

CITY COUNCIL

1520 AVENUE K



DATE: 2/27/2012
CALL TO ORDER: 7:00 p.m.
INVOCATION: Assistant Pastor Kelvin Foley
Prestonwood Baptist Church
PLEDGE OF ALLEGIANCE: Cadette Girl Scout Troop 2206
Rice Middle School

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></p> <p>Presentation: Collin County Commissioners Court presentation of check from the Collin County Parks and Open Space Matching Grant Program</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Photographic Traffic Signal Advisory Committee</u></p> <p>Peter Pennesi</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p><u>Approval of Minutes</u> February 13, 2012</p>	
(b)	<p><u>Approval of Expenditures</u> Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>Bid No. 2012-101-B for the purchase of twenty (20) Chevrolet Black & White Police Tahoe's for Fleet Services to be utilized by the Police Department from Caldwell Country Automotive in the amount of \$538,680 and authorizing the City Manager to execute all necessary documents.</p>	
(c)	<p><u>Purchase from an Existing Contract</u></p> <p>To approve the purchase and installation of playground equipment for Cross Bend, Forest Creek East, and Prairie Meadow Parks through PISD Contract (2011-59-1/PISD #2010-052) in the amount of \$328,905; and authorizing the City Manager to execute all necessary documents.</p>	
(d)	<p>To approve the purchase of a False Alarm Tracking and Billing System to include Software Licenses, Installation, Data Conversion and Training for the Plano Police Department in the amount of \$66,825 from Dell Marketing L.P., through an existing contract/agreement with Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR Contract #SDD-890)</p>	
(e)	<p>To approve a contract for the purchase of Commvault-Galaxy Software Premium Support Coverage, in the amount of \$118,423 from CDW Government, LLC, through an existing contract with The Cooperative Purchasing Network (TCPN), and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R5106)</p>	
(f)	<p><u>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</u></p> <p>To approve a Professional Services Agreement by and between the City of Plano and Birkhoff, Hendricks & Carter, L.L.P., in the amount of \$66,000 to prepare a performance specification for the replacement of the City's Water and Wastewater Supervisory Control and Data Acquisition (SCADA) and authorizing the City Manager to execute all necessary documents.</p>	
(g)	<p>To approve a Professional Services Agreement by and between the City of Plano and Birkhoff, Hendricks, and Carter, L.L.P., in the amount of \$424,000 for the renovation of the Stadium Pump Station and authorizing the City Manager to execute all necessary documents.</p>	
(h)	<p><u>Adoption of Resolutions</u></p> <p>To approve the terms and conditions of an agreement by and between the City of Plano and SolarBee, Inc., the sole source provider of SolarBee Potable Water Mixers; authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(i)	To suspend the March 6, 2012, effective date of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex") requested rate change to permit the City time to study the request and to establish reasonable rates; approving cooperation with Atmos Cities Steering Committee ("ACSC") and other cities in the Atmos Mid-Tex service area to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; requiring reimbursement of cities' rate case expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company; ACSC's legal counsel; and providing an effective date.	
(j)	To authorize the filing of application for federal funds in an amount not to exceed \$35,700 under the Edward Byrne Memorial Justice Assistance Grant (JAG) State Formula Program through the Office of the Governor of Texas, Criminal Justice Division; designating Gregory W. Rushin as authorized representative of the City of Plano for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date.	
(k)	To approve the terms and conditions of an Amended and Restated Tax Abatement Agreement consolidating the prior agreements into a single document by and among the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, the County of Collin, Texas, and Capital One, National Association, a national banking association; and authorizing its execution by the City Manager; and providing an effective date.	
(l)	To approve the hiring of an Assistant City Attorney II by the City Attorney; and providing an effective date.	
(m)	To approve the hiring of an Assistant City Attorney II by the City Attorney; and providing an effective date.	
(n)	To authorize the purchase of downloadable content (ebooks, music, video, and e-audio library materials) with Kindle functionality in an amount not to exceed the sum of \$150,000 from OverDrive, Inc., the sole source provider of such library materials for the City of Plano - Plano Public Library System; and authorizing its execution by the City Manager to execute all necessary documents; and providing an effective date.	
(o)	<p><u>Adoption of Ordinances</u></p> <p>To amend Section 12-101 of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to prohibit stopping, standing, or parking of motor vehicles on certain sections of Bishop Road, Dickens Drive, Gifford Drive, Infinity Avenue, and Wedgegate 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 roadway within the limits herein defined; and providing a penalty clause, a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(p)	<p>To transfer the sum of \$15,000 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2011-12 for the purpose of providing funds for auditing of additional programs outside the scope of the audit engagement with Grant Thornton; amending the budget of the City and Ordinance 2011-9-8, declaring this action to be a case of public necessity; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**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:		02/27/2012		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: Collin County Commissioners Court presentation of check from the Collin County Parks and Open Space Matching Grant Program				
FINANCIAL SUMMARY				
<input 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
February 13, 2012**

COUNCIL MEMBERS PRESENT

Phil Dyer, Mayor
Pat Miner, Mayor Pro Tem
Lissa Smith, Deputy Mayor Pro Tem
Ben Harris
André Davidson
James Duggan
Patrick Gallagher
Lee Dunlap

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:04 p.m., Monday, February 13, 2012, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was present. 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 and discuss Litigation, Section 551.071; receive information regarding Economic Development, Section 551.087; discuss Real Estate, Section 551.072; and Personnel, Section 551.074 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 6:01 p.m.

**Consideration and action resulting from Executive Session discussion: Personnel
Appointments – Building Standards Commission**

Upon a motion made by Council Member Dunlap and seconded by Council Member Duggan, the Council voted 8-0 to move James Mack Craft, Jr. from an alternate to a regular position and to appoint Joe W. Milkes as an alternate member.

Comprehensive Plan Update – Take the Case Program

Senior Planner Perry spoke to the program designed to facilitate meetings and gather input for the Comprehensive Plan. She spoke to items provided including a host's guide, agenda, exercises and response forms. Senior Planner Sims spoke regarding exercises related to reviewing development across the City, building a group vision for the next 20 years, and developing a list of suggestions for the Comprehensive Plan. He responded to the Council regarding the anticipated length of meetings and Mayor Dyer requested feedback as the program is implemented.

IMCA Performance Measurement

Mayor Dyer advised that this item will be brought forward at a later meeting.

Update Regarding Plano Partners Program

Director of Public Information Conklin provided a history of the program and advised that Texas Health Presbyterian Plano will be the first participant in the amount of \$1 million gross over a five-year agreement. She reviewed their plans to provide health screenings and information at the recreation centers and the City's provision of ribbon signs for all partners and site identification at recreation centers. Ms. Conklin advised that the net revenue will be \$720,000 including commissions and signage costs.

Personnel: Appointment – Photographic Traffic Signal Advisory Committee

Mayor Pro Tem Miner appointed Peter Vincent Pennesi as a member of the board.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agenda

City Manager Glasscock requested that Consent Agenda Item "K," Contract Modification No. 5 to increase the contract cap in the amount of \$2,414,290 for the purchase of water meters and installation services from HD Supply Waterworks Ltd. be removed for individual consideration.

Council Member Harris advised that he would be stepping down on Regular Agenda Item "1," Public Hearing and consideration of an ordinance to rezone 26.5± acres located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive from Regional Employment and Regional Commercial to Single-Family Residence-6 due to a possible conflict of interest.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:48 p.m.

Phil Dyer, MAYOR

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
February 13, 2012

COUNCIL MEMBERS PRESENT

Phil Dyer, Mayor
Pat Miner, Mayor Pro Tem
Lissa Smith, Deputy Mayor Pro Tem
Ben Harris
André Davidson
James Duggan
Patrick Gallagher
Lee Dunlap

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, February 13, 2012, at 7:01 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Pastor Barry Gin of Plano Chinese Alliance Church led the invocation and Boy Scout Troop 219 of Christ Church Plano led the Pledge of Allegiance.

COMMENTS OF PUBLIC INTEREST

Citizen Matt Dixon spoke to the impact of apartment residents on TEA ratings and the corresponding effect on Plano City taxes.

CONSENT AGENDA

City Manager Glasscock requested that Consent Agenda Item “K,” be removed for individual consideration.

Council Member Harris advised that he would be stepping down on Regular Agenda Item “1” due to a possible conflict of interest.

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

Approval of Minutes (Consent Agenda Item “A”)

January 23, 2012
January 30, 2012

Approval of Expenditures

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

Bid No. 2012-47-B for the 2011-2012 Pavement Maintenance Phase I – Plano Parkway and Custer Road, Project No. 6170 to Laughley Bridge & Construction, Inc., in the amount of \$870,258 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

CSP No. 2012-44-B for the construction of Aquatic Center Renovation to J.C. Commercial, Inc., in the amount of \$4,260,777 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

Bid No. 2012-40-C for a one (1) year contract with three (3) City optional renewals for Irrigation Repair Parts for the Parks Department to Irrigator's Supply Inc., Longhorn Inc., and Professional Turf Products LP, in the estimated annual amount of \$65,000 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “D”)

Bid No. 2012-32-C for a one (1) year contract with three (3) City optional renewals to purchase Reinforcing Steel from BARNSCO Inc. and CMC Construction Services Inc., in an estimated amount of \$63,850 to be utilized by Public Works, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “E”)

Purchase from an Existing Contract

To approve a contract for the purchase of maintenance and support for Ironport Software, in the amount of \$68,624 from Solid Border, Inc., through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD- 1123) (Consent Agenda Item “F”)

To approve the purchase of a Court Management System in the amount of \$970,278 from Tyler Technologies, Inc., through an existing contract and authorizing the City Manager to execute all necessary documents. (City of Carrollton RFP #07-014) (Consent Agenda Item “G”)

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

To approve a Professional Services Agreement by and between the City of Plano and CP&Y, Inc., in the amount of \$190,000 for Plano Park 1 – Street Reconstruction and Water Main Replacement project and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “H”)

To approve a Landscape Architecture Services Agreement by and between the City of Plano and la terra studio, inc., in the amount of \$58,723 for Improvements to Carpenter Park and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “I”)

To approve a Landscape Architecture Services Agreement by and between the City of Plano and la terra studio, inc., in the amount of \$177,085 for Improvements to High Point Park and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “J”)

Reimbursement of Oversize Participation

To approve and authorize reimbursement to TOG Development I, LLC for oversize participation for public improvements associated with the construction of Bright Star Way and a portion of Oceanview Drive in the amount of \$131,837 and to TOG Development II, LLC for oversize improvements associated with the construction of a portion of Oceanview Drive in the amount of \$4,811. (Consent Agenda Item “L”)

Adoption of Resolutions

Resolution No. 2012-2-1(R): To approve the terms and conditions of a Corporate Sponsorship Agreement by and between Texas Health Presbyterian Hospital Plano and the City of Plano; approving its execution by the City Manager; and providing an effective date. (Consent Agenda Item “M”)

Resolution No. 2012-2-2(R): To approve the Investment Portfolio Summary for the quarter ending December 31, 2011 and providing an effective date. (Consent Agenda Item “N”)

Resolution No. 2012-2-3(R): To repeal Resolution No. 2011-6-23(R) approving the terms and conditions of an agreement by and between the City of Plano, Texas, Collin County, Texas, Internap Network Services Corporation, a Delaware corporation and Behringer Harvard 1221 Coit, LP, a Texas limited partnership; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “O”)

Resolution No. 2012-2-4(R): To appoint James D. Shields and Lori A. Leu to serve for two year terms as investigators as required by Section 2-104 of the Code of Conduct of the City of Plano; and providing an effective date. (Consent Agenda Item “P”)

Adoption of Ordinances

Ordinance No. 2012-2-5: To abandon all right, title and interest of the City, in that certain 15-foot wide Sanitary Sewer Easement recorded in Instrument No. 20111026001150700, Official Public Records of Collin County, Texas, and being situated in the Collin County School Survey, Abstract No. 153, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Florida Etoile, Inc., to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. (Consent Agenda Item “Q”)

Ordinance No. 2012-2-6: To amend Chapter 14, Offenses-Miscellaneous, of the Code of Ordinances of the City of Plano to add a new Article XI, Vulnerable Road Users, to regulate the conduct of motor vehicle operators while passing cyclists on a highway or street and providing a penalty; and providing a repealer clause, a savings clause, a severability clause, a publication clause and an effective date. (Consent Agenda Item “R”)

Ordinance No. 2012-2-7: To repeal Ordinance No. 2011-6-22 designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 123 for tax abatement consisting of a 7.255 acre tract of land located in the Martha McBride Survey, Abstract No. 553, Collin County, in the City of Plano, Texas; and providing an effective date. (Consent Agenda Item “S”)

Ordinance No. 2012-2-8: To adopt and enact Supplement Number 97 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date. (Consent Agenda Item “T”)

END OF CONSENT

Approval of Contract Modification - To approve and authorize Contract Modification No. 5 to increase the contract cap in the amount of \$2,414,290 for the purchase of water meters and installation services from HD Supply Waterworks Ltd to be utilized by Public Works, Customer & Utility Services, and Warehouse, and authorizing the City Manager to execute all necessary documents (2007- 223-B). (Consent Agenda Item “K”)

Director of Public Works Cosgrove advised that the item includes the cost of additional contracted services to expedite the installation of meters and the purchase of meters for new construction and replacement. He responded to Mayor Dyer, stating that the use of contractors would reduce City-wide installation time from three years to one.

Upon a motion made by Mayor Pro Tem Miner and seconded by Deputy Mayor Pro Tem Smith, the Council voted 8-0 to approve and authorize Contract Modification No. 5 to increase the contract cap in the amount of \$2,414,290 for the purchase of water meters and installation services from HD Supply Waterworks Ltd.

Due to a possible conflict of interest, Council Member Harris stepped down from the bench on the following item and did not return to the meeting.

Public Hearing and adoption of Ordinance No. 2012-2-9 as requested in Zoning Case 2011-35 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 26.5± acres located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive in the City of Plano, Collin County, Texas, from Regional Employment and Regional Commercial to Single-Family Residence-6; directing a change accordingly in the official zoning map of the City; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Haggard-Jezzeen Partners (Regular Agenda Item “1”)

Planning Manager Firgens reviewed the current and proposed zoning and allowed uses. She spoke to surrounding zoning and advised that the request is inconsistent with the Comprehensive Plan. Ms. Firgens advised that the Planning and Zoning Commission recommended approval as submitted.

Ordinance No. 2012-2-9 (cont'd)

Mayor Dyer opened the Public Hearing. Thomas Juhn, of JBI Partners, representing the applicant, spoke to challenges of the property including its topography/access and the setbacks of similar residential developments along State Highway 121. He spoke to discussions held with TxDOT and the Frisco Independent School District and the property's location near other residentially zoned parcels and a school. Beau Brooks of Grand Homes reviewed the company's other developments in the City and spoke to the homes planned. He responded to the Council regarding the anticipated home size and stated that Grand Homes would take all of the lots. No one else spoke for or against the item. The Public Hearing was closed.

Mr. Juhn responded to questions from Council Member Davidson regarding access from the State Highway 121 Frontage Road.

A motion was made by Council Member Duggan and seconded by Council Member Gallagher to rezone 26.5± acres located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive in the City of Plano, from Regional Employment and Regional Commercial to Single-Family Residence-6; as requested in Zoning Case 2011-35 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2012-2-9. The Council voted 6-1 with Council Member Davidson voting in opposition. The motion carried.

Nothing further was discussed and Mayor Dyer adjourned the meeting at 7:29 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:		2/27/12		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Earl Whitaker x7074				
CAPTION				
Bid No. 2012-101-B for the purchase of twenty (20) Chevrolet Black & White Police Tahoe's for Fleet Services to be utilized by the Police Department from Caldwell Country Automotive in the amount of \$538,680 and authorizing the City Manager 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: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	560,000	0	560,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-538,680	0	-538,680
BALANCE	0	21,320	0	21,320
FUND(S): EQUIPMENT REPLACEMENT FUND				
COMMENTS: Funds are included in the FY 2011-12 Adopted Budget to purchase Twenty (20) Chevrolet Black and White Police Tahoe's for Department #532/Police. Remaining balance will be used for other Fleet and Equipment purchases. STRATEGIC PLAN GOAL: Providing Chevrolet Tahoe's for the City's Police Department relates to the City's Goal of a Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the bid of Caldwell Country Automotive in the amount of \$538,680 be accepted as the lowest responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents. This purchase is for the Fleet Department to be utilized by the Police Department.				
List of Supporting Documents: Award Memo, Bid Recap			Other Departments, Boards, Commissions or Agencies NA	



Date: February 16, 2012
To: Earl Whitaker, Buyer Supervisor
From: Reid Choate, Fleet Manager
Subject: **Police Tahoe Purchase Recommendation**

Fleet Services has reviewed all bids received on City of Plano Bid # 2012-101-B and recommends purchasing, twenty (20) black and white Chevrolet PPV Tahoe's, in the amount of \$538,680 from Caldwell Country Automotive as the lowest responsive, responsible bidder, meeting specifications.

These vehicles are for the scheduled replacements for Police Patrol units in Cost Center 532/Police, approved in the FY11-12 Equipment Replacement Fund. Due to the age and maintenance cost, Fleet Services recommends these units be replaced. If these vehicles are not replaced, it would limit the Department in their capacity to perform the public safety duties within the City of Plano.

Feel free to call me if you have any questions at extension 4182.

CITY OF PLANO

BID NO. 2012-101-B
POLICE TAHOE'S
BID RECAP

Bid opening Date/Time: February 14, 2012 @ 2:00 pm

Number of Vendors Notified: 1187

Vendors Submitting "No Bids": 0

Number of Bids Submitted: 3

Caldwell Country Automotive	\$538,680.00
Reliable Chevrolet	\$539,524.60
Holiday Chevrolet	\$550,069.00

Recommended Vendor:

Caldwell Country Automotive	\$538,680.00
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Earl S. Whitaker

Earl S. Whitaker
Buyer Supervisor

February 17, 2012

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:		2/27/12		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
To approve the purchase and installation of playground equipment for Cross Bend, Forest Creek East, and Prairie Meadow Parks through PISD Contract (2011-59-I/PISD #2010-052) in the amount of \$328,904.51; and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	105,675	790,325	400,000	1,296,000
Encumbered/Expended Amount	-105,675	-14,939	0	-120,614
This Item	0	-328,905	0	-328,905
BALANCE	0	446,481	400,000	846,481
FUND(S): CAPITAL RESERVE CIP				
COMMENTS: Funds are included in the FY 2011-12 Capital Reserve CIP. This item, in the amount of \$328,905, will leave a current year balance of \$446,481 for the Playground Replacements project. STRATEGIC PLAN GOAL: Replacement of playground equipment and surfacing relates to the City's Goal of Great Neighborhoods - 1st Choice to Live.				
SUMMARY OF ITEM				
In conjunction with the Collin County Governmental Purchasing Forum, Plano ISD sponsored and awarded a contract for playground equipment and installation to webuildfun, inc. The City of Plano requests to purchase playground equipment and playground surfacing from this contract in the amount of \$328,905 for Cross Bend, Forest Creek East, and Prairie Meadow Parks.				
All competitive bid requirements were met by PISD on behalf of the forum participants. The City of Plano is a participating member of CCGPF.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map				
Memo				
Quote				

MEMORANDUM

Date: 2/16/2012
To: Nicole Griffin, Purchasing Department
From: Kyle McCutcheon, Park Renovation Project Coordinator
Subject: **Playground Equipment purchase for Cross Bend, Forest Creek East and Prairie Meadow**

It is the recommendation of the Plano Parks and Recreation Department to award the replacement of Cross Bend, Forest Creek East, and Prairie Meadow playgrounds to **webuildfun, inc. webuildfun, inc.** is both responsive and responsible, and appears fully capable of successfully completing this project as specified. The lowest price option for this proposed purchase, in the amount of \$328,904.51, was acquired using bid quotes taken from three competing Cooperative Price Agreements. The proposed purchase price is within the estimated amount of \$375,000.00 as previously budgeted for this project. Please review and begin the necessary steps for the award of this contract.

