

CITY COUNCIL

1520 AVENUE K



DATE: 2/28/2011
 CALL TO ORDER: 7:00 p.m.
 INVOCATION: Sr. Pastor Gene Wilkes
 Legacy Church
 PLEDGE OF ALLEGIANCE:

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>OATHS OF OFFICE</u></p> <p><u>Civil Service Commission</u></p> <p>NiCole Williams</p> <p><u>CERTIFICATES OF APPRECIATION</u></p> <p><u>Civil Service Commission</u></p> <p>Patrick Gallagher</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 10, 2011 February 14, 2011 February 17, 2011</p>	
(b)	<p><u>Approval of Expenditures</u> Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency) Bid No. 2011-57-B for Tree Planting and Irrigation Project - Park Boulevard and Brand Road for the Parks Department to Whitmore and Sons, Inc. in the amount of \$65,329 and authorizing the City Manager to execute all necessary documents.</p>	
(c)	<p><u>Purchase from an Existing Contract</u> To approve the purchase of Replacement of Cat Cages at the Animal Shelter in the amount of \$85,059 from Kellogg Brown & Root Services, Inc., through an existing contract/agreement with The Cooperative Purchasing Network (TCPN) and authorizing the City Manager to execute all necessary documents. (TCPN Contract Number R4958)</p>	
(d)	<p><u>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</u> To approve an Engineering Services Agreement by and between the City of Plano and BW2 Engineers, Inc. in the amount of \$68,650 for the design of the Chisholm Trail south connection to the City of Richardson and authorizing the City Manager to execute all necessary documents.</p>	
(e)	<p><u>Approval of Change Order</u> To J. R. Stelzer Co., increasing the contract by \$28,560 for Southeast Industrial Water Tank Repaint, Change Order No. 1. Original Bid No. 2010-198-B.</p>	
(f)	<p><u>Approval of Expenditure</u> To approve of a 90-day contract extension with LegacyTexas Bank for the City's Treasury Department, for the limited purpose of depository services for Utility Billing funds that are currently direct deposited into LegacyTexas Bank and will be transitioned to direct deposit with Frost Bank, and authorizing the City Manager to execute the contract extension and all other necessary documents for Bid No. 2009-217-C; and providing an effective date.</p>	
(g)	<p><u>Adoption of Resolutions</u> To authorize the purchase of twenty (20) additional XpressCheck™ patron self-checkout stations in an amount not to exceed \$124,589 from Integrated Technology Group, the sole source provider of such equipment for the City of Plano - Plano Public Library System; and authorizing the City Manager to execute all necessary documents; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Adoption of Ordinances</u></p> <p>(h) To amend Sections 15-3, 15-56, 15-57, 15-59, 15-60, 15-61, and 15-65, Chapter 15, Parks and Recreation of the Code of Ordinances of the City of Plano, Texas to replace with provisions containing new language regarding prohibited activities, sports seasons, allocations, tournaments/meets/camps/clinics/tryouts, practice sessions, user fees and insurance; and providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause, and an effective date.</p> <p>(i) To repeal Ordinance No. 2006-11-27 designating a certain area within the City of Plano as Reinvestment Zone No. 103 for a tax abatement consisting of a 2.8383 acre tract of land located at the southwest intersection of Bishop Road and Infinity Avenue in the City of Plano, Texas; and providing an effective date.</p> <p>(j) To amend Section 2-25. Attendance at council meetings, etc., of Article II. City Manager, of Chapter 2. Administration of the Code of Ordinances of the City of Plano, Texas to allow the City Manager to assign a designee to attend council meetings on his behalf; and providing a repealer clause, a severability clause, and an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>Consideration of Bid No. 2011-68-B for Screening Wall – Parker & Independence project to Quality Excavation, Ltd. in the amount of \$350,157 and authorizing the City Manager to execute all necessary documents.</p>	
(2)	<p>Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between Applied Concepts, Inc. and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.</p>	
(3)	<p>Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between Keste, LLC and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(4)	<p>Consideration of a Resolution to establish the area defined herein as the "Plano Eruv District," for the purpose of accommodating Orthodox Jewish citizens to "carry" and transport within said "Plano Eruv District" on the Sabbath and other Jewish Holy Days in accordance with Jewish religious law; and providing an effective date.</p>	
(5)	<p>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2011-02 to amend Subsections 2.824 (RC - Regional Commercial), 2.825 (RE - Regional Employment), 2.827 (LI-1 - Light Industrial-1), and 2.828 (LI-2 - Light Industrial-2) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses) and Subsection 3.302 (Nonresidential Uses), of Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, regarding the use of metal as an exterior wall construction material in nonresidential zoning districts; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano</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>	

**PLANO CITY COUNCIL
NEIGHBORHOOD ROUNDTABLE
DISTRICT ONE
February 10, 2011**

COUNCIL MEMBERS

Phil Dyer, Mayor
Lee Dunlap, Mayor Pro Tem
Pat Miner, Deputy Mayor Pro Tem
Ben Harris
André Davidson
Lissa Smith
Harry LaRosiliere
Jean Callison

STAFF

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

The Plano City Council met informally at 7:05 p.m., Thursday, February 10, 2011, at the Plano Centre – Windhaven Room, 2000 East Spring Creek Parkway, Plano, Texas. All Council Members were present. Mayor Dyer welcomed those in attendance and introduced Council and Staff. He spoke regarding the structure of the Council where all members represent citizens across the City.