Background and Scope

Plano currently has playground structures at 69 different sites, with some locations having multiple structures. Park Support conducts ongoing evaluations of each structure to determine equipment condition and compliance. Typically playground structures require replacement every 15-20 years depending on use, wear, safety and compliance.

Justification

Cross Bend, and Prairie Meadow playgrounds have been in place for more than 20 years, and Forest Creek East more than 15 years. Each location has play features that would not be allowed by current safety standards such as certain slides and larger than allowable openings which could cause head entrapments or falls. The border surrounding the play area at Cross Bend is in poor shape and needs replacement. The loose stones from the border are often used to damage the playground equipment.

All three locations require modifications to the play area to make them handicap accessible such as ramps into the play area. Forest Creek also requires conversion of the fall surface from pea gravel to Engineered Wood Fiber to make the play area accessible as well increase the fall attenuation.

None of the three existing playgrounds currently provide any shade. Shade will be included with all three of the new installations.

Should these playgrounds not be replaced at this time, the condition of the playgrounds will continue to deteriorate. Many parts on these playgrounds are no longer manufactured which could require closure of certain play features or the entire playground itself should replacement parts not be available.

CC: Amy Fortenberry, Director of Parks and Recreation
Jim Fox, Park Services Manager
Robin Reeves, Chief Park Planner
Douglas Green, Park Operations Superintendent

Forest Creek Park East

CD193256	1	Miracle Kids' Choice unit , 2-5 yrs inlcudes (3) 18' Dia. Hexagon Pinwheel Shades and a 2-Bay anti-wrap swings, (2) tots, (2) s/p seats	\$73,799.00
	1	Elephant Play, 2-5 Rotating Mini Net 12' Concrete Accessible Ramp w/ handrails Installation of equipment	\$12,250.00 \$2,500.00
4,648 sq ft		Engineered Wood Fiber	\$8,134.00
		Demo and Pea Gravel Haul off	\$7,500.00
		Freight	\$4,151.44
		Plano Purchasing Coop Discount	-\$11,100.00
		Miracle Extra Credit Discount	-\$3,689.95
		ADA Plan Review, Registration & Inspection	\$850.00
		Option Two TOTAL	\$94,394.49

*If tax exempt, please provide tax exemption certificate otherwise tax will be included on your invoice
Thank you for the opportunity to provide this quote!*

Vince Allen

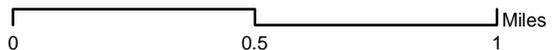
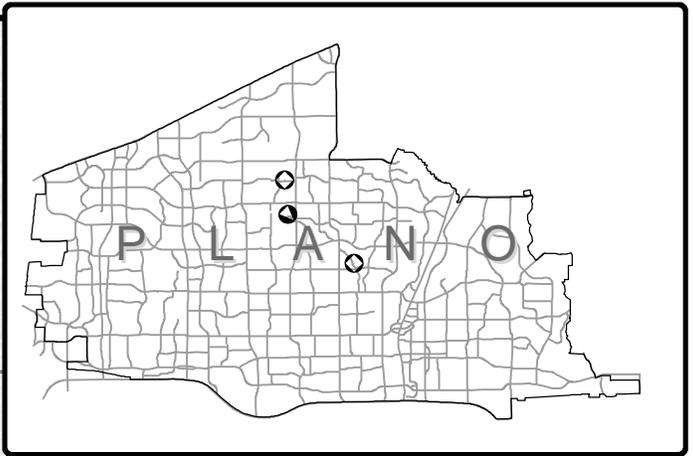
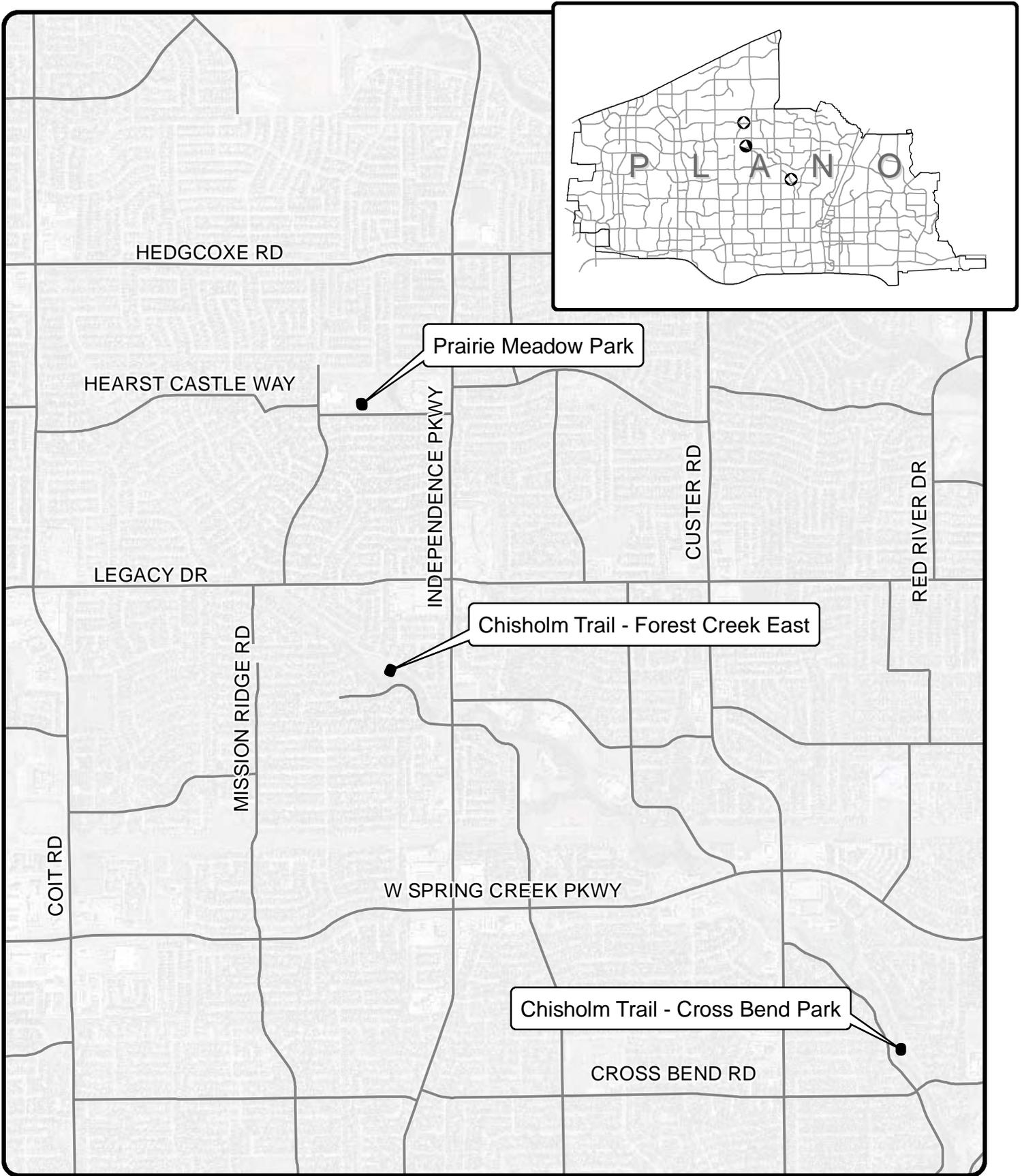
Prepared By:

Approved by:



Playground Location Map

Prairie Meadow, Forest Creek East and Cross Bend





**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:		2/27/12		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Earl Whitaker x7074				
CAPTION				
To approve the purchase of a False Alarm Tracking and Billing System to include Software Licenses, Installation, Data Conversion and Training for the Plano Police Department in the amount of \$66,825 from Dell Marketing L.P., through an existing contract/agreement with Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR Contract #SDD-890)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	150,000	0	150,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-66,825	0	-66,825
BALANCE	0	83,175	0	83,175
FUND(s): CRIMINAL INVESTIGATION FUND				
<p>COMMENTS: Funds are available in the 2011-12 Criminal Investigation Fund budget for the purchase of a False Alarm Tracking and Billing System for the Plano Police Department. The balance of funds will be used for other items required for the replacement of the current system.</p> <p>STRATEGIC PLAN GOAL: Periodic replacement of the City's Alarms System, including software, hardware and other related items, relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
Staff recommends the purchase of a False Alarm Tracking and Billing System to include Software Licenses, Installation, Data Conversion and Training for the Plano Police Department in the amount of \$66,825 from Dell Marketing L.P., through an existing contract/agreement with Department of Information Resources (DIR). AOT Public Safety Corporation, Dell's subcontractor, shall work directly with the City to provide the services. The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271 subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (DIR Contract #SDD-890 / City of Plano Internal Contract No. 2011-295-O)				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Award Memo			NA	



P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099

MEMORANDUM

DATE: February 16, 2012

TO: Gregory W. Rushin, Chief of Police

FROM: Edward G. Brashear, Administrative Manager

SUBJECT: Alarm Billing & Tracking System Recommendation

Staff has recognized the need to acquire a new Alarm Billing & Tracking System for approximately two years. Our existing software has been in place for over ten years, is an outdated operating system, and the current vendor (a "one person" shop) is the only source for maintenance. Concerns over the viability plus the outdated application have led to the recommendation that it be replaced.

Staff submitted a Project Management Office proposal to the City's Technology Peer Review Team and was granted approval to continue with the planning process. PD staff subsequently began working with Purchasing, Technology Services, Accounting, and Public Safety Communications to develop specifications and seek proposals from qualified vendors. The decision was made to utilize a Co-Operative Contract to facilitate this project. Multiple vendors were contacted and as a result, two proposals were received and evaluated. After completing the evaluation process, staff is recommending the proposal of AOT Public Safety Corporation (PSC) for their Cry Wolf® system which will be purchased from Dell Marketing L.P. through an existing contract with DIR (Contract # SDD-890). AOT Public Safety Corporation, Dell Marketing L.P.'s subcontractor, shall work directly with the City to provide the services. This is based on their offer of the lowest price, most effective solution, twelve years of experience and successful implementation of their product for over 200 agencies supporting more than 450 cities, counties, and other municipalities.

The total acquisition for this new software application is \$66,825. On-going annual license renewal and maintenance is \$7210, which is already approved in annual appropriations. (Note: after the first license renewal period, the fee may be increased by no more than 6% annually).

Continuing to use this outdated system could potentially impact our quality of service for the approximate 25,000 active permit holders. In addition, over \$1.6 million is processed and collected through this system. Maintaining an operationally sound system is of utmost importance in providing exceptional customer service.

Lastly, acquisition of the Cry Wolf® system offers numerous time saving features, bi-directional transfer and updates between TriTech CAD and the Cry Wolf system requiring less manual data entry, current updated alarm permit information for patrol, and provide state-of-the-art web-based availability to our citizens and agency personnel.



**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:		2/27/12		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
To approve a contract for the purchase of Commvault-Galaxy Software Premium Support Coverage, in the amount of \$118,423 from CDW Government, LLC., through an existing contract with The Cooperative Purchasing Network (TCPN), and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R5106)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		0	2,866,574	0
Budget		0	-1,446,063	0
Encumbered/Expended Amount		0	-118,423	0
This Item		0	1,302,088	0
BALANCE		0	1,302,088	1,302,088
FUND(S): TECHNOLOGY SERVICES FUND				
COMMENTS: Funds are included in the 2011-12 Technology Services budget for this maintenance agreement. The remaining balance will be used throughout the year for other maintenance agreements.				
STRATEGIC PLAN GOAL: Maintenance agreements relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Technology Services recommends Council approve an expenditure for Commvault-Galaxy Software Support Coverage with CDW Government, LLC, through The Cooperative Purchasing Network, in the amount of \$118,423 for a premier support services agreement which provides the City with critical software support. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (TCPN Contract No. R5106).				
List of Supporting Documents: Staff Memo and Contract			Other Departments, Boards, Commissions or Agencies	

Interoffice Memo

Date: February 15, 2012
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Annual Maintenance for Commvault Backup Software

We must purchase maintenance for the Commvault backup software we use to backup the City's network. We recommend purchasing this maintenance from CDW Government, LLC, for a price of \$118,423.23 from their TCPN Contract No. R5106. The term of maintenance will be one year. Quotes were also obtained from Dell Marketing, LP, and MTM Technologies, but both of these quotes were higher than the price provided by CDW Government, LLC.

Commvault is our major component of software we currently use to assure compliance with any legal discoveries and to also provide business continuity for critical City data and applications.

We recommend purchasing this maintenance from CDW Government, LLC, as stated above.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND CDW GOVERNMENT LLC
FOR COMMAVULT GALAXY PREMIER SOFTWARE SUPPORT**

THIS CONTRACT is made and entered into by and between **CDW GOVERNMENT LLC**, an Illinois limited liability corporation, whose address is 230 North Milwaukee Avenue, Vernon Hills, Illinois 60061, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide Commvault Galaxy Premier Software Support to the City of Plano Technology Services Department. These services shall be provided in accordance with this Contract and with the TCPN Contract No. R5106, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The TCPN Contract No. R5106, on file with the City of Plano Technology Services Department;
- (c) CDW Government's Statement of Work (**Exhibit "A"**);
- (d) Insurance Requirements (**Exhibit "B"**);
- (e) Affidavit of No Prohibited Interest (**Exhibit "C"**).

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **ONE HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED TWENTY THREE AND 23/100 DOLLARS (\$118,423.23)**.

**III.
TERM**

The term of this Contract shall be a period of one (1) year commencing upon the effective date hereof.

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and **Exhibit "A"** attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the TCPN Contract No. R5106 or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

If requested by Contractor, City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

**VI.
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC**

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

**VII.
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

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, INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT) 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.

IN ADDITION TO CONTRACTOR'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS HEREIN, IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR 'S OPINION IS LIKELY TO OCCUR, CONTRACTOR 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 REIMBURSEMENT FOR THE PRODUCT. CONTRACTOR WILL PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.

THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION HEREIN APPLIES TO ALL PRODUCTS PROVIDED, SUPPLIED OR SOLD UNDER THIS AGREEMENT BY CONTRACTOR TO CITY WHETHER MANUFACTURED BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONTRACTOR TO CITY AS PART OF THIS

AGREEMENT DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO USE SAID PRODUCTS. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3 IN THE HEREIN INDEMNIFICATION SECTION.

**X.
VENUE**

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

**XI.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract and that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor affiliate. An assignment of this Contract with the consent of the City or to an affiliate of Contractor is conditioned on the assignee agreeing to be bound by the terms of this Contract. Contractor may subcontract any portion of its performance under this Contract. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**XII.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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.

**XIII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. Contractor shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract.

**XIV.
FORCE MAJEURE**

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including 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.

**XV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents Contractor is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "C"**.

**XVI.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XVII.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XVIII.
MAILING OF NOTICES**

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

Service Contract

Page 5

City of Plano
Technology Services
P.O. Box 860358
Plano, Texas 75086-0358
Attn: David Stephens

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

CDW Government LLC
230 North Milwaukee Avenue
Vernon Hills, IL 60061
Attn: General Counsel

Copy: CDW Government LLC
2 Enterprise Dr. Suite 404
Shelton, CT 06484

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.

XIX. ENTIRE AGREEMENT

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

City agrees to reference this Contract and TCPN Contract No. R5106 on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Contract; (ii) clearly indicate the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

XX. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XXI. SUCCESSORS AND ASSIGNS

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

XXII. HEADINGS

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXIII.
EFFECTIVE DATE**

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

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

CDW GOVERNMENT LLC

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

INSURANCE REQUIREMENTS

1.0 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
- 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
 - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

2.1 Commercial General Liability. Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10** or the equivalent.

2.1.3 Limits of Insurance

2.1.3.1 \$1,000,000 Per Occurrence

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1 List each insurers' NAIC Number or FEIN

- 3.5.2 List **contract number, project name**/number, name of event, location (building name, building address, etc.), date(s) of event or service being performed
- 3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City
- 3.5.4 Specifically list reference to all endorsements required herein
- 3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
- 3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section



CDWLLC

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/21/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. 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).

PRODUCER Commercial Lines - (415) 541-7900 Wells Fargo Insurance Services USA, Inc. - CA Lic#: 0D08408 45 Fremont Street, Suite 800 San Francisco, CA 94105-2259	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:		FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED CDW Government LLC 230 North Milwaukee Avenue Vernon Hills, IL 60061	INSURER A: Travelers Property Casualty Co of America		25674
	INSURER B: Charter Oak Fire Insurance Co.		25615
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER: 3676185

REVISION NUMBER: See below

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (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			6600252P993TIL12	10/01/2011	10/01/2012	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			Domestic Auto - BA0239P10A	10/01/2011	10/01/2012	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			CUP0252P993	10/1/2011	10/1/2012	EACH OCCURRENCE	\$ 5,000,000USD
							AGGREGATE	\$ 5,000,000USD
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			WC STATUTORY LIMITS	
							OTHER	
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

re: Commvault Galaxy Support Agreement

The City of Plano (the "City"), the Plano City Council and its members, the City's agents, officers, directors and employees are named additional insured, as respects General Liability per form #CGD4170708. Coverage shall be primary and non-contributory as required by written contract.

CERTIFICATE HOLDER

City of Plano
 Risk Management Division
 7501 A Independence Parkway
 Plano, Texas, 75025

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

James Brada

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ACORD 25 (2010/05)

EXHIBIT B
 PAGE 4 OF 11

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|--|
| <ul style="list-style-type: none"> A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion B. Non-Owned Watercraft Less Than 75 Feet C. Aircraft Chartered With Pilot D. Damage To Premises Rented To You E. Increased Supplementary Payments F. Who Is An Insured – Employees And Volunteer Workers – First Aid G. Who Is An Insured – Employees – Supervisory Positions H. Who Is An Insured – Newly Acquired Or Formed Organizations I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises | <ul style="list-style-type: none"> J. Blanket Additional Insured – Lessors Of Leased Equipment K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement L. Blanket Additional Insured – Broad Form Vendors M. Who Is An Insured – Unnamed Subsidiaries N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures O. Contractual Liability – Railroads P. Knowledge And Notice Of Occurrence Or Offense Q. Unintentional Omission R. Blanket Waiver Of Subrogation |
|---|--|

PROVISIONS

A. REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2., of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2.

of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (a) Less than 75 feet long; and
- (b) Not being used to carry any person or property for a charge.

C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

D. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions c., g. and h., and Paragraphs (1), (3) and (4) of Exclusion j., do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III – Limits Of Insurance.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**:
6. Subject to 5. above, the **Damage To Premises Rented To You Limit** is the most we will pay under Coverage A for damages because of "premises damage" to any one premises.

The **Damage To Premises Rented To You Limit** will be:

- a. The amount shown for the **Damage To Premises Rented To You Limit** on the **Declarations** of this Coverage Part; or
 - b. \$100,000 if no amount is shown for the **Damage To Premises Rented To You Limit** on the **Declarations** of this Coverage Part.
4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
 - b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.
6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:
 - (b) That is insurance for "premises damage"; or
 7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:
 - b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the **Bodily Injury Liability Coverage** applies. We do not have to furnish these bonds.
2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

F. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – FIRST AID

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed

or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS

The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED:**

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED:**

- 4. Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner

or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

COMMERCIAL GENERAL LIABILITY

- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

K. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

L. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
 - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
 - (6) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingre-

dent, part or container entering into, accompanying or containing such products; or

- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

O. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c. Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph **2., Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph **a.** above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph **1.** or **2.** of Section **II – Who Is An Insured**:

(1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

(2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

- (a) Any individual who is:
 - (i) A partner or member of any partnership or joint venture;
 - (ii) A manager of any limited liability company;
 - (iii) A trustee of any trust; or
 - (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or
- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

COMMERCIAL GENERAL LIABILITY

(3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

Q. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

R. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

POLICY NUMBER: 6600252P993TIL12

ISSUE DATE: 10/01/2011

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED ENTITY – NOTICE OF
CANCELLATION PROVIDED BY US**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice of Cancellation: 30

**PERSON OR
ORGANIZATION:**

City of Plano

ADDRESS:

Risk Management Division
7501 A Independence Parkway
Plano, Texas, 75025

PROVISIONS:

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule

above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.



**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:	2/27/12
Department:	Public Works
Department Head:	Gerald P. Cosgrove, P.E.
Agenda Coordinator (include phone #): Irene Pegues (7198)	
Project No. 6212	

CAPTION

To approve a Professional Services Agreement by and between the City of Plano and Birkhoff, Hendricks & Carter, LLP, in the amount of \$66,000, to prepare a performance specification for the replacement of the City's Water and Wastewater Supervisory Control and Data Acquisition (SCADA) and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	586,000	0	586,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-66,000	0	-66,000
BALANCE	0	520,000	0	520,000

FUND(S): WATER CIP

COMMENTS: Funds are included in the FY 2011-12 Water CIP. This item, in the amount of \$66,000, will leave a current year balance of \$520,000 for the Monitoring & Control Ridgeview project.

STRATEGIC PLAN GOAL: Updating the monitor and control systems at the Ridgeview Pump station relate to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

The Supervisory Control and Data Acquisition System (SCADA) was initially installed at the Water, Waste Water Pumping Stations and elevated storage tanks in 1993 by Automation Services. The SCADA system automatically controls all critical plant processes and provides a computer terminal interface for plant operators. The system has served the City well with few major interruptions. Although the system is still operating, various Programmable Logic Controllers (PLC), a key component of the SCADA system, are no longer manufactured and have been obsolete for approximately 5 to 7 years. Repairs have been made utilizing spare and scrapped parts. The risks of failure of the PLCs, resulting in service interruptions have increased since parts and service are no longer being supported by the manufacturer. Furthermore, the PLC software was originally installed using DOS based computers. Since that time there has been a patch installed which allows the system to operate in a windows based system which has continually been problematic causing the software to lock up.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

<u>Task</u>	Basic Services	<u>Estimated Budget</u>
Collect and Compile Data		\$6,200.00
Workshop Hardware		\$5,760.00
Software Investigation		\$6,900.00
Workshop Software		\$5,760.00
High-Tech Procurement Specifications		\$9,000.00
Prepare Evaluation Criteria		\$2,340.00
Meetings to Discuss RFP		\$1,200.00
Selection Process		\$6,840.00
Implementation		<u>\$22,000.00</u>
	Total	\$66,000.00

List of Supporting Documents: Engineering Services Agreement	Other Departments, Boards, Commissions or Agencies N/A
---	---

**WATER & WASTEWATER SCADA
(SUPERVISORY CONTROL AND DATA ACQUISITION)**

PROJECT NO. 6212

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **BIRKHOFF, HENDRICKS & CARTER, L.L.P.**, a **TEXAS** Limited Liability Partnership, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare a performance specification for the replacement of the City's Water and Wastewater SCADA System and to perform other related engineering services in connection with the **WATER & WASTEWATER SCADA (SUPERVISORY CONTROL AND DATA ACQUISITION)** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER 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 ENGINEER'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 ENGINEER, 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 ENGINEER 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 ENGINEERS. 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.

ENGINEER 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 ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER 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 ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

City of Plano
Public Works Department, Suite 250
P.O. Box 860358
Plano, TX 75086-0358
Attn: Shahrzad Tavana

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

Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Avenue, Suite 600
Dallas, TX 75243
Attn: John W. Birkhoff, P.E.

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

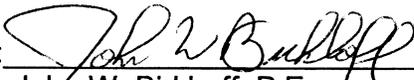
G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
A Texas Limited Liability Partnership

DATE: 1/18/12

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

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

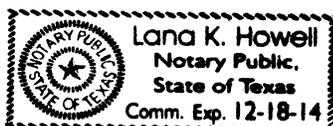
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 18th day of JANUARY, 2012, by **JOHN W. BIRKHOFF, P.E., MANAGING PARTNER**, of **BIRKHOFF, HENDRICKS & CARTER, L.L.P.**, a **TEXAS** Limited Liability Partnership, on behalf of said company.





Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT "A"

SCOPE OF SERVICES

WATER & WASTEWATER SCADA (SUPERVISORY CONTROL AND DATA ACQUISITION)

DESCRIPTION:

Provide engineering services to prepare a performance specification for the replacement of the City's Water and Wastewater SCADA System utilizing the State Fair of Texas' High Tech Procurement Process.

The engineering services will include the following:

1. Meet with City staff to obtain expectation of the replacement system by the City.
2. Obtain from City what hardware the City would like to retain from current system.
3. Obtain from City any preferences on proposed hardware.
4. Obtain from City the existing I/O that is to be deleted from the new system.
5. Obtain from City any additional I/O that the City desires to be added to the new system.
6. Obtain from City desires in the communications between sites and current weak points with the system for communications.
7. Obtain from City the current automated reports.
8. Obtain from City the desired automated reports and format of each report.
9. Create the proposed I/O count for each site.
10. Determine I/O that is available through the motor control centers, switchgear and power correction equipment that can be utilized or added to the SCADA system.
11. Obtain from the City the likes and dislikes of the current SCADA screens.
12. Investigate available RTU's and prepare a matrix of comparison.
13. Meet with City in a workshop format to discuss gathered data. Through the workshop process, determine the needs of the system hardware. Determine actual I/O for the new system, determine screen preferences, and determine type of RTU.

14. During workshop discuss the various methods of radio communication and zero in on desired method.
15. During workshop discuss automated reports desired by the City.
16. During workshop have discussions on software expectations. Discuss the following:
 - a) Polling
 - b) Web Access
 - c) Security
 - d) Alarm Handling (phone, text, email)
 - e) Historian
 - f) Alarms
 - g) Software Upgrades
 - h) Technical Support
17. Investigate available software packages and prepare matrix of comparison. Consider short list of packages and arrange for demo of each package.
18. Conduct a workshop on software packages and move towards determination of a package for implementation.
19. Prepare the performance specification for the SCADA replacement proposals.
20. Prepare a QA/QC implementation plan to verify compliance to specification.
21. Prepare the High Tech Procurement Proposal which could include the following:
 - a) Work experience and qualifications. This shall include a list of similar types of projects performed for other cities, references (name and telephone nos.), the software used on those projects, and a resume of project manager. Resume of system integrator proposed for this project. Contractor shall demonstrate a minimum of five years of experience with the completion of fifteen Municipal Water and Wastewater SCADA Systems within the past 10-years.
 - b) Description of the scope of services proposed. This should include expressing interest in this assignment along with an outline of definitive scope of work that illustrates an understanding of the City's needs. This should include an outline of how the contractor, if successful, intends to proceed with the project. This should explain the methodology, implementation plan and termination plan.
 - c) Alternatives to the requirements listed in this request which will make the final product more useful to the City.
 - d) Outline phases of work and estimate the time required for each phase of the project.
 - e) Production Site. Indicate the location of the site where the packaged software will be

customized for SCADA's system.

- f) Project Price. The price sheet shall include an itemized list for each phase of the project, each remote site and a total price.
 - g) Description of on-site training and manufacturer's training on Software.
 - h) Description of how alarms can be presented on screen and the historic log.
 - i) Description of historic data storage proposed.
 - j) Report generation within software to record, report and archive hourly pumpage flows and hourly elevated storage tank levels.
 - k) Description of interface to third party software.
 - l) Description of polling scheme and times/report by exception/combination being proposed.
 - m) Descriptions of logic in RTUs.
 - n) Description of dial up alarm system, number of people, type of interface (phones & pagers), how message is relayed.
 - o) List of spare parts being proposed.
 - p) Provide I/O count at each site used for sizing expansion unit of RTU.
 - q) RTU manufacturer and model proposed.
 - r) Typical graphical screen for Water Pump Station, Storage Tanks and Lift Stations.
 - s) Statement that a Performance Bond and Payment Bond in the amount of 100% of the contract will be furnished. Such bonding shall be by companies licensed and authorized to provide such capabilities in the State of Texas.
 - t) Statement of the type of support and service to be provided after installation (days of week, hours per day and service center location).
 - u) Statement that all designs, wiring diagrams and the alike will be designed, sealed, signed and dated by a Licensed Professional Engineer in the State of Texas.
 - v) Description of Network and web based version of SCADA software.
 - w) Discussion of security of system from outside intruders. Discussion of firewall to protect the system.
22. Prepare the criteria for evaluation and anchors for rating, which could include the following:
- a) Quality of the responses and compliance with information requests contained in the RFP.

- b) Qualifications and experience of persons identified as integrator.
 - c) The Contractors performance in other cities. This includes consideration of the similarity of the project to this project and the quality of the system. This may include site visits.
 - d) Description of SCADA's software, network capabilities, polling scheme, archiving method, alarm reporting, historic data methods, compatibility to 3rd party software, software security from outside world, use of laptops/tablets/phones from remote locations.
 - e) Computer software and hardware and RTU.
 - f) CRT system screens, reports and data storage.
 - g) The vendor's estimated time to complete the project.
 - h) Contractors understanding of needs and the ability to communicate and demonstrate leadership and technical skills which will contribute to the timely and successful completion of this assignment.
 - i) Overall cost for the project.
 - j) Support and service staff, locations, hours.
23. Assist the City in the evaluation of the proposals.
24. Participate in the interview process.
25. Review shop drawing submittals.
26. Make one site visits to each site during construction.
27. Meet with City and system integrator during monthly progress meetings.
28. Have instrumentation/electrical engineer, Bill Goff review system integrator's shop drawings, attend factory (shop) testing and observe field installations of hardware and terminations. Be present as each site is directed to new HMI software to assist in trouble shooting for quick resolution and conversion.
29. Provide written responses to Contractor's request for information.

EXCLUSIONS

The intent of this scope of services is to include only the services specifically listed herein and none others. Services specifically excluded from this scope of services include, but are not necessarily limited to the following:

- 1. Providing an on-site representative.

2. Environmental impact statements and assessments.
3. Fees for permits or advertising.
4. Certification that work is in accordance with plans and specifications.
5. Environmental cleanup.
6. Landscape architecture.
7. Flood plain reclamation plans.
8. Title searches.
9. Trench safety designs.
10. Quality control and testing services during construction.
11. Services in connection with condemnation hearings.
12. Preliminary engineering report.
13. Phasing of Contractors work.
14. On-site safety precautions, programs and responsibility.
15. Consulting services by others not included in proposal.
16. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).
17. Traffic engineering report or study.
18. Computer modeling except as defined in scope of services.
19. Title searches, boundary surveys, or property surveys.

CITY RESPONSIBILITY

1. Provide access to each site being included in the SCADA System.
2. Participate in workshops.

EXHIBIT "B"

COMPLETION SCHEDULE SCADA

Collect and Compile Data on Existing System, Visit Each Site	6-Weeks
Workshop–Hardware, Communications, Reports, Software Expectations	1-Day
Investigation of Software Packages	4-Weeks
Workshop – Software Package	1-Day
Prepare Performance Specification, High-Tech Procurement	4-Weeks
Prepare Criteria for Evaluation and Anchors for Rating	2-Weeks
Meet and Review RFP Documents	1-Day
Complete Selection Process	6-Weeks
System Implementation	6-Months

EXHIBIT "C"

PAYMENT SCHEDULE SCADA

Compensation for engineering services shall be based on the following fee schedule for time actually spent on the project:

Classification/Task	Straight Time (Rate)
Partner-In-Charge	\$220.00
Project Manager	\$180.00
Electrical Engineer	\$110.00
Design Engineer	\$136.00
E.I.T.	\$110.00
AutoCAD III	\$125.00
AutoCAD II	\$109.00
AutoCAD I	\$90.00
Word Processor II	\$101.00
Word Processor I	\$69.00
Survey Crew	\$155.00
Expenses at Invoice Cost Times	1.15
Plotting Services	\$5.00 /plot
Mileage	I.R.S. Limit
Delivery Service	\$50.00

Total not to exceed \$66,000.00 without scope change.



**McLaughlin
Brunson**
Insurance Agency LLP

Dear Valued Client:

RE: SB 425 - Certificates of Insurance

We provide the following information to assist you in responding to your client's insurance requirements in your existing contacts as well as better preparing you to respond to future RFPs. If you have any questions about this or any other issue we can help with, please give us a call.

There is a new law effective Jan. 1, 2012 that affects certificates of insurance.

SB 425 requires that all certificate of insurance forms, including electronic evidence of insurance, be approved by the Texas Department of Insurance before the form can be used to certify insurance after Jan. 1, 2012. Already approved is the ACORD 25 form (2010/05), which is widely used in business as a standard certificate. Company-specific forms will have to be approved by TDI, or a company can agree to accept the ACORD 25 form as evidence of casualty insurance.

Special certificate forms can be filed for approval at:

P&C Intake Unit
Texas Department of Insurance
333 Guadalupe
Austin, TX 78701

After Jan. 1, 2012 it will be illegal for an agent or insurance company to issue evidence of insurance on a certificate form that has not been approved by TDI. It is also illegal for anyone to require an agent or insurance company to use a certificate form that has not been approved.

The law provides some guidance on the construction and limitations of certificates, as follows:

- A certificate is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the referenced insurance policy.
- A certificate shall not confer to the certificate holder new or additional rights beyond what the referenced policy or any executed endorsement provides
- A certificate may not contain a reference to a legal or insurance requirement contained on a contract other than the underlying contract of insurance or endorsement to the insurance policy.
- A person may have a legal right to notice of cancellation, nonrenewal or material change or any similar notice if (1) the person is named within the policy or an endorsement to the policy and (2) the policy or endorsement, or state law or rule, requires notice to be provided.

Futhermore, the law provides this warning to certificate holders: "A certificate of insurance that is executed, issued, or required and that is in violation of this chapter is void and has no effect."

If you have any questions about the new law, please contact the Texas Department of Insurance at 800-252-3439. You can view more information about the filing rules on the TDI website at <http://www.tdi.texas.gov/rules/informal1216.html>. You can read the text of SB 425 at <http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB00425F.pdf>

6600 LBJ Freeway, Suite 220
Dallas, Texas 75240

214-503-1212 Phone 1-800-506-1011 214-503-8899 Fax
mclaughlinbrunson.com

EXHIBIT "D"

ENGINEERING

INSURANCE

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

1. General Insurance Requirements:

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

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

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

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

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

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

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

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

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

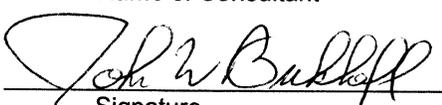
I, the undersigned declare that I am authorized to make this statement on behalf of Birkhoff, Hendricks & Carter, L.L.P. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of Birkhoff, Hendricks & Carter, L.L.P. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Birkhoff, Hendricks & Carter, L.L.P.
Name of Consultant

By: 
Signature

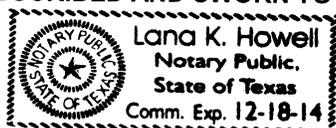
JOHN W BIRKHOFF
Print Name

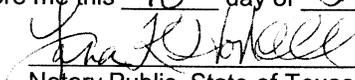
MANAGING PARTNER
Title

1/18/12
Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 18th day of JANUARY, 2012.




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:		2/27/2012			
Department:		Public Works			
Department Head:		Gerald P. Cosgrove, P.E.			
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 6210	
CAPTION					
To approve a Professional Services Agreement by and between the City of Plano and Birkhoff, Hendricks, and Carter LLP, in the amount of \$424,000, for the renovation of the Stadium Pump Station and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	430,000	350,000	780,000	
Encumbered/Expended Amount	0	0	0	0	
This Item	0	-424,000	0	-424,000	
BALANCE	0	6,000	350,000	356,000	
FUND(S): WATER CIP					
COMMENTS: Funds are included in the FY 2011-12 Water CIP. This item, in the amount of \$424,000 will leave a current year balance of \$6,000 for the Stadium Pump Station project.					
STRATEGIC PLAN GOAL: Engineering services for pump station renovation relates to the City's Goal of Financially Strong City with Service Excellence.					
SUMMARY OF ITEM					
This agreement is for the engineering design services required for the renovation of the Stadium Pump Station, including the required design and specification for the replacement of pumps, motors, piping, instrumentation and other needed improvements detailed as follows:					
Payment for basic services shall be based on a lump sum amount as follows:					
1. Preliminary Engineering			\$200,000		
2. Final Engineering			\$150,000		
3. Bidding Phase Services			\$4,000		
4. Construction Administration			<u>\$35,000</u>		
Basic Services:			\$389,000		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Special Services

A. Design Surveys	\$4,500
B. Record Drawing	\$2,000
C. Reproduction	\$1,000
D. Suction Header Investigation	\$6,000
E. Electrical Part-Time On-Site Observer	\$18,000
F. Oncor Easement Prepration	<u>\$3,500</u>

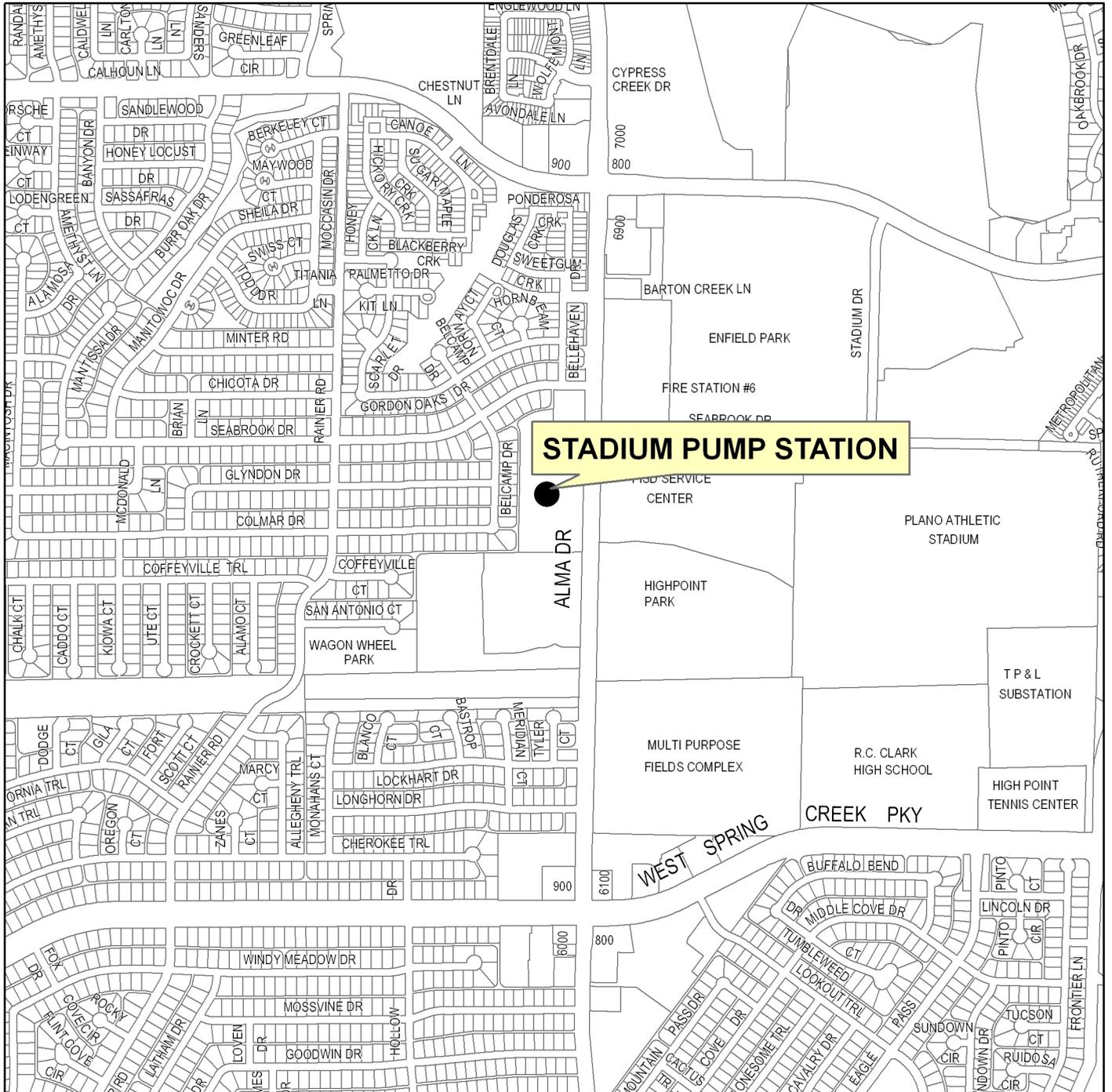
Additional Services: \$35,000

Maximum Fee Not to Exceed: \$424,000.00

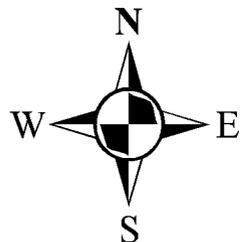
List of Supporting Documents:
Location Map; Engineering Services Agreement

Other Departments, Boards, Commissions or Agencies
N/A

STADIUM PUMP STATION REHABILITATION PROJECT 6210



CITY OF PLANO
PUBLIC WORKS DEPT.