Budget Update

Director of Budget and Research Rhodes-Whitley spoke to the status of the budget process, development of the three-year forecast to be presented in March and advised that the current budget is \$396 million with \$75 million in Capital Improvement Projects. She spoke to the estimated deficit for 2011-12 of \$10-13 million, departmental cutbacks and work on prioritization of services. Ms. Rhodes-Whitley spoke to increases in sales tax revenue, potentially flat residential property values in 2011 with declines of 2-3% for commercial properties.

Economic Development Progress Report

Plano Economic Development Board Director of Business Retention and Expansion Hamm spoke to creating job opportunities, diversifying the economic base to cushion against economic shock, and increasing the tax base. She spoke to contributions made by companies and efforts of the Economic Development Board through outreach and recruitment; retention and expansion; and marketing and redevelopment. Ms. Hamm reviewed recent projects, industry targets, utilization of the web site, challenges and opportunities. Mayor Dyer spoke to commercial land yet to be developed.

Community Development Update
Downtown residential/commercial leasing activity - Downtown Development Update -
Research Technology District Update - 12th Street Station Initiative Update

Planning Director Jarrell spoke to new businesses in Downtown Plano, renovations, and construction. She advised that DART is considering a new station along the area where the Cotton Belt Line crosses lite rail and potential for a 12th Street Station which would increase ridership, connection, real estate investments, and provide a catalyst for development opportunities in the area. Ms. Jarrell spoke regarding Council's direction to the Planning and Zoning Commission to review the Research Technology District's boundaries and regulations. She responded to citizen questions regarding the City of Richardson's recommendation for a rail station, DART ownership of land near the Parker Station, the addition of commuter trains to the Cotton Belt Line using new technologies, and the need for parking at the 12th Street Station.

Parks and Recreation Projects Update

Director of Parks and Recreation Fortenberry spoke to the Oak Point Park and Nature Preserve's 801 acres tying into Bob Woodruff Park and including a 16 acre lane, meadow, hard/soft trails, and pavilion. She spoke to future trail connections into the City of Allen via the Bluebonnet trail and a planned visitors/education building. Ms. Fortenberry spoke regarding Pecan Hollow Golf Course renovations including a new cart barn and updated greens and tees to be completed by November 2011. She reviewed the Hall tract at the northwest corner of Park Boulevard and Alma Road which is 52 acres in size and will be developed as a community park. Ms. Fortenberry responded to citizens, advising that the City is monitoring property at Haggard Park for future acquisition. She also advised that structures planned at Oak Point Park are a visitor's center and retreat building and spoke to current regulations in place prohibiting alcoholic consumption on park properties (with the exceptions of Oak Point Amphitheater and Pecan Hollow).

Community Investment Program (CIP) & Street Improvements – District 1
14th Street Construction Status

Deputy Director of Public Works and Engineering Cosgrove spoke to recently completed projects including the single point urban interchange at US 75 and Parker Road, railroad quiet zones, and the Shiloh pump station. He advised that areas under construction are 14th Street (Avenue K to Ridgewood) and Chaparral (K Avenue to the east City limits), and spoke to repainting of the southeast industrial water tank. Mr. Cosgrove spoke to future projects including Split Trail (K Avenue to Spring Creek Parkway), Park Boulevard pedestrian crossing, and various intersection improvements and pavement repairs. He responded to citizen questions regarding lane configuration on 14th Street and the status of lighting, sidewalks and medians on 15th Street (Avenue G to US 75). Transportation Engineering Manager Neal responded to citizen questions, advising that Staff is monitoring conditions at the US 75/Parker Road interchange.

Code Enforcement/Property Standards Update - Apartment Inspection Program Update

Director of Property Standards O'Banner spoke to Code Enforcement regulating compliance with zoning ordinances and property maintenance codes and spoke to City-wide inspections, educational, and enforcement efforts to sustain housing and business communities. Ms. O'Banner spoke to voluntary compliance and enforcement measures which include penalties/fees, civil/criminal remedies, or abatement measures. She advised regarding recent changes to fees and criminal penalties and spoke to Community Service Projects, the *Love Where You Live Program*, and *Helping Partners*. Ms. O'Banner reviewed cases handled in the last year and spoke