STADIUM PUMP STATION REHABILITATION

PROJECT NO. 6210

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **BIRKHOFF, HENDRICKS & CARTER, L.L.P.**, a **TEXAS** Limited Liability Partnership, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

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

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER 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 ENGINEER'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

ENGINEER, 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 ENGINEER 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 ENGINEERS. 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.

ENGINEER 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 ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER 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 ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

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

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The

Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent.

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

City of Plano
Public Works Department, Suite 250
P.O. Box 860358
Plano, TX 75086-0358
Attn: Shahrzad Tavana

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

Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Avenue, Suite 600
Dallas, TX 75243
Attn: John W. Birkhoff, P.E.

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

BIRKHOFF, HENDRICKS & CARTER, L.L.P.

A Texas Limited Liability Partnership

DATE: 2/16/12

BY: John W. Birkhoff

John W. Birkhoff, P.E.
MANAGING PARTNER

CITY OF PLANO, TEXAS

DATE: _____

BY: _____

Bruce D. Glasscock
CITY MANAGER

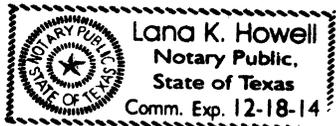
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 16th day of February, 2012, by **JOHN W. BIRKHOFF, P.E., MANAGING PARTNER**, of **BIRKHOFF, HENDRICKS & CARTER, L.L.P.**, a **TEXAS** Limited Liability Partnership, on behalf of said company.





Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012 by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT "A"

SCOPE OF SERVICES STADIUM PUMP STATION REHABILITATION

Part I. DESCRIPTION

This project will renovate the Stadium Pump Station including replacement of the pumps, motors, piping, electrical motor control center, instrumentation and other improvements.

Design Standards

A. This project shall be designed in accordance with the following:

- Geodetic Monumentation Manual
- Manual for Right-of-way Management
- Storm Drainage Design Manual
- Stream Bank Stabilization Manual
- Erosion & Sediment Control Manual
- Thoroughfare Standards Rules & Regulations
- Manual for the Design of Water & Sanitary Sewer Lines
- Standard Construction Details
- Barrier Free Ramp Details
- NCTCOG Standard Specifications for Public Works Construction
- Special Provisions to Standard Specifications for Public Works Construction

B. All plans submitted to the City shall be signed and sealed in accordance with state law.

Part II. PRELIMINARY ENGINEERING

Prepare preliminary construction plans to address the following:

1. Remove interior walls of station to allow for expansion of Control Room into shop to create new electrical room. Center wall to Valve Room will remain.

2. Eliminate separate bathroom and shower and combine into a single room that meets ADA Standards.
3. Provide for tankless electric hot water heater in bath and shower room.
4. Plumbing will be rerouted in crawl space to allow relocation of toilet and sinks to ADA compliant bath and shower.
5. Existing Electrical Room will be converted to shop and future disinfection room.
6. Remove front windows, minimize size of side windows with security glass.
7. Remove store-front glass at entry, eliminate windows in south wall, and eliminate exterior doors to old Chlorine Room.
8. Replace remaining exterior doors with fiberglass doors and frames. Include new fiberglass door and frame entry door.
9. Add driveway to proposed rollup door (south end of valve room).
10. Attempt to grade site away from building.
11. Level-up floor from wall removal and place terrazzo on floor.
12. Paint all walls and exposed concrete (ceiling area) in station.
13. Add kick-panel to existing aluminum handrails.
14. Replace two support beams under aluminum grating in main valve room.
15. Replace aluminum grating supports in suction header basement.
16. Replace "L" support bracket to grating support system along north wall.
17. Add lighting to lowest levels.
18. Place electrical receptacles to 4-feet above floor level in valve and piping rooms.
19. Seal exterior pump deck. Route and seal cracks.
20. Replace piping from suction header to discharge header. Replace discharge headers.

21. Replace valves between suction header and discharge header.
22. Replace and size surge valves for each service area.
23. Size pumps and motors.
24. Design the replacement of one generator set and add sound enclosure to existing one generator set. Design will include integration of generators with proposed switchgear and preparing distributed Generation Permit with Oncor. Relocate generators to north side of driveway near existing fuel storage tank.
25. Analyze the existing structure to determine if a 2-ton bridge crane can be incorporated into valve room.
26. If structure can support bridge crane, design its layout. This will be a manual bridge crane.
27. Remove and dispose of equipment and panels, and the alike from the site.
28. Existing motor control centers and electrical switchgear will be removed and replaced. Motor Control Centers will be soft start units. Control valves for design will be Valmatic Surge Busters.
29. Interior lighting will be rerouted to fit new floor layout. All lighting will be replaced.
30. Discharge metering will be replaced. Venturi to be tubes removed. Magnetic flow meters will be specified.
31. Replace single sump pump with dual alternating sump pump with flood alarm mounted in pit. Alarm to be tied to SCADA.
32. Site lighting will be added. Proposed lighting to utilize LED as the light source. Existing exterior lighting will be removed.
33. Include photographs of existing station in specification book.
34. Include new ornamental fencing at site with manual open gates. Remove Photinia plants inside and outside existing fence line.
35. Include provisions to clean and disinfect ground storage reservoirs after construction of pump station is complete.

36. Provide details to extend grade beam deeper into the earth for security of the station.
37. Pressure wash and seal exterior brick.
38. Provisions for a 3-foot mow strip around Reservoir No. 4.
39. Prepare Technical Specifications for the above-described work to the station. All work will occur at one time, no separate phasing is part of the design.
40. Install new conduit and conductors to four (4) ground storage reservoirs (110-volt electric, 24VDC control).
41. Replace the four (4) ground storage reservoir level transmitters.
42. Pull existing Oncor transformers, set new foundation and reset.

Part III. FINAL DESIGN

- A. Revise preliminary plans incorporating comments from the City of Plano.
- B. Finalize sections and piping plan.
- C. Prepare Proposal & Bid Schedule for project. Proposal & Bid Schedule will be for major components of the plant and installation, including the following:
 1. Pumps and Motors
 2. Building Improvements
 3. Electrical
 4. Site Work
 5. Valves
 6. Piping
 7. Painting
- D. Finalize specifications and bidding documents.
- E. Complete quantity take-off and prepare opinion of probable construction cost based on final plans.

- F. Prepare final bid documents including bid proposal forms, construction plans, specifications, and contract documents.
- G. Submit with monthly pay requests, a monthly report of progress completed on the project.

Part IV. BIDDING PHASE

- A. Assist the City staff in advertising for bids. This will include e-mailing “Notice to Contractors” to contractors experienced in this type of construction. City will have Notice published in local newspaper.
- B. Sell bidding documents to potential bidders and their suppliers and other parties.
- C. Provide bidding documents to the City.
- D. Conduct a pre-bid conference at City facilities.
- E. Assist during opening of bids and provide bidding tally sheets.
- F. Provide bid tabulation to City and contractors who submitted bids.
- G. Obtain the following information from the lowest bidder:
 - 1. Past work history.
 - 2. Physical resources to produce the projectFormulate opinion from information received and provide the City a recommendation for award of the construction contract.
- H. After award of contract, furnish thirteen sets of prints of the final plans, specifications and contract documents to the City for construction use by the City and contractor.
- I. Submit a CD-ROM disk of the bid set plans in a PDF format to the City.

Part V. CONSTRUCTION PHASE

- A. Conduct pre-construction conference, including preparing an agenda.

- B. Not Applicable.
- C. Attend coordination meetings with contractor, quality control personnel, and City representatives to discuss strategy, problem areas, progress, and any required coordination once a month during nine month onsite construction.
- D. Review shop drawings and other submittal information which the contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review by the Engineer does not relieve the contractor of any responsibilities, safety measures or the necessity to construct a complete and workable facility in accordance with the Contract Documents.
- E. Shop drawings for which no exceptions are taken, two copies will be provided to City's project manager for use during construction.
- F. Provide written responses to requests for information or clarification to City or contractor.

Part VI. ADDITIONAL SERVICES

- A. Survey for Design: Horizontal and vertical location of the existing facilities, including existing site plan, and interior piping.
- B. Prepare Record Drawings: Prepare record drawings based on contractor mark-ups and submit one set of 11" x 17" size black-line set to the Construction Inspector for review. Upon review and approval, submit set of 11" x 17" black-line set and one CD-ROM disk containing scanned images 11" x 17" final "as-built" black-line drawings (with "as-built" stamps bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIFF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIFF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

- C. Reproduction of specifications and plans for use during construction and for plans sent to publisher during the bidding phase, and set sent to City's testing laboratory.
- D. Suction Header Investigation: Complete destructive testing on three suction header concrete supports to expose the steel pipe located within the cradle of the concrete support. Visual observation shows corrosion in this area and felt was not present between pipe and concrete support. Metal loss will be determined by testing, if the observation warrants. Repairs or supplemental wood supports will be provided until construction activities commence to complete proper repairs.
- E. Provide electrical on-site observation during the electrical installation. This will consist of random visits during this phase of the work with observer spending 1 to 4-hours on-site per visit. Visits are limited to fifteen (15) visits.
- F. Prepare one field note description and plat for Oncor electrical easement.

Part VII. EXCLUSIONS

Services specifically excluded from this scope include, but are not necessarily limited to the following:

- A. Providing full-time on-site representative.
- B. Environmental impact statements and assessments.
- C. Fees for permits or advertising.
- D. Certification that work is in accordance with plans and specifications.
- E. Environmental cleanup.
- F. Landscape architecture.
- G. Flood plain reclamation plans.
- H. Title searches.

- I. Trench safety designs.
- J. Preliminary engineering report.
- K. Phasing of Contractors work.
- L. On-site safety precautions, programs and responsibility.
- M. Consulting services by others not included in proposal.
- N. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).
- O. Title searches, boundary surveys, or property surveys.
- P. Roof replacement.
- Q. HVAC Replacement
- R. Asbestos Removal

Part VIII. CITY'S RESPONSIBILITY

- A. The City will provide information regarding objectives and requirements for the Project.
- B. The City will designate a single representative to act in its behalf, with respect to the project, who shall examine documents submitted by the Undersigned and, to the extent allowed by law, shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Undersigned's services.
- C. All of the City's plat, easement and construction plan files will be made available for use. City will provide copies at no cost.

- D. Access to Stadium Pump Station site. If manhole lids are bolted down the Engineer will contact the City's Utility Operation Department and schedule a time when they can meet with the Engineer and remove the manhole lid.
- E. City's on-site representative's construction reports on a weekly basis.
- F. Asbestos study and removal of asbestos.

EXHIBIT “B”

COMPLETION SCHEDULE STADIUM PUMP STATION

Notice to Proceed	March 5, 2012
Commence Field Surveys	March 8, 2012
Submit Preliminary Plans to City	August 10, 2012
Receive Comments Back from City	September 7, 2012
Complete Final Plans	December 14, 2012
Advertise Project	February 2013
Open Bids	March 2013
Award Contract	April 2013
Notice to Proceed	May 2013
Shop Drawing Process/Order Equipment.....	May 2013 - September 2013
On-Site Construction	October 2013 – May 2014

EXHIBIT "C"

PAYMENT SCHEDULE STADIUM PUMP STATION

Payment for basic services shall be based on a lump sum amount as follows:

1. Preliminary Engineering	\$200,000
2. Final Engineering	\$150,000
3. Bidding Phase Services	\$4,000
4. Construction Administration	<u>\$35,000</u>
Basic Services:	\$389,000

5. Additional Services shall be salary cost times a multiplier of 2.40, expenses times a multiplier of 1.15, onsite electrical observer \$180.00 per hour, and mileage at 0.50¢ per mile.

A. Design Surveys	\$4,500
B. Record Drawing	\$2,000
C. Reproduction	\$1,000
D. Suction Header Investigation	\$6,000
E. Electrical Part-Time On-Site Observer	\$18,000
F. Oncor Easement Prepration	<u>\$3,500</u>
Additional Services:	\$35,000

Maximum Fee Not to Exceed: \$424,000.00

The maximum overall fee established herein shall not be exceeded without written authorization from the City, based on increased scope of services.

EXHIBIT "D"
ENGINEERING

INSURANCE

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

1. General Insurance Requirements:

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

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

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

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

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

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

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

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

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

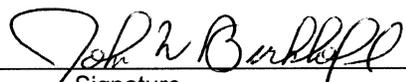
I, the undersigned declare that I am authorized to make this statement on behalf of Birkhoff, Hendricks & Carter, L.L.P. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of Birkhoff, Hendricks & Carter, L.L.P. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Birkhoff, Hendricks & Carter, L.L.P.
Name of Consultant

By: 
Signature

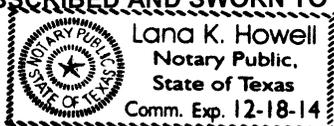
JOHN W BIRKHOFF
Print Name

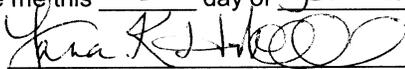
MANAGING PARTNER
Title

2/16/12
Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 16th day of February, 2012.

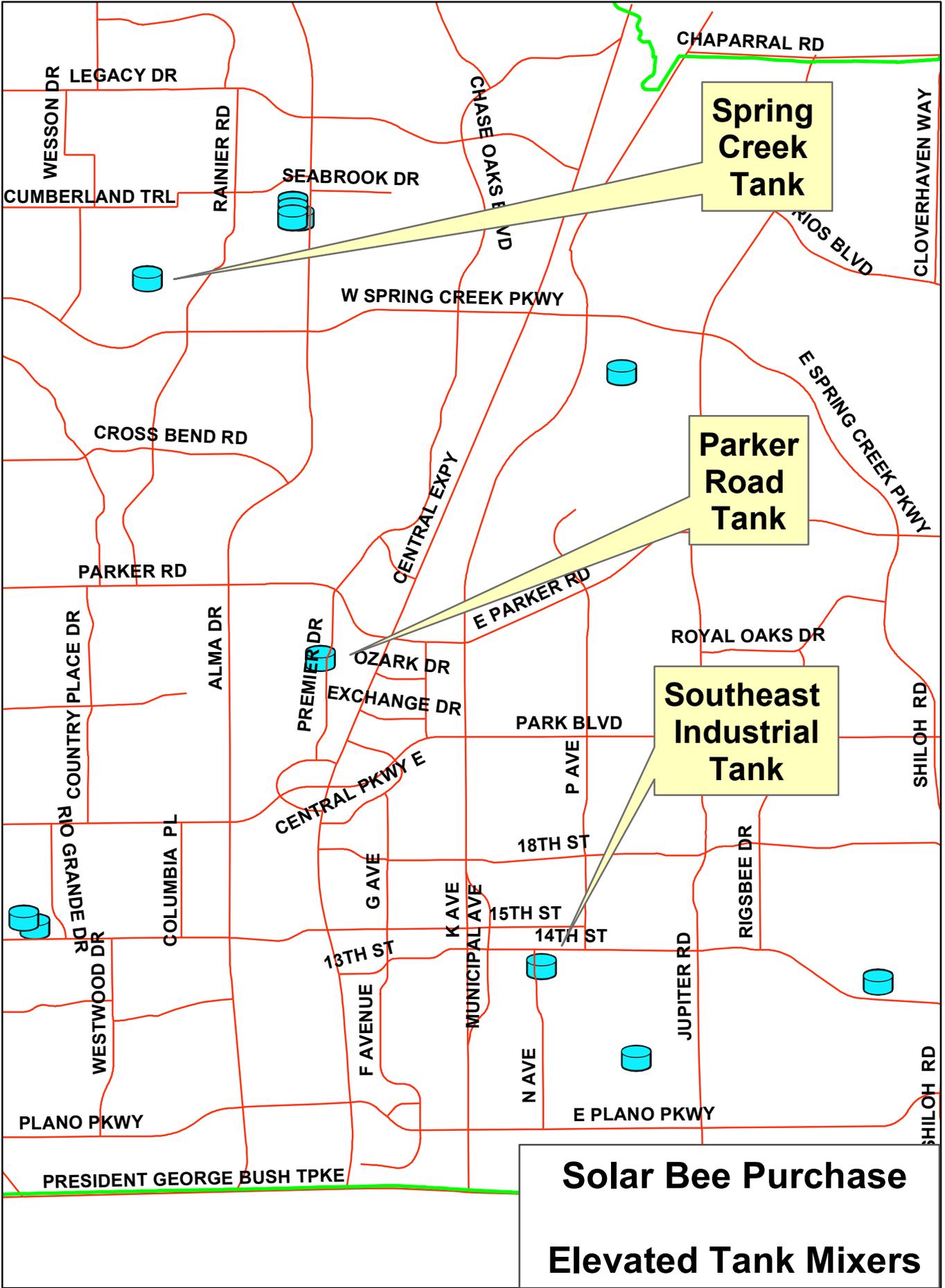



Notary Public, State of Texas



**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:		2/27/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove		
Agenda Coordinator (include phone #): Irene Pegues (7198)				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano and SolarBee, Inc., the sole source provider of SolarBee Potable Water Mixers; 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 type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	52,282	1,467,718	0	1,520,000
Encumbered/Expended Amount	-52,282	-11,906	0	-64,188
This Item	0	-127,953	0	-127,953
BALANCE	0	1,327,859	0	1,327,859
FUND(S): WATER CIP				
COMMENTS: Funds are included in the FY 2011-12 Water CIP. This item, in the amount of \$127,953, will leave a current year balance of \$1,327,859 for the Water Quality project.				
STRATEGIC PLAN GOAL: Water quality improvements relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
<p>The City of Plano has had problems maintaining water quality in its elevated tanks in the 795 service area which supplies water to the eastern portion of the city. The Public Works Department has had to flush water from its tanks and in some cases take the elevated tanks out of service. The Department has investigated several methods to address this problem. Our determination is the installation of solar powered mixers is the option that best improves the quality of the water in our elevated tanks. Especially during the drought that we are currently in, it is important that we do as much as we can to minimize the amount of water that we flush.</p> <p>The proposal is to install mixers on the Spring Creek, Parker Road and Southeast Industrial Elevated Tanks. These are the tanks that we have had the most problems with. In the future we may install mixers on other tanks.</p> <p>The cost for the mixers and their installation is \$127,953.00.</p>				
List of Supporting Documents: Location Map, Agreement			Other Departments, Boards, Commissions or Agencies N/A	



Solar Bee Purchase
Elevated Tank Mixers

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano and SolarBee, Inc., the sole source provider of SolarBee Potable Water Mixers; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City of Plano has a need to improve the water quality in its elevated storage tanks; and

WHEREAS, the Public Works Department has determined that the installation of solar powered mixing devices is the best option available; and

WHEREAS, SolarBee, Inc., is the sole source provider and patent holder for a solar powered mixing device; and

WHEREAS, the City Council has been presented with an agreement between the City of Plano and SolarBee, Inc., to supply and install three solar powered mixing devices, 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 Agreement should be approved, and that the City Manager or his designee shall be authorized to execute the Agreement on behalf of the City of Plano.

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

Section I. The City Council hereby finds and determines that SolarBee, Inc., is the sole source provider of specialized equipment, solar powered mixing devices for the Spring Creek, Parker Road and Southeast Industrial Elevated Water Tanks; and, thus, the purchase of such solar powered mixing devices is exempt from competitive bid as provided for in *V.T.C.A., Local Government Code, Section 252.022(a)(7)*.

Section II. 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 citizen, are hereby in all things approved.

Section III. The City Manager or his authorized designee is hereby authorized to execute the Agreement and any 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 IV. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 27th day of February, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS AND SOLARBEE, INC.**

SOLE SOURCE

THIS CONTRACT is made and entered into by and between **SOLARBEE, INC.**, a North Dakota corporation, whose address is 3225 Highway 22, Dickinson, North Dakota 58601-9419, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide all labor, supervision, materials, and equipment necessary for the installation of SolarBee Potable Water Mixers at Southeast Industrial, Parker and Spring Creek Elevated Storage Tanks. These products and services shall be provided in accordance with the Specifications for SolarBee Potable Water Mixer, a copy of which is attached hereto and incorporated herein as **Exhibit "1"**, and the Contractor's Bid in response thereto, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "1"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Specifications for SolarBee Potable Water Mixer (**Exhibit "1"**);
- (b) Contractor's Bid (**Exhibit "1"**);
- (c) Insurance Requirements (**Exhibit "2"**); and
- (d) Affidavit of No Prohibited Interest (**Exhibit "3"**).

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."

**II.
TIME OF COMPLETION**

Contractor agrees and covenants that all work hereunder shall be complete within ninety (90) days following notice to proceed from City. The work shall be completed at each location within six (6) days after the work is commenced.

III. WARRANTY

Contractor warrants and covenants to City that all goods and services provided by Contractor, Contractor's subcontractors, and agents under the Agreement shall be free of defects and produced and performed in a skillful and workmanlike manner and shall comply with the specifications for said goods and services as set forth in this Agreement and the Bid Specifications attached hereto and incorporated herein as **Exhibit "1"**. Contractor warrants that the goods and services provided to City under this Agreement shall be free from defects in material and workmanship, for the periods specified in **Exhibit "1"**, commencing on the date that City issues final written acceptance of the project.

IV. PAYMENT

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **ONE HUNDRED TWENTY SEVEN THOUSAND NINE HUNDRED FIFTY THREE AND 00/100 DOLLARS (\$127,953.00)**.

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

V. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of the Contractor. Contractor shall indemnify City for any and all losses arising out of or related to a breach of this duty by Contractor pursuant to paragraph **VII. INDEMNIFICATION** and paragraph **VIII. COMPLIANCE WITH APPLICABLE LAWS** set forth herein.

VI. LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be

encountered in the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

VII. INDEMNIFICATION

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.

VIII. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and SHALL INDEMNIFY AND SAVE HARMLESS CITY AGAINST ANY CLAIM RELATED TO OR ARISING FROM THE VIOLATION OF ANY SUCH

LAWS, ORDINANCES AND REGULATIONS WHETHER BY CONTRACTOR, ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, OR REPRESENTATIVES. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
VENUE**

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

**X.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned or sublet without the prior written consent of City, and that no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

**XI.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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.

**XII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "2"** attached hereto and incorporated herein by reference. Contractor shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract.

**XIII.
HINDRANCES AND DELAYS**

No claims shall be made by Contractor for damages resulting from hindrances or delays from any cause during the progress of any portion of the work embraced in this Contract.

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "3"**.

**XV.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XVI.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XVII.
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

**XVIII.
CONTRACT INTERPRETATION**

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

**XIX.
SUCCESSORS AND ASSIGNS**

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

**XX.
AUTHORITY TO SIGN**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

**XXI.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXII.
EFFECTIVE DATE**

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

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

SOLARBEE, INC.

Date: Feb 16, 2012

By: Willard R Tomaschy
Willard Tomaschy
CORPORATE SECRETARY

CITY OF PLANO, TEXAS

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

**STATE OF NORTH DAKOTA §
 §
COUNTY OF STARK §**

This instrument was acknowledged before me on the 16th day of February, 2012, by **WILLARD TORMASCHY**, Corporate Secretary of **SOLARBEE, INC.**, a North Dakota corporation, on behalf of said corporation.

**KRISTY HINTZ
NOTARY PUBLIC, STATE OF NORTH DAKOTA
MY COMMISSION EXPIRES JULY 10, 2014**

Kristy Hintz

Notary Public, State of North Dakota

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

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

**EXHIBIT
"1"**



Bert Hibel - Regional Manager
303-955-7914 • Bert@SolarBee.com

Represented Locally by Moody Bros. Inc.
Ken Moody • 713-462-8544

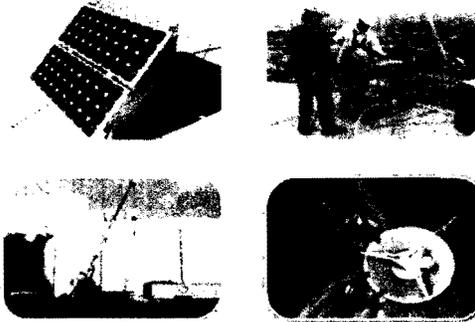
SolarBee Potable Water Mixer

Proposal

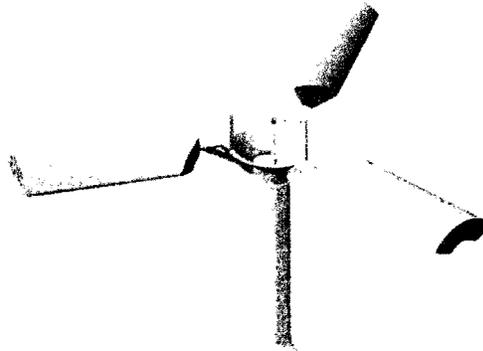
for:

City of Plano, TX

**c/o Gerald P. Cosgrove
Director of Public Works**



December 30, 2011



SolarBee Model SB1250PW v18 Solar-Powered Mixer

3225 Highway 22 • Dickinson, ND 58601
Tel. (701) 225-4495 • Toll Free: (866) 437-8076 • Fax: (701) 225-0002
www.SolarBee.com

1.0 INVESTMENT OPTIONS

Equipment Purchase (See Appendix A)			
Quantity	Description	Purchase Cost Each	Purchase Cost Total
1	SB1250PWc v18 machine for Parker Road Tank (40' Hose):	\$30,650	\$30,650
1	SB1250PWc v18 machine for SE Industrial Tank (50' Hose):	\$31,080	\$31,080
1	SB1250PWc v18 machine for Spring Creek Tank (40' Hose):	\$30,650	\$30,650
Total Equipment Cost:			\$92,380
Applicable Taxes:			to be determined
3	Potable Factory Delivery, Installation and Startup:	\$13,950	\$41,850
Multiple Unit Delivery Discount:		15%	(\$6,278)
Total Delivery, Installation, and Startup Cost:			\$35,573
Total Investment (excluding taxes):			\$127,953

2.0 OPTIONS - Call us to discuss pricing for the following items:

2.2 Options for Solar-Powered Models		
SCADA for the solar-powered v18 units	All v18 models come standard with a SCADA brain-board with six outputs. For on-site communication options, please contact our SCADA Engineering Department.	Please request option list
LED RPM Indicator for solar-powered units	Recommended when SCADA is not available. An electronic pulsing monitor is added to the digital controller and a flashing green LED beacon is located outside of the tank. The LED indicates the SolarBee impeller rotational speed, and the beacon can be directionally targeted for ground level viewing.	\$1,000
Additional 80-watt PV panel	Recommended when ice is an issue. The extra photovoltaic solar panel will improve ice control during winter periods when solar energy is at its lowest.	\$1,000

2.3 Options for all Models		
 Portable Disinfectant Boost System	Consider when occasional on-site boosting is desired. Portable Disinfectant Boost System (designed to be installed in the back of a pickup), safe, durable chemical transfer system to boost disinfectant in potable water reservoirs. Boosting rate up to 4 gpm, one system can treat multiple tanks, approximate dimensions: 20" W x 52" L x 20" H. Air compressor (4 cfm @ 60 psi) is required to operate the air-powered diaphragm pump; air compressor not included. Brochure available upon request.	\$5,500
 SolarBee Beekeeper	SolarBee's maintenance and support program is available for all models. Please see Appendix C for more details.	Call for pricing
 THM Removal System	Effective and economical air-stripping system that works in conjunction with a SolarBee mixer to strip TTHM from potable water storage tanks and clearwells. For more information on the THM removal system, please contact us.	Call for pricing

Appendix A: Equipment

SB1250PW v18 / SB1250PWc v18: High-flow NSF / ANSI Std 61-G Certified mixer, 316-stainless steel and non-corrosion polymer construction, 25-year life high-efficiency brushless electric motor designed to provide day and night operation with a solar-charged battery power system, digital control system for intelligent power management specific to this application, six parameter SCADA outputs, one (1) 80-watt solar panel and control box mounted on a 316SS pedestal, 8" diameter fluid intake hose, and fluid intake injection assembly (injection hose from the intake to the top of the tank). NOTE: (A) Can be installed through a hatch size with a minimum unobstructed clearance of: 26" X 26" for SB1250PW / 24" diameter for SB1250PWc collapsible model; (B) There is minimal impact from mounting PV panels and control box (typically only one penetration), and the integrity of the tank coating is maintained; (C) See Appendix D for information on the most extensive warranty in the industry.

Appendix B: Factory Delivery, Installation and Startup

Factory Delivery, Installation and Startup:

SolarBee, Inc. will typically send a team of 3-4 trained factory representatives to deliver equipment, perform on-site final assembly, placement and startup functions, and to train the customer's personnel on the operation and maintenance of the SolarBees. The teams are trained to meet confined space, over-water and at-elevation safety requirements. Special safety equipment is utilized and special safety procedures are followed to meet all OSHA safety requirements.

Complete details of the factory delivery, installation and startup, including safety information, are available upon request.

Appendix C: Beekeeper Service Program

The Beekeeper Service Program utilizes trained factory crews to keep proprietary designed equipment operating at optimal efficiency and performance. In addition to full maintenance and service, the Beekeeper:

- extends the warranty during the term of the Beekeeper,
- covers damage from Acts of God and vandalism,
- provides for power system upgrades and updates,
- provides hardware, firmware, and software for computer upgrades,
- provides scientific and technical support,
- provides for scheduled and unscheduled field service calls, and much more.

Please request the Beekeeper brochure for more details.

Appendix D: General Provisions

Purchase of the SolarBee circulation equipment in this quotation is an "Equipment Purchase," not a "Construction Project":

SolarBee circulation equipment is portable, and can be easily relocated or removed entirely from the premises at any time. They do not become an integral part of any building or other structure, and never become part of "real estate". Therefore, to purchase SolarBee circulation equipment, the city or other organization purchasing SolarBees should use the same procedure as for purchasing other portable equipment, such as a forklift, a drill press, or an office desk. SolarBee reserves the right not to accept an order if the purchase is incorrectly characterized as a "construction" project. SolarBee, Inc. has not found any state or other jurisdiction where construction or contractor statutes apply to portable equipment that is sold by a factory, with on-site final assembly and startup performed by factory personnel.

Assumptions:

This quotation may be based on worksheets and calculations that have been provided to the customer, either previously or else attached to this quotation. The customer should bring to our attention any discrepancies in data used for these calculations.

Quotation Validity Term:

This quotation replaces all prior quotations for this project. It is valid until replaced by a subsequent quotation, or until 2/28/2012, whichever occurs first.

Delivery Time:

Delivery is due by 4/30/2012. This is contingent upon SolarBee receiving a purchase order and all necessary paperwork at least 6 weeks before this date.

Payment Terms:

For governmental entities, and for homeowners associations that have pre-approved credit, payment is due 30 days after invoice date, and invoicing occurs when the goods leave the factory. For private individuals, payment is due by credit card or cashier's check before the goods leave the factory.

Currency:

All prices shown are in U.S. Dollars, and all payments made must be in U.S. Dollars.

Maintenance and Safety:

The customer agrees to follow proper maintenance instructions regarding the equipment as contained in the safety manual that accompanies the equipment or sent to the customer's address.

Government Regulatory Compliance:

In all reservoir/tank systems the customer must comply with all applicable governmental regulations. It is the customer's sole responsibility to inquire about governmental regulations and ensure that SolarBees are deployed and maintained so as to remain in compliance with these regulations and guidelines, and to hold SolarBee, Inc. harmless from any liability caused by non-compliance with these regulations and guidelines.

SolarBee Limited Replacement Warranty:

All new and factory-refurbished SolarBee equipment is warranted to be free of defective parts, materials, and workmanship for a period of 2 years from the date of installation. In addition, the SolarBee brushless motor is warranted for a period of 10 years from the date of installation. Photovoltaic modules (solar panels) carry manufacturer warranties, some ranging up to 25 years (see manufacturer's warranty for details). This warranty is valid only for SolarBee equipment used in accordance with the owner's manual, and consistent with any initial and ongoing factory recommendations. This warranty is limited to the repair or replacement of defective components. The first 2 years of warranty include parts and onsite labor if SolarBee delivery and installation was

purchased. Parts and in-factory service are included if the equipment was self-installed. In lieu of sending a factory service crew to the site for minor repairs, SolarBee, Inc. may choose to send the replacement parts to the owner postage-paid and, in some cases, may pay the owner a reasonable labor allowance to install the parts.

Please consult your state law regarding this warranty as certain states may have legal provisions affecting the scope of this warranty.

In no event will SolarBee or its affiliates be liable for any damages caused by failure of buyer to perform buyer's responsibilities.

Method of acceptance of this quotation:

To accept this quotation, please issue a purchase order to SolarBee, Inc., 3225 Hwy. 22, Dickinson, ND 58601. The purchase order can be mailed, or it can be faxed to 701-225-0002 at the home office. The purchase order should refer to the date of this quotation, and will be assumed to include this entire quotation by reference.

If purchase orders are not utilized, please sign and date the last page of this proposal, provide billing information, and either fax to 701-225-0002 or email to Orderprocessing@SolarBee.com.

EXHIBIT "2"

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
I. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Injury e) Contractual Liability	\$1,000,000 each occurrence, \$2,000,000 general aggregate: Or \$2,000,000 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
I. Business Auto Liability	Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.	
Workers' Compensation & Employers' Liability	The employers liability limit and, if necessary, commercial umbrella coverage shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease	City to be provided a waiver of subrogation

**Questions regarding this insurance should be directed to the City of Plano Risk Management Department
972-208-8250.**

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



CERTIFICATE OF LIABILITY INSURANCE

OP ID: TM

DATE (MM/DD/YYYY)

12/29/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. 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).

PRODUCER American Insurance Center (D) 38 1st Street W Dickinson, ND 58601 Doug Davidson		701-483-9104 701-483-3208	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: MEDOEN1	FAX (A/C, No):
INSURED Medora Environmental, Inc. Gladin, LLC, PSI-ETS, LLC Solarbee, Inc, Water Solutions Inc., Solarbee Transport Corp. 3225 Hwy 22 Dickinson, ND 58602-9419		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: The Phoenix Insurance Company		
		INSURER B: Travelers Indemnity Co. of CT		
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

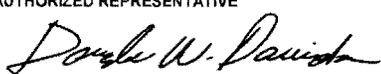
REVISION NUMBER:

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			6602923P579PHX11	08/04/11	08/04/12	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 5,000
	<input checked="" type="checkbox"/> Limited Pollution						PERSONAL & ADV INJURY	\$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ 2,000,000
<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COMP/OP AGG	\$ 2,000,000
							Emp Ben.	\$ 1,000,000
B	AUTOMOBILE LIABILITY			BA-7510N778-11-SEL	08/04/11	08/04/12	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS							\$
<input type="checkbox"/> NON-OWNED AUTOS				\$				
B	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		CUP2923P579TIL11	08/04/11	08/04/12	EACH OCCURRENCE	\$ 10,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$ 10,000,000
	DEDUCTIBLE							\$
<input checked="" type="checkbox"/> RETENTION	\$	0					\$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			YJUB2923P57911	08/04/11	08/04/12	WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y / <input type="checkbox"/> N	N / A				E L EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E L DISEASE - EA EMPLOYEE	\$ 1,000,000
							E L DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

CITYPLA City of Plano 1520 K Avenue, Suite 250 Plano, TX 75074	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

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Main Office
600 East Century Avenue, Suite 1
PO Box 5585
Bismarck ND 58506-5585



Fargo Service Center
2601 12th Avenue SW
Fargo, ND 58103-2354

To WHOM IT MAY CONCERN:

We have received numerous requests for information on coverage limits and other issues. Please be aware of the following:

All Workforce Safety & Insurance account holders are equally insured with worker's compensation coverage provided by Workforce Safety & Insurance, a monopolistic state fund. Coverage is provided without limits other than the limits placed on individual benefits such as the maximum weekly disability benefit.

All accounts have an annual renewal date; however, coverage does not cease on that date, but rather continues without interruption until the account is closed. Only in the event of a significantly delinquent account does Workforce Safety & Insurance issue a formal notice of an uninsured status. A certificate evidencing the account's good standing is issued annually.

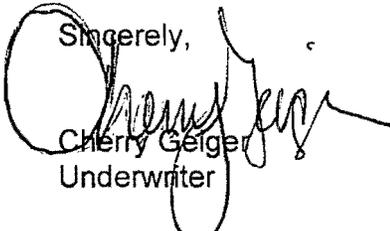
Workforce Safety & Insurance does not waive its rights of subrogation.

Workforce Safety & Insurance does not allow additional insureds to be listed on the account.

Workforce Safety & Insurance does not include General Liability coverage.

Workforce Safety & Insurance, because it is a state agency, does not issue a policy. Rather, all provisions are stated in the form of State statute or administrative rules.

Anyone may contact Workforce Safety & Insurance to verify the insured status of a North Dakota employer by calling 701-328-3800.

Sincerely,

Cherry Geiger
Underwriter

PL602



**North Dakota
Workforce Safety
& Insurance**
Putting Safety to Work

**CERTIFICATE OF
PREMIUM PAYMENT**
WORKFORCE SAFETY & INSURANCE
EMPLOYER SERVICES
SFN 4920 (04/2007)

1600 EAST CENTURY AVENUE, SUITE 1
PO BOX 5585
BISMARCK ND 58506-5585
Telephone 1-800-777-5033
Toll Free Fax 1-888-786-8695
TTY (hearing impaired) 1-800-366-6888
Fraud and Safety Hotline 1-800-243-3331
www.WorkforceSafety.com

RECEIVED JAN 08 2012

BLETH J & TORMASCHY W R
MEDORA ENVIRONMENTAL INC DBA SOLARBEE
INC & DBA SOLARBEE TRANSPORT CORP
3225 HIGHWAY 22
DICKINSON ND 58601-9419

Employer Account Number: 822742

Issued Date: 12/29/2011

Expiration Date: 03/16/2013

CERTIFICATE OF PREMIUM PAYMENT

This is to certify that North Dakota Workers Compensation coverage is effective for the employer named on this certificate. Employees of the named employer are entitled to apply for the rights and benefits of Workforce Safety and Insurance(WSI).

Coverage under this certificate extends to North Dakota based employers for their North Dakota exposure. Limited coverage extends beyond the physical boundaries of North Dakota. Contact the Policyholder Services Department of WSI at 1-800-777-5033 for further information on coverage issues or to inquire into the status of the holder of this certificate.

North Dakota Century Code § 65-04-04 requires that each employer post this Certificate of Premium Payment in a conspicuous manner at the workplace. A penalty of \$250 may apply for failure to comply with this requirement.

A Certificate of Premium Payment may be revoked for failure to make required premium payments.

Barry Schumacher

Barry Schumacher
Chief of Employer Services

Class	Classification Description
3504	Implement &/Or Equipment Mfg
8380Q	Pump-Valves-Gauges-Sls&Svc
8747	Professional/Business Reps
8747X	Optional Coverage
8805	Clerical Office Employees

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/24/2012

PRODUCER
 Trean Corporation
 775 Prairie Center Drive
 Suite 420
 Eden Prairie, MN 55344

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
 MEDORA ENVIRONMENTAL INC DBA SOLARBEE INC & DBA SOLARBEE TRANSPORT CORP
 3225 HIGHWAY 22
 DICKINSON ND 58601-9419

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Accident Fund Ins Co of Amer	10166
INSURER B:	
INSURER C:	
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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 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 \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$
A		WORKERS COMPENSATION AND EMPLOYEES' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISION below OTHER	WCT394908	01/01/2012	12/31/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES/ EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Workers' Compensation coverage C is extended to the insured for claims outside the state of North Dakota when employees are temporarily and/or incidentally outside the state for a period of thirty days or less, excluding any monopolistic states.

CERTIFICATE HOLDER	CANCELLATION
Evidence of Insurance	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> 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 <i>Susan M. McManis</i>

INSURANCE REQUIREMENT AFFIDAVIT
(SUPPLEMENTAL INFORMATION)

(To be completed by appropriate Insurance Agent)

I, the undersigned agent, certify that the insurance requirements contained in this proposal document have been reviewed by me with the below identified vendor. If the below identified vendor is awarded this contract by the City of Plano, I will be able, within ten (10) working days after being notified of such potential award, to furnish a valid insurance certificate to the City meeting all of the requirements contained in this proposal.

Agent's Signature _____

Agent's Name Printed _____

Name of Insurance Carrier _____

Address of Agency _____

City, State, Zip _____

Phone number where Agent may be contacted _____

Per our insurance agent: "We are unable to complete the affidavit, I would classify this as a 'special form certificate' which is prohibited by ND state law."

Vendor's Name (please print or type) _____

SUBSCRIBED AND SWORN to before me by the above named _____

on this the _____ day of _____, 20____.

Notary Public in and for the State of _____.

NOTE TO AGENT:
IF THIS TIME REQUIREMENT IS NOT MET, THE CITY HAS THE RIGHT TO DECLARE THIS VENDOR NON-RESPONSIVE AND AWARD THE CONTRACT TO THE NEXT LOWEST PROPOSER MEETING THE SPECIFICATIONS. IF YOU HAVE ANY QUESTIONS CONCERNING THESE REQUIREMENTS, PLEASE CONTACT THE CITY OF PLANO PURCHASING DIVISION AT 972-941-7557.

EXHIBIT '3'

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of SolarBee, Inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of SolarBee, Inc. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

SolarBee, Inc.

Name of Contractor

By:

Willard Tormaschky

Signature

Willard Tormaschky

Print Name

Corporate Secretary

Title

Feb 16, 2012

Date

STATE OF North Dakota §

COUNTY OF Stark §

SUBSCRIBED AND SWORN TO before me this 16 day of February, 2012.

KRISTY HINTZ
NOTARY PUBLIC, STATE OF NORTH DAKOTA
MY COMMISSION EXPIRES JULY 10, 2014

Kristy Hintz
Notary Public, State of North Dakota



**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:		February 27, 2012		
Department:		Customer and Utility Services		
Department Head		Mark Israelson		
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
CAPTION				
<p>A Resolution of the City of Plano suspending the March 6, 2012, effective date of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex") requested rate change to permit the City time to study the request and to establish reasonable rates; approving cooperation with Atmos Cities Steering Committee ("ACSC") and other cities in the Atmos Mid-Tex service area to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; requiring reimbursement of cities' rate case expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company; ACSC's legal counsel; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	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): N/A				
<p>COMMENTS: This item has no fiscal impact. STRATEGIC PLANO GOAL: Council Resolution to suspend an ATMOS natural gas rate increase relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
Resolution to suspend the March 6, 2012, Atmos Energy Corporation rate increase.				
List of Supporting Documents: Memorandum.			Other Departments, Boards, Commissions or Agencies	



Date: February 27, 2012
To: City Council
Through: Bruce D. Glasscock, City Manager
From: Mark D. Israelson, Director Office of Policy and Government Relations
Subject: Resolution Suspending Atmos Mid-Tex's Proposed March 6, 2012, Effective Date for a Rate Increase

The City, along with approximately 153 other cities served by Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On or about January 31, 2012, Atmos Mid-Tex filed with the City a Statement of Intent to increase rates within the City.

Background

In 2003, TXU Gas filed a statewide rate case which became known at the Railroad Commission of Texas ("RRC") as Gas Utilities Docket ("GUD") No. 9400. That same year the Texas Legislature passed legislation referred to as the Gas Reliability Infrastructure Program ("GRIP") which authorized annual piecemeal rate reviews that Texas courts have concluded significantly restrict city jurisdiction, participation, and input. Shortly after GUD No. 9400 was decided in 2004, Atmos Energy purchased TXU Gas and created what is known as Atmos Energy Corp., Mid-Tex Division. The City is within the Atmos Mid-Tex Division.

Atmos Mid-Tex filed four GRIP cases before filing a traditional rate case in September, 2007. As part of Cities' Settlement Agreement with Atmos of the 2007 rate case, ACSC and Atmos created a substitute process for annual piecemeal GRIP cases. That substitute process was called a Rate Review Mechanism ("RRM") and was intended as an expedited but comprehensive rate review that included a number of fixed values and constraints. The RRM was intended as a three-year experiment. Last year, it was extended for a fourth year with some slight modifications to the original formulas. ACSC negotiated with Atmos in the final quarter of last year to further extend the RRM process, but no agreement was reached. Atmos has expressed a desire to reach a settlement of the January 31, 2012 filing that includes a revised RRM process.

Enclosed are frequently asked questions ("FAQ") on ACSC and the RRM ratemaking process.

Discussion and Purpose

Atmos Mid-Tex filed a Statement of Intent on January 31, 2012, seeking to increase system-wide base rates (which exclude the cost of gas) by approximately \$49 million or 11.94%. However, the Company is requesting an increase of 13.6%, excluding gas costs, for its residential customers. Additionally, the application would change the way that rates are collected, by increasing the residential fixed-monthly (or customer) charge from \$7.50 to \$18.00 and decreasing the consumption charge from \$0.25 per 100 cubic feet ("ccf") to \$0.07 per ccf.

The law provides that a rate request made by a gas utility cannot become effective until at least 35 days following the filing of the application to change rates. Atmos has proposed an effective date of March 6, 2012. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Atmos' rate request is deemed administratively approved.

The purpose of the resolution is to extend the effective date of Atmos Mid-Tex's proposed rate increase to give the City time to review the rate-filing package. The resolution suspends the March 6, 2012 effective date of the Company's rate increase for the maximum period permitted by law to allow the City, working in conjunction with the other ACSC cities, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy to pursue, including settlement and ultimately to approve reasonable rates.

Explanation of "Be It Resolved Paragraphs"

Section 1. The City is authorized to suspend the rate change for 90 days after the date that the rate change would otherwise be effective so long as the City has a legitimate purpose. Time to study and investigate the application is always a legitimate purpose. Please note that the resolution refers to the suspension period as the "maximum period allowed by law" rather than ending by a specific date. This is because the Company controls the effective date and can extend its effective date and, therefore, extend the deadline for final city action to increase the time that the City retains jurisdiction (for example, if necessary to reach settlement on the case). If the suspension period is not otherwise extended by the Company, the City must take final action on Atmos Mid-Tex's request to raise rates by June 4, 2012.

Section 2. This provision recognizes the City's membership in ACSC and authorizes the City to participate with other similarly situated cities served by Atmos Mid-Tex in order to more efficiently represent the interests of the City and its citizens.

Section 3. By law, the Company must reimburse the cities for their reasonable rate case expenses. Legal counsel and consultants approved by ACSC will present their invoices to the City of Arlington which will then seek reimbursement from Atmos Mid-Tex. The City will not incur liability for payment of rate case expenses by adopting a suspension resolution.

Section 4. This section merely recites that the resolution was passed at a meeting that was open to the public and that the consideration of the resolution was properly noticed.

Section 5. This section provides that both Atmos Mid-Tex's designated representative and counsel for ACSC will be notified of the City's action by sending a copy of the approved and signed resolution to certain designated individuals.

Recommendation

The City Staff recommends adoption of the resolution suspending the effective date of Atmos Mid-Tex's proposed rate increase.

A Resolution of the City of Plano suspending the March 6, 2012, effective date of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex”) requested rate change to permit the City time to study the request and to establish reasonable rates; approving cooperation with Atmos Cities Steering Committee (“ACSC”) and other cities in the Atmos Mid-Tex service area to hire legal and consulting services and to negotiate with the company and direct any necessary litigation and appeals; requiring reimbursement of cities’ rate case expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company; ACSC’s legal counsel; and providing an effective date.

WHEREAS, on or about January 31, 2012, Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), pursuant to Gas Utility Regulatory Act § 104.102 filed with the City of Plano (“City”) a Statement of Intent to change gas rates in all municipalities exercising original jurisdiction within its Mid-Tex Division service area, effective March 6, 2012; and

WHEREAS, the City is a regulatory authority under the Gas Utility Regulatory Act (“GURA”) and under Chapter 104, §104.001 et seq. of GURA has exclusive original jurisdiction over Atmos Mid-Tex’s rates, operations, and services within the City; and

WHEREAS, in order to maximize the efficient use of resources and expertise, it is reasonable for the City to maintain its involvement in the Atmos Cities Steering Committee (“ACSC”) and to cooperate with the more than 150 similarly situated city members of ACSC and other city participants in conducting a review of the Company’s application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, Atmos Mid-Tex proposed March 6, 2012, as the effective date for its requested increase in rates; and

WHEREAS, it is not possible for the City to complete its review of Atmos Mid-Tex’s filing by March 6, 2012; and

WHEREAS, the City will need an adequate amount of time to review and evaluate Atmos Mid-Tex’s rate application to enable the City to adopt a final decision as a local regulatory authority with regard to Atmos Mid-Tex’s requested rate increase; and

WHEREAS, the Gas Utility Regulatory Act § 104.107 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days; and

WHEREAS, the Gas Utility Regulatory Act § 103.022 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

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

Section I. That the March 6, 2012, effective date of the rate request submitted by Atmos Mid-Tex on January 31, 2012, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

Section II. That the City is authorized to cooperate with ACSC and its member cities in the Mid-Tex service area and under the direction of the ACSC Executive Committee to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Railroad Commission.

Section III. That the City's reasonable rate case expenses shall be reimbursed by Atmos.

Section IV. That it is hereby officially found and determined that the meeting at which this Resolution is passed 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.

Section V. A copy of this Resolution shall be sent to Atmos, care of David Park, Vice President Rates & Regulatory Affairs, at Atmos Energy Corporation, Mid-Tex Division, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

Section VI. This resolution shall become effective immediately.

DULY PASSED AND APPROVED this the 27th day of February, 2012.

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 type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		02/27/2012			
Department:		Police			
Department Head		Gregory W. Rushin			
Agenda Coordinator (include phone #): Pam Haines, ext 2538					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, authorizing the filing of application for federal funds in an amount not to exceed \$35,700 under the Edward Byrne Memorial Justice Assistance Grant (JAG) State Formula Program through the Office of the Governor of Texas, Criminal Justice Division; designating Gregory W. Rushin as authorized representative of the City of Plano for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring 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:	2011-12, 2012-13	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): N/A					
COMMENTS: This item is a resolution to make application for a grant that, if accepted, will provide funding of approximately \$35,700 for the Police Department. This item has no fiscal impact until if/when the application has been approved. If approved, an additional resolution will be required for City acceptance of the grant funding. STRATEGIC PLAN GOAL: Application for Federal Grant Funds relates to the City's Goal of Financially Strong City with Service Excellence.					
SUMMARY OF ITEM					
The Resolution authorizes the Chief of Police to apply to the Office of the Governor, Criminal Justice Division for the Edward Byrne Memorial Justice Assistance Grant (JAG) State Formula Program.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memo, Resolution					



P.O. Box 860358
Plano, Texas 75086-0358
972-424-5678
Fax. No. 972-941-2177
www.planopolice.org

MEMORANDUM

DATE: February 8, 2012

TO: LaShon Ross, Deputy City Manager

FROM:  Gregory W. Rushin, Chief of Plano

SUBJECT: Edward Byrne Memorial Justice Assistance Grant

The Plano Police Department is in the process of making application for the Edward Byrne Memorial Justice Assistance Grant State Formula Program through the Office of the Governor of Texas, Criminal Justice Division. This grant is on a three year cycle and the third year starts in September. As a requirement of the application process, the City of Plano is required to adopt a resolution authorizing the City to file an application for the federal funds. Further we must also designate an authorizing official who is given authority to apply for, accept, reject, alter, or terminate the grant, and provide written assurances that in the event of loss or misuse of grant funds the City of Plano will return all funds to the Office of the Governor.

The Plano Police Department proposes to continue the National Integrated Ballistic Information Network Program that provides firearms and ballistic forensic analysis services to law enforcement agencies throughout Collin, Dallas and Denton counties. The unit provides critical analysis and support in the investigation and prosecution of criminal activity involving the use of firearms.

The Police Department upon request researched the prospect of collecting fees for the firearms and ballistic forensic analysis services provided to other agencies. In researching the grant requirements, it was discovered the Police Department could charge for the services provided but the fees collected would have to be reported as program income and used towards paying the expenses of the grant before grant funds could be expended. This would negate the purpose of charging fees for this service to other agencies.

As a result we are requesting the City Council adopt a resolution in order to apply for this grant.

A Resolution of the City Council of the City of Plano, Texas, authorizing the filing of application for federal funds in an amount not to exceed \$35,700 under the Edward Byrne Memorial Justice Assistance Grant (JAG) State Formula Program through the Office of the Governor of Texas, Criminal Justice Division; designating Gregory W. Rushin as authorized representative of the City of Plano for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date.

WHEREAS, the City Council finds it is in the best interest of the citizens of the City of Plano, Texas that the National Integrated Ballistic Information Network Program be operated for the FY 2012-13; and

WHEREAS, the City Council agrees that in the event of loss or misuse of the Office of the Governor funds, the City Council assures that the funds will be returned to the Office of the Governor in full; and

WHEREAS, the City Council designates Chief of Police Gregory W. Rushin as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the application agency.

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

Section I. The submission of the grant application for the National Integrated Ballistic Information Network Program to the Office of the Governor, Criminal Justice Division is hereby approved and Chief of Police Gregory W. Rushin is designated as the authorized official to act on behalf of the City of Plano with regard to this grant.

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

DULY PASSED AND APPROVED this the 27th day of February, 2012.

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 type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/27/12		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x7479				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Amended and Restated Tax Abatement Agreement consolidating the prior agreements into a single document by and among the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, the County of Collin, Texas, and Capital One, National Association, a national banking association; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-2012	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): ECONOMIC DEVELOPMENT INCENTIVE FUND				
COMMENTS: This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
<p>The purpose of this resolution and agreement is to consolidate, amend and restate the 2008 and 2011 Tax Abatement Agreements with Capital One as set forth herein for the purpose of establishing distinct phases of development in one tax abatement agreement. The parties propose to consolidate the prior agreements into a single amended and restated document for efficiency and conciseness.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Amended and Restated Tax Abatement Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Amended and Restated Tax Abatement Agreement consolidating the prior agreements into a single document by and among the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, the County of Collin, Texas, and Capital One, National Association, a national banking association; and 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 Amended and Restated Tax Abatement Agreement by and among the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, hereinafter referred to as “City”, the County of Collin, Texas, hereinafter referred to as “County” and Capital One, National Association, a national banking association, hereinafter referred to as “Owner”, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, the City, County and the Owner previously entered into that certain Tax Abatement Agreement dated May 29, 2008 relating to approximately 150,000 square feet of improvements known as Building 4 located at 8000 Dominion Parkway, Plano, Texas and tangible personal property located therein (the “2008 Tax Abatement Agreement”); and

WHEREAS, the City and Owner previously entered into that certain Tax Abatement Agreement dated March 9, 2011 relating to approximately 135,000 square feet of improvements known as Building 3 located at 7941 Preston Road, Plano, Texas (the “2011 Tax Abatement Agreement”); and

WHEREAS, previous Agreements with Owner included Capital One Auto Finance which will no longer be a party to the Agreement and the rights and obligations of the Agreements on behalf of Owner will be assumed solely by Capital One National Association as set out herein; and

WHEREAS, the V.T.C.A. Tax Code, Chapter 312 authorizes the Parties to amend the Tax Abatement Agreements; and

WHEREAS, the parties propose to consolidate the prior agreements into a single amended and restated document for efficiency and conciseness; and

WHEREAS, upon full review and consideration of the Amended and Restated Tax Abatement 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:**

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, 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 from and after its passage.

DULY PASSED AND APPROVED this the 27th day of February, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

AMENDED AND RESTATED TAX ABATEMENT AGREEMENT

This Amended and Restated Tax Abatement Agreement is entered into by and among 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**”; the County of Collin, Texas, duly acting herein by and through its County Judge, and hereinafter referred to as “**County**”, and together are hereinafter collectively referred to as “**Taxing Units**,” and Capital One, National Association, a national banking association, acting by and through their officers, hereinafter referred to as “**Owner**.”

W I T N E S S E T H:

WHEREAS, the City, County and the Owner previously entered into that certain Tax Abatement Agreement dated May 29, 2008 relating to approximately 150,000 square feet of improvements known as Building 4 located at 8000 Dominion Parkway, Plano, Texas and tangible personal property located therein (the “2008 Tax Abatement Agreement”); and

WHEREAS, the City and Owner previously entered into that certain Tax Abatement Agreement dated March 9, 2011 relating to approximately 135,000 square feet of improvements known as Building 3 located at 7941 Preston Road, Plano, Texas (the “2011 Tax Abatement Agreement”); and

WHEREAS, the V.T.C.A. Tax Code, Chapter 312 authorizes the Parties to amend the Tax Abatement Agreements; and

WHEREAS, on the 8th day of April, 2008, the City Council of the City of Plano, Texas, passed Ordinance No. 2008-4-43 establishing Reinvestment Zone No. 111, 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, the City adopted a revised policy statement for Tax Abatement by Resolution No. 2007-8-27(R), No. 2009-9-21(R) and No. 2012-1-6(R) stating that it elects to be eligible to participate in tax abatements (the “Policy Statement”); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefiting both the City and the Taxing Units in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, the contemplated improvements to the Real Property in the amount as set forth in this Agreement and

the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 111 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law, and

WHEREAS, the 2008 and 2011 Tax Abatement Agreements are herein amended, restated and consolidated into one document and supersede and replace the prior Agreements between the parties; and

WHEREAS, previous Agreements with Owner included Capital One Auto Finance which will no longer be a party to the Agreement and Capital One National Association assumes all rights, responsibilities, and obligations (as hereby amended, restated and superseded) of Capital One Auto Finance pursuant to this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree that this Agreement restates, amends, supersedes and replaces all prior agreements signed by the parties (including, without limitation, the 2008 and 2011 Tax Abatement Agreements) as follows:

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") and the Phase I Improvements (hereinafter defined) as shown on **EXHIBIT "B"** thereon (the "Phase I Development") and the Phase II Improvements (hereinafter defined) as shown on **EXHIBIT "B"** thereon (the "Phase II 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. 111 Phase 1 Development, which shall be hereinafter referred to as the "Personalty." The Personalty will have an approximate investment value of **Four Million Dollars (\$4,000,000)** and is, or will be, owned by the Owner and/or their affiliates. Owner shall timely render the 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.

PHASE I IMPROVEMENTS

4. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as the "Phase I Improvements") consisting primarily of new buildings consisting of a total of 150,000 gross square feet of office space known as Building 4 located at 8000 Dominion Parkway, Plano, Texas with an initial expenditure of not less than **Thirty Million Dollars (\$30,000,000)** on or before April 30, 2009 provided that Owner shall have such additional time to complete the Phase I Improvements as may be required in the event of "force majeure," if Owner is diligently and faithfully pursuing the completion of the Phase I Improvements, or if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Phase I 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 Phase I Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

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

6. The Owner agrees and covenants that they shall occupy 150,000 gross square feet of office space within the Phase I Improvements on the Real Property.

PHASE II IMPROVEMENTS

7. For purposes of Phase II Improvements and Obligations hereunder, the Owner is Capital One, National Association. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Phase II Improvements) consisting primarily of new buildings consisting of a total of not less than 135,000 square feet of office space known as Building 3 located at 7941 Preston Road, Plano, Texas with a Taxable Value of not less than **Five Million Dollars (\$5,000,000)** on or before March 31, 2012 subject to an event of Force Majeure. For this purpose, "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. The date of completion of the Phase II Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano. The term "Taxable Value" shall mean the assessed value for ad valorem tax purposes as determined by the Collin County Appraisal District.

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

9. The Owner agrees and covenants that it shall occupy not less than 135,000 square feet of office space within the Phase II Improvements on the Real Property.

DEFAULT

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

(a) The Phase I and/or the Phase II Improvements are not completed in accordance with this Agreement; or

(b) Owner allows their real or personal property taxes owed the **City** or **County** on the Real Property, the Phase I and/or the Phase II 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; or

(c) Owner fails to occupy the Phase I Improvements for the Purposes set forth in paragraph 4 above on or before December 31, 2009 or Owner fails to occupy the Phase II Improvements for the Purposes set forth in paragraph 7 above on or before March 31, 2012; or

(d) The initial investment value of the Phase I Improvements to Real Property and the initial investment value of Personalty placed on the improved Real Property on or before April 30, 2009 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 4 above; or

(e) The Taxable Value of the Phase II Improvements on or before January 1, 2012 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraph 7 above; or

(f) Owner fails to provide annual certification as required in paragraph 13 below; or

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

11. In the event that the Owner defaults under this Agreement then the City or County, as the case may be, shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City or the County, as the case may be; (the "Terminating Party") 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 10(b) or 10(g) above and after Owner fails to cure same in accordance herewith, this Agreement shall immediately terminate with respect to the Terminating Party and all taxes due the Terminating Party 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.

12. Upon the occurrence of an event of default under Paragraph 10(b) above or upon the occurrence of an event of default under Paragraph 10(g), then the City or County, as the case may be, as the Terminating Party, shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated with respect to and by the Terminating Party and all taxes, including previously abated taxes which would have been paid to the Terminating Party without the benefit of this Agreement, shall become due and owing to the Terminating Party, 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

13. 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 and the County certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

14. 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 Taxing Units, which permission shall be at the reasonable discretion of the Taxing Units, 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 Taxing Units of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

15. **Phase I.** Subject to the terms and conditions of this Agreement, a portion of ad valorem real and personal property taxes from the Real Property, Phase I Improvements, Phase II Improvements and Personalty, otherwise owed to the Taxing Units shall be abated as follows:

(a) The City and County grant the Owner tax abatements as to the Real Property, Phase I Improvements, and Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2009, through December 31, 2018.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City grants the Owner tax abatement equal to fifty percent (50%) of the improved value of the Real Property and Phase I Improvements and fifty percent (50%) of the Personalty for each tax year from January 1, 2009, through December 31, 2018. The County grants the Owner tax abatement equal to fifty percent (50%) of the Phase I Improvements and fifty percent (50%) of the Personalty for each tax year from January 1, 2009 through December 31, 2018.

(c) The Owner shall have the right to protest and/or contest any assessment of the Real Property, Phase I 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.

16. **Phase II.** Subject to the terms and conditions of this Agreement, a portion of ad valorem real property taxes from the Phase II Improvements otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to the Phase II Improvements as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2012, through December 31, 2021.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City grants the Owner abatement equal to fifty percent (50%) of the improved value of the Phase II Improvements for each tax year from January 1, 2012, through December 31, 2021.

(c) The Owner shall have the right to protest and/or contest any assessment of the Phase II Improvements 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

17. 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: City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

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

For Taxing Units by notice to:

County of Collin, Texas
Attention: The Honorable Keith Self
County Judge
Collin County Commissioners' Court
210 S. McDonald, Ste. 626
McKinney, Texas 75069

For Owner by notice to:

Capital One, National Association
Attention: Shahin Rezai, Esq.
1680 Capital One Drive
McLean, Virginia 22102

Capital One, National Association
Corporate Real Estate
Attention: Real Estate Administration
14601 Sweitzer Lane
Laurel, MD 20707

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

18. The Owner further agrees that the Taxing Units, their 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 Taxing Units 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.

19. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the Taxing Units assume no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless Taxing Units 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.

20. The Taxing Units each represent and warrant that the Real Property, Improvements and Personalty do not include any property that is owned by a member of their respective councils or boards, agencies, commissions, or other governmental bodies approving, or having responsibility for the approval of this Agreement.

21. The Agreement was authorized by Resolution of the City Council at its Council meeting on the 11th day of April, 2011, authorizing the City Manager to execute the Agreement on behalf of the City and this Amendment was authorized by Resolution of the City Council at its Council meeting on the 27th day of February, 2012, authorizing the City Manager to execute the Amendment on behalf of the City.

22. The Agreement was authorized by the minutes of the Commissioners' Court of Collin County, Texas, at its meeting on the 6th day of June, 2011, whereupon it was duly determined that the County Judge would execute the Agreement on behalf of Collin County and this Amendment was authorized by the minutes of the Commissioners' Court of Collin County, Texas, at its meeting on the _____ day of _____, 2012, whereupon it was duly determined that the County Judge would execute the Amendment on behalf of Collin County .

23. This Agreement was entered into by Owner pursuant to authority granted by its National Association, whereby the undersigned on behalf of Owner represents that he has the authority to sign and bind Owner to this Agreement.

24. This instrument shall constitute a valid and binding agreement between the City and Owner when executed in accordance herewith, regardless of whether the County executes this Agreement. This Agreement shall constitute a valid and binding Agreement between the County and Owner when executed on behalf of said parties, for the abatement of the County's taxes in accordance therewith.

25. 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 the _____ day of _____, 2012.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

COMMISSIONERS' COURT OF COLLIN
COUNTY

Keith Self, COUNTY JUDGE

Signatures on next page

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a National Banking
Association

By: _____
Print Name, Title:

By: _____
Dan Mortensen
Senior Vice President Facilities
Management/Real Estate

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 111
Real Property
Metes and Bounds

LEGAL DESCRIPTION

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, and the Collin County School Land Survey, Abstract No. 153, in the City of Plano, Collin County, Texas, being a part of that tract of land described as Tract 3B in deed to West Plano Land Company, L.P., as recorded in Collin County Clerk's File No. 20060920001358250, Land Records of Collin County, Texas (L.R.C.C.T.), and being all of Lot 3, Block 1 of Capital One Addition Lots 3 & 4, Block 1, an Addition to the City of Plano as recorded in Volume 2007, Page 269-270, L.R.C.C.T., and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "Halff Assoc., Inc." (hereafter referred to as "with cap") found at the southwest corner of a tract of land described in deed to McAfee, Inc., recorded in Collin County Clerk's File No. 20060703000911570, L.R.C.C.T., and being on the north line of Lot 4, Block 1 of said Capital One Addition;

THENCE North 64 degrees 39 minutes 06 seconds East, with the southeast line of said McAfee tract, and the north line of said Lot 4, passing at a call distance of 196.54 feet the southeast corner of said McAfee tract, also being the southwest corner of Network Associates, an addition to the City of Plano according to the plat thereof recorded in Cabinet O, Page 322, of the Map Records of Collin County, Texas (M.R.C.C.T.), and continuing along the southeast line of said Network Associates addition, for a total distance of 430.07 feet to a 1/2-inch iron rod with cap set at the westerly most corner of said Lot 3 for THE POINT OF BEGINNING;

THENCE North 64 degrees 39 minutes 06 seconds East, continuing along the southeast line of said Network Associates addition and along the north line of said Lot 3, a distance of 713.02 feet to 5/8-inch iron rod with a cap stamped "Kimley-Horn Assoc., Inc" found on the west right-of-way line of Preston Road (State Highway 289 – variable width right-of-way) for the beginning of a non-tangent curve to the left with a radius of 3,369.35 feet and a chord bearing South 30 degrees 56 minutes 44 seconds East, a distance of 681.56 feet;

THENCE Southeasterly along said west right-of-way line and with said curve to the left, through a central angle of 11 degrees 36 minutes 35 seconds, an arc distance of 682.73 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 29 degrees 32 minutes 01 second East, continuing along said west right-of-way line, a distance of 86.81 feet to a 1/2-inch iron rod with cap set for the beginning of a non-tangent curve to the left with a radius of 3,381.35 feet and a chord bearing South 39 degrees 18 minutes 40 seconds East, a distance of 129.32 feet;

THENCE Southeasterly along said west right-of-way line and with said curve to the left, through a central angle of 02 degrees 11 minutes 29 seconds, an arc distance of 129.33 feet to a 1/2-inch

iron rod with cap set for the southeast corner of said Lot 3 and on the north line of Lot 2, Block 1 of Capital One Addition, Lots 1, 2 & 3, Block 1, an addition to the City of Plano, recorded in Volume 2007, Page 122, L.R.C.C.T.;

THENCE South 47 degrees 12 minutes 12 seconds West, departing said west right-of-way line and along the common line between said Lots 2 and 3, a distance of 992.02 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 37 degrees 29 minutes 43 seconds West, continuing along said common line, a distance of 63.29 feet to a 5/8-inch iron rod with aluminum cap stamped "City of Plano Monument" set for corner on the east right-of-way line of Dominion Parkway (a proposed 92 foot wide right-of-way), and being on a non-tangent curve to the left with a radius of 1,446.00 feet and a chord bearing North 64 degrees 04 minutes 15 seconds West, a distance of 583.54 feet;

THENCE Northwesterly along said east right-of-way line and with said curve to the left, through a central angle of 23 degrees 16 minutes 54 seconds, an arc distance of 587.57 feet to a 1/2-inch iron rod with cap set for corner, said point being the southwesterly corner of said Lot 3 and the southeasterly corner of said Lot 4;

THENCE North 17 degrees 12 minutes 12 seconds East, departing said east right-of-way line and along the common line between said Lots 3 and 4, a distance of 870.25 feet to a 1/2-inch iron rod with cap set for corner;

THENCE North 42 degrees 47 minutes 48 seconds West continuing along said common line, a distance of 126.18 feet to the POINT OF BEGINNING AND CONTAINING 1,082,487 square feet or 24.850 acres of land, more or less.

EXHIBIT "B"
THE PHASE I AND PHASE II DEVELOPMENT
REINVESTMENT ZONE NO. 111
Site Plan/Map of Project



EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 111
CAPITAL ONE NATIONAL ASSOCIATION
PHASE I & II IMPROVEMENTS

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 111, Phase I & Phase II Improvements
Tax Abatement Agreement (the "Agreement") between Capital One National Association
("Owner") and the City of Plano and the County of Collin, Texas.

This letter certifies that the Owner is in compliance with each applicable term as set forth in the Agreement as of November 1, 20__ which includes the following: (Check all that are applicable)

_____ **Phase I Improvements.** The term of the abatement for the Phase I Improvements is January 1, 2009, through December 31, 2018.

_____ **Phase II Improvements.** The term of the abatement for the Phase II Improvements is January 1, 2012, through December 31, 2021.

This form is due on November 1 of each year the Agreement is in force.

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a National Banking
Association

By: _____
Print Name, Title:

By: _____
Dan Mortensen
Senior Vice President Facilities
Management/Real Estate

Date

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:		2/27/12			
Department:		Legal			
Department Head		Diane Wetherbee			
Agenda Coordinator (include phone #): Betsy Allen # 7545					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving the hiring of an Assistant City Attorney II by the City Attorney; 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:	2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	19,483	0	19,483
Encumbered/Expended Amount		0	0	0	0
This Item		0	-19,483	0	-19,483
BALANCE		0	0	0	0
FUND(S): GENERAL FUND					
<p>COMMENTS: Funding for this item, in the amount of \$19,483, is included in the approved 2011-12 Budget. This position does not increase the number of authorized positions in Legal. City Charter authorizes the hiring of attorneys with the approval of the City Council.</p> <p>STRATEGIC PLAN GOAL: The hiring of an Assistant City Attorney II meets the City's goal of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
<p>The City Charter authorizes the City Attorney to select attorneys for hire with the approval of the City Council. It is the City Attorney's recommendation that Susan K. Johnson be hired as an Assistant City Attorney II for the City Attorney's office. See attached Memorandum regarding qualifications for the proposed new hire.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memorandum			n/a		

MEMORANDUM

DATE: February 15, 2012

TO: Honorable Mayor and Members of Council

FROM: Diane C. Wetherbee, City Attorney

SUBJECT: HIRING OF SUSAN K. JOHNSON AS ASSISTANT CITY ATTORNEY II

This memo is to provide information regarding the qualifications of Susan K. Johnson as a new hire for the position of Assistant City Attorney II. In accordance with Section 4.05 of the Plano City Charter, I am requesting City Council approval of my selection for this position.

The legal department has two vacancies created by the departure of Luke Williams on March 2, 2012 and Susan Keller on November 22, 2011. The filling of these positions is within the current budget allocation and authorized number of positions for my department.

It is my recommendation that Susan K. Johnson be hired to fill one of the Assistant City Attorney II positions for my office. Ms. Johnson is retired from the Office of the Attorney General for Oklahoma where she served as an Assistant Attorney General for ten years during which time she handled tobacco, employment, tort claims, civil rights, and worker's compensation fraud litigation and served as Chief of the Litigation Division for five years of her service. In addition to handling all aspects of litigation including appeals, she represented various state agencies and universities in handling investigation of employment claims, responding to open records requests and advising risk management on legal issues. Prior to her service with the Oklahoma Attorney General, Ms. Johnson worked for the City of Oklahoma City for twelve years where she handled tort claims and employment litigation, contracts, purchasing, criminal prosecution and served as a Special Municipal Judge for four years of her service. Ms. Johnson obtained her Bachelor of Science in Sociology from the University of Central Oklahoma and received her Juris Doctor Degree from the Oklahoma City School of law. She recently moved to Plano and is licensed to practice law in Texas.

Thank you for your consideration. If you have any questions, please contact me.

A Resolution of the City Council of the City of Plano, Texas, approving the hiring of an Assistant City Attorney II by the City Attorney; and providing an effective date.

WHEREAS, Section 4.05 of the City Charter of the City of Plano gives the City Attorney the authority to select attorneys, with the approval of the City Council, to represent the City in litigation and to advise city departments and boards; and

WHEREAS, the City Attorney has selected Susan K. Johnson to be hired as an Assistant City Attorney II and is requesting the City Council's approval of same.

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

Section I. The City Council approves the hiring by the City Attorney of Susan K. Johnson as Assistant City Attorney II, such approval to be effective with the date of her employment and compliance with all prescreening requirements.

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

DULY PASSED AND APPROVED this the 27th day of February, 2012.

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 type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		2/27/12			
Department:		Legal			
Department Head		Diane Wetherbee			
Agenda Coordinator (include phone #): Betsy Allen # 7545					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving the hiring of an Assistant City Attorney II by the City Attorney; 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:	2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	13,194	0	13,194
Encumbered/Expended Amount		0	0	0	0
This Item		0	-13,194	0	-13,194
BALANCE		0	0	0	0
FUND(S): GENERAL					
<p>COMMENTS: Funding for this item, in the amount of \$13,194, is included in the approved 2011-12 Budget. This position does not increase the number of authorized positions in Legal. City Charter authorizes the hiring of attorneys with the approval of the City Council.</p> <p>STRATEGIC PLAN GOAL: The hiring of an Assistant City Attorney II meets the City's goal of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
<p>The City Charter authorizes the City Attorney to select attorneys for hire with the approval of the City Council. It is the City Attorney's recommendation that David Thomas Ritter be hired as an Assistant City Attorney II for the City Attorney's office. See attached Memorandum regarding qualifications for the proposed new hire.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memorandum			n/a		

MEMORANDUM

DATE: February 15, 2012

TO: Honorable Mayor and Members of Council

FROM: Diane C. Wetherbee, City Attorney

SUBJECT: HIRING OF DAVID RITTER AS ASSISTANT CITY ATTORNEY II

This memo is to provide information regarding the qualifications of David Ritter as a new hire for the position of Assistant City Attorney II. In accordance with Section 4.05 of the Plano City Charter, I am requesting City Council approval of my selection for this position.

The legal department has two vacancies created by the departure of Luke Williams on March 2, 2012 and Susan Keller on November 22, 2011. The filling of these positions is within the current budget allocation and authorized number of positions for my department.

It is my recommendation that David Ritter be hired to fill one of the Assistant City Attorney II positions for my office. Mr. Ritter is currently an associate for an environmental law firm representing landowners in water contamination and property damage cases. He formerly worked for the law firm of Taylor, Olson and Adkins, et al. for four years, a private firm that represents TML risk pool clients and provides general counsel services to municipalities. At the Taylor/Olson firm, Mr. Ritter handled land use and condemnation litigation for cities and school districts including appeals. He has also worked in the area of tort claims defense, open records, police and fire employment, zoning, and property acquisition and development for cities. Mr. Ritter began his career with Baron and Budd, P.C. as a litigator in the area of toxic torts where, among other cases, he represented cities, states and water management districts in water-contamination litigation. He also advised clients on corporate structure, SEC compliance, mergers and acquisitions, insurance and indemnity, and recovery from dissolved corporate entities. Mr. Ritter obtained a Bachelor of Arts Degree in History from Austin College and received a Juris Doctor Degree from Southern Methodist University.

Thank you for your consideration. If you have any questions, please contact me.

A Resolution of the City Council of the City of Plano, Texas, approving the hiring of an Assistant City Attorney II by the City Attorney; and providing an effective date.

WHEREAS, Section 4.05 of the City Charter of the City of Plano gives the City Attorney the authority to select attorneys, with the approval of the City Council, to represent the City in litigation and to advise city departments and boards; and

WHEREAS, the City Attorney has selected David Thomas Ritter to be hired as an Assistant City Attorney II and is requesting the City Council's approval of same.

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

Section I. The City Council approves the hiring by the City Attorney of David Thomas Ritter as Assistant City Attorney II, such approval to be effective with the date of his employment and compliance with all prescreening requirements.

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

DULY PASSED AND APPROVED this the 27th day of February, 2012.

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 type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		February 27, 2012		
Department:		Library Administration		
Department Head		Cathy Ziegler		
Agenda Coordinator (include phone #): Jeanne Argomaniz (4327)				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, authorizing the purchase of downloadable content (ebooks, music, video, and e-audio library materials) with Kindle functionality in the amount not to exceed the sum of One Hundred Fifty Thousand and 00/Dollars (\$150,000) from OverDrive, Inc., the sole source provider of such library materials for the City of Plano - Plano Public Library System; and authorizing its execution by the City Manager or his authorized designee to execute all necessary documents; 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: 2011-2012	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,758,517	0	1,758,517
Encumbered/Expended Amount	0	-700,832	0	-700,832
This Item	0	-150,000	0	-150,000
BALANCE	0	907,685	0	907,685
FUND(S): GENERAL FUND				
<p>COMMENTS: Funds are included in the FY 2011-12 adopted budget to purchase ebooks, music, video, and e-audio library materials for the City of Plano Public Library System.</p> <p>STRATEGIC PLAN GOAL: Providing downloadable contents for the Plano Public Library System relates to the City's Goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Approval of this purchase from OverDrive, Inc. is requested in the amount of \$150,000 for the purchase of downloadable content (ebooks, music, video and e-audio library materials) with Kindle functionality.</p> <p>Overdrive, Inc. is the sole source provider of such downloadable materials. Sole source purchases are exempt from the competitive bid process as provided in V.T.C.A., Local Government Code, Section 252.022 (a) (7).</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memo from Julie Torstad dated 01.26.2012 OverDrive, Inc., Sole Source letter dated 12.14.2011 Affidavit of No Prohibited Interest from OverDrive, Inc., dated 01.12.2012				



City of Plano
Library Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769-4237

Memorandum

Date: January 26, 2012

To: Cathy Ziegler, Director of Libraries

From: Julie Torstad, Library Technical Services Manager

Subject: City Council Approval for OverDrive

Please request City Council approval to spend approximately \$150,000 with OverDrive, Inc, a sole source provider for content (e-books, music, video and e-audio library materials) with Kindle functionality. Funds will be taken from 01-682-6203 (\$60,000) and 01-682-8441 (\$90,000). Some of the funds will be transferred into 01-682-8442.

Schedule "C"
AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of **OverDrive, Inc.** a Delaware corporation, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **OverDrive, Inc.** is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

OverDrive, Inc.
Company Name

By: 
Signature

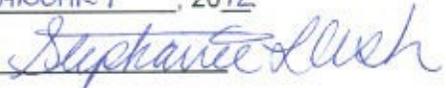
Erica Lazzaro
Print Name

General Counsel
Title

January 10, 2012
Date

STATE OF OHIO §
 §
COUNTY OF CUYAHOGA §

SUBSCRIBED AND SWORN TO before me this 10TH day of JANUARY, 2012

STEPHANIE L. ASH 
Notary Public, State of Ohio



STEPHANIE L. ASH
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

A Resolution of the City Council of the City of Plano, Texas, authorizing the purchase of downloadable content (ebooks, music, video, and e-audio library materials) with Kindle functionality in an amount not to exceed the sum of One Hundred Fifty Thousand and 00/Dollars (\$150,000) from OverDrive, Inc., the sole source provider of such library materials for the City of Plano - Plano Public Library System; and authorizing its execution by the City Manager or his authorized designee to execute all necessary documents; and providing an effective date.

WHEREAS, the City of Plano, Texas desires to purchase from OverDrive, Inc. downloadable content (ebooks, music, video, and e-audio library materials) with Kindle functionality for the City of Plano, Plano Public Library System; and

WHEREAS, OverDrive, Inc. is the sole source provider of downloadable content (ebooks, music, video, and e-audio library materials) with Kindle functionality; and

WHEREAS, the City Council of the City of Plano, Texas, finds that the public's best interest is served by authorizing the purchase of downloadable content, (ebooks, music, video and e-audio library materials) with Kindle functionality not to exceed \$150,000; and

WHEREAS, the City Council is of the opinion that these downloadable content (ebooks, music, video and e-audio library materials) with Kindle functionality are available only from one source, OverDrive, Inc., and therefore the purchase is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022 (a) (7); and

WHEREAS, upon full review and consideration of the proposed purchase and all matters attendant and related thereto, the City Council is of the opinion that the purchase should be approved, and that the City Manager or his authorized designee should be authorized to take such action and execute such documents as necessary to effectuate the purchase.

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

Section I. The City Council hereby finds and determines OverDrive, Inc., is the sole source provider for the downloadable content (ebooks, music, video and e-audio library materials) with Kindle functionality and said purchase is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022 (a) (7).

Section II. The City Manager or his authorized designee is hereby authorized to take such action and execute such documents with OverDrive, Inc., the sole source provider, as necessary to effectuate the purchase of downloadable content (ebooks, music, video and e-audio library materials) with Kindle functionality in the amount of \$150,000.

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

DULY PASSED AND APPROVED this the 27th day of February, 2012.

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 type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:	2/27/2012			
Department:	Public Works			
Department Head	Gerald Cosgrove			
Agenda Coordinator (include phone #): Irene Pegues (7198)				
CAPTION				
<p>An ordinance of the City of Plano, Texas amending section 12-101 of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to prohibit stopping, standing, or parking of motor vehicles on certain sections of Bishop Road, Dickens Drive, Gifford Drive, Infinity Avenue, and Wedgegate 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 roadway within the limits herein defined; and providing a penalty clause, a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	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): GENERAL FUND				
COMMENTS: Any revenue received is undeterminable at this time.				
STRATEGIC PLAN GOAL: Amending the Code of Ordinances relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
<p>The purpose of this proposed ordinance is to prohibit the stopping, standing, or parking of vehicles to improve traffic flow along five short street segments where on-street parking impedes the free movement of vehicular traffic.</p> <ul style="list-style-type: none"> • Along Bishop Road and Infinity Avenue, the limits of the on-street parking areas are delineated by curb extensions. Unfortunately, motorists have also begun parking in the travel way adjacent to the curb extensions effectively narrowing the travel way to one-way flow. <p style="padding-left: 20px;">Prohibiting the stopping, standing, or parking of vehicles adjacent to selected curb extensions should restore the travel way to two-way flow.</p> <ul style="list-style-type: none"> • Along Dickens Drive and Wedgegate Drive, on-street parking, combined with a right-angle turn in the roadway, and the evolution of longer and wider Fire Department apparatus has also resulted in the effective narrowing of the travel way to a point where Fire Department apparatus cannot travel around 				



CITY OF PLANO COUNCIL AGENDA ITEM

the turn when cars are parked on both sides of the street.

Prohibiting the stopping, standing, or parking of vehicles along the inside of the turn will impact the least number of residents while opening up sufficient street width to accommodate the movement of Fire Department apparatus down the street.

- Finally, along Gifford Drive, the prohibition of parking next to Fire Station 10 will improve the Fire Department's ability to access McDermott Road when leaving the station.

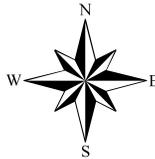
The Transportation Engineering Division (TED) has prepared the attached ordinance for City Council consideration. The TED recommends approval of this ordinance.

List of Supporting Documents:
Location Maps

Other Departments, Boards, Commissions or Agencies
N/A



Proposed No Stopping, Standing, or Parking Zone on Infinity Avenue



Transportation Engineering Division



Proposed No Stopping,
Standing, or Parking Zone

**McDERMOTT ROAD
CHURCH OF CHRIST**

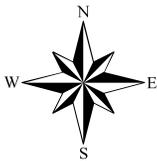
GIFFORD DRIVE

**FIRE
STATION
10**

**RUSSELL CREEK
PARK**

McDERMOTT ROAD

Proposed No Stopping, Standing, or Parking Zone on Gifford Drive



Transportation Engineering Division

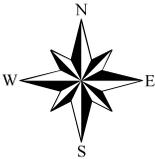


Bishop Road

Proposed No Stopping,
Standing, or Parking Zone

Tennyson Parkway

Proposed No Stopping, Standing,
or Parking Zone on Bishop Road



Transportation Engineering Division



Proposed No Stopping, Standing, or Parking Zone

Proposed No Stopping, Standing, or Parking Zone on Wedge Gate Drive and Dickens Drive



Transportation Engineering Division

An ordinance of the City of Plano, Texas amending section 12-101 of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to prohibit stopping, standing, or parking of motor vehicles on certain sections of Bishop Road, Dickens Drive, Gifford Drive, Infinity Avenue, and Wedgegate 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 roadway within the limits herein defined; and providing a penalty clause, a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.

WHEREAS, Bishop Road in the Shops of Legacy Town Center is a collector-width street constructed with curb extensions to delineate the parking lanes from the travel way; and

WHEREAS, a curb extension along the east side of Bishop Road extends from Tennyson Parkway to a point approximately 85 feet to the north; and

WHEREAS, motorists view the travel way adjacent to this curb extension as a convenient place to park; and

WHEREAS, on-street parking adjacent to this curb extension was not intended, and results in traffic congestion in the Bishop Road/Tennyson Parkway intersection; and

WHEREAS, the prohibition of stopping, standing, or parking along the curb extension on the east side of Bishop Road north of the Tennyson Parkway intersection will reduce the traffic congestion that occurs in the Bishop Road/Tennyson Parkway intersection; and

WHEREAS, Gifford Drive, a collector street of the City of Plano, serves not only residential and neighborhood school traffic, but also provides access to Plano Fire Station No. 10, Russell Creek Park, and McDermott Road Church of Christ; and

WHEREAS, on-street parking occurs on Gifford Drive adjacent to Plano Fire Station No. 10 during times when the park and/or the church are at peak utilization; and

WHEREAS, on-street parking on Gifford Drive adjacent to Plano Fire Station No. 10 impedes the response of emergency response apparatus from the Fire Station; and

WHEREAS, the prohibition of stopping, standing, or parking along the northbound (east) curb of Gifford Drive between the driveway for Plano Fire Station No. 10 and McDermott Road will remove any impedance to the response of emergency response apparatus from the Fire Station; and

WHEREAS, Infinity Avenue in the Shops of Legacy Town Center is a collector-width street constructed with curb extensions to delineate the parking lanes from the travel way; and

WHEREAS, a curb extension along the north side of Infinity Avenue extends from Ruthie Road to a point approximately 136 feet to the west; and

WHEREAS, this curb extension extends through the Infinity Avenue/Bishop Road intersection; and

WHEREAS, motorists view the travel way adjacent to this curb extension as a convenient place to park; and

WHEREAS, on-street parking adjacent to this curb extension was not intended, and results in traffic congestion in the Infinity Avenue/Bishop Road and Infinity Avenue/Ruthie Road intersections; and

WHEREAS, the prohibition of stopping, standing, or parking along the curb extension on the north side of Infinity Avenue west of the Ruthie Road intersection will reduce the traffic congestion that occurs in the Infinity Avenue/Bishop Road and Infinity Avenue/Ruthie Road intersections; and

WHEREAS, Wedgegate Drive is a 26-foot wide local residential street of the City of Plano; and

WHEREAS, Wedgegate Drive intersects and continues on as Dickens Drive in a smooth right angle turn with an inside radius of approximately 37 feet; and

WHEREAS, on-street parking on residential streets is generally allowed so long as ten feet of street is available as a travel way for vehicles, and

WHEREAS, Plano Fire Department apparatus can be up to 50 feet long and 9-foot 8-inches wide; and

WHEREAS, Plano Fire Department apparatus responding to a call on Wedgegate Drive has been impeded by on-street parking in the turn at the intersection of Wedgegate Drive and Dickens Drive; and

WHEREAS, the prohibition of stopping, standing, or parking along the south curb of Wedgegate Drive and west curb of Dickens Drive adjacent to 700 Wedgegate Drive should open up the travel way through the turn to improve Fire Department response vehicle accessibility; and

WHEREAS, the City Council of the City of Plano finds it necessary to prohibit the stopping, standing or parking at any time of motor vehicles along and upon certain sections of Bishop Road, Dickens Drive, Gifford Drive, Infinity Avenue, and Wedgegate 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 sections of Bishop Road, Dickens Drive, Gifford Drive, Infinity Avenue, and Wedgegate 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. Section 12-101 of Chapter 12, Motor Vehicles and Traffic, of the City of Plano Code of Ordinances is hereby amended to read as follows:

“Bishop Road, along the east side of Bishop Road from its intersection with Tennyson Parkway to a point eighty-five (85) feet north of its intersection with Tennyson Parkway.

“Dickens Drive, along the west side of Dickens Drive from its intersection with Wedgegate Drive to a point two hundred thirty-five (235) feet north of its intersection with Kipling Drive.”

“Gifford Drive, along the east side of Gifford Drive from its intersection with McDermott Road to a point one hundred sixty-four (164) feet south of its intersection with McDermott Road.”

“Infinity Avenue, along the north side of Infinity Avenue from its intersection with Ruthie Road to a point one hundred thirty-six (136) feet west of its intersection with Ruthie Road.”

“Wedgegate Drive, along the south side of Wedgegate Drive from its intersection with Dickens Drive to a point five hundred ten (510) feet east of its intersection with Lookout Trail.”

Section III. 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 IV. 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 V. 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 VI. 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 VII. The repeal of any ordinance or part of an ordinance affected 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 VIII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this 27th day of February, 2012.

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 type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/27/12		
Department:		Budget & Research		
Department Head		Karen Rhodes-Whitley		
Agenda Coordinator (include phone #): Anita Bell, 7194				
CAPTION				
An Ordinance of the City of Plano, Texas, transferring the sum of \$15,000 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2011-12 for the purpose of providing funds for auditing of additional programs outside the scope of the audit engagement with Grant Thornton; amending the budget of the City and Ordinance 2011-9-8, Section 1, Item "A" to reflect the actions taken herein; declaring this action to be a case of public necessity; 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:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	197,252,918	0
Encumbered/Expended Amount		0	0	0
This Item		0	15,000	0
BALANCE		0	197,267,918	0
FUND(S): GENERAL FUND				
COMMENTS: Supplemental appropriations approved to date for the General Fund, including this item, total \$735,738. The current General Fund balance supports this supplemental appropriation in the amount of \$15,000.				
STRATEGIC PLAN GOAL: Providing additional funding for the auditing of additional programs relates to the City's goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Supplemental Appropriation No. 5				
This supplemental appropriation will provide necessary funding for payment of additional auditing services provided by the outside auditors, Grant Thornton, in accordance with the Office of Management and Budget A-133 Compliance Supplement.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memo				
Supplemental Appropriation				

DATE: February 16, 2012
TO: Bruce Glasscock, City Manager
FROM: Andrea Cockrell, Controller



SUBJECT: Supplemental Appropriation – 2011 Audit

The scope of our audit engagement with Grant Thornton encompasses the audit of the overall financial statements as well as the Single Audit in accordance with the Office of Management and Budget A-133 Compliance Supplement. Our audit contract allows for one (1) major program to be audited each year. Any additional programs to be audited are considered to be outside the scope of the engagement letter and will be billed separately at \$5,000 per major program. In fiscal year 2011, four (4) major programs were audited due to the increase in the expenditures of the City, as well as the American Recovery and Reinvestment Act funds which were a part of the stimulus package from a couple of years ago.

The following programs were additional programs that were outside the scope of our engagement letter.

State 121 Highway Program -	\$5,000
Homelessness Prevention and Rehabilitation (ARRA) -	5,000
Energy Efficiency and Conservation Block Grant (ARRA)-	<u>5,000</u>
Total overage	\$15,000

The Accounting Department will be seeking a supplemental appropriation in the amount of \$15,000. At this time the cost will be housed in the General Fund Accounting cost center, however, at the conclusion of our indirect cost rate study, we anticipate charging back an indirect cost that would include costs such as audit to the various grants. At budget re-estimate, we will revisit the cost and determine the amount that can be charged back to the departments audited.

An Ordinance of the City of Plano, Texas, transferring the sum of \$15,000 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2011-12 for the purpose of providing funds for auditing of additional programs outside the scope of the audit engagement with Grant Thornton; amending the budget of the City and Ordinance 2011-9-8, Section 1, Item "A" 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 2011-12 setting the appropriations for the General Fund at \$197,252,918; and

WHEREAS, the City's audit engagement with Grant Thornton encompasses the audit of the overall financial statements as well as the Single Audit in accordance with the Office of Management and Budget A-133 Compliance Supplement; and

WHEREAS, there were several additional programs audited in fiscal year 2011, outside the scope of the engagement, due to the increase in the expenditures of the City, to be billed separately at \$5,000 per program; and

WHEREAS, programs audited, outside the scope of the engagement, were State 121 Highway Program, Homelessness Prevention and Rehabilitation (ARRA), and Energy Efficiency and Conservation Block Grant (ARRA); 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 General Fund operating appropriation should be made in order to provide additional funding for the programs audited, 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 estimated sum of FIFTEEN THOUSAND DOLLARS (\$15,000) is hereby transferred from the General Fund unappropriated fund balance to the General Fund operating appropriation.

SECTION II. The budget of the City of Plano for fiscal year 2011-12 as adopted by Ordinance No. 2011-9-8 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. 5 shall become effective immediately from and after the date of its passage.

DULY PASSED AND APPROVED THIS THE 27th DAY OF FEBRUARY, 2012.

Phil Dyer, **MAYOR**

ATTEST:

Diane Zucco, **CITY SECRETARY**

Diane C. Wetherbee, **CITY ATTORNEY**

**FY 2011-12
SUPPLEMENTAL APPROPRIATIONS**

Description	Department	Amount
Supplemental Appropriation for Special Election Contract with Collin County	City Secretary	94,187
Supplemental Appropriation for Special Election Contract with Denton County	City Secretary	3,863
Supplemental Appropriation for legal fees for PEDB dissolution	Economic Development	68,355
Supplemental Appropriation for settlement of lawsuit - Billy Horton, et al	Legal	554,333
Supplemental Appropriation for 2011 Audit Change Order	Accounting	15,000
TOTAL GENERAL FUND APPROPRIATIONS		\$ 735,738
TOTAL CATV FUND APPROPRIATIONS		\$ -
TOTAL CAPITAL RESERVE FUND APPROPRIATIONS		\$ -
TOTAL MUNICIPAL DRAINAGE FUND APPROPRIATIONS		\$ -
TOTAL WATER & SEWER FUND		\$ -
TOTAL SUSTAINABILITY & ENVIRONMENTAL FUND APPROPRIATIONS		\$ -
TOTAL CONVENTION & TOURISM FUND APPROPRIATIONS		\$ -
TOTAL PROPERTY/LIABILITY FUND APPROPRIATIONS		\$ -
TOTAL PROPERTY MANAGEMENT FUND APPROPRIATIONS		\$ -
TOTAL GOLF COURSE FUND APPROPRIATIONS		\$ -
TOTAL RECREATION FUND APPROPRIATIONS		\$ -
TOTAL INTERNAL SERVICE FUNDS AND OTHER FUNDS APPROPRIATIONS		\$ -
GRAND TOTAL ALL FUNDS		\$ 735,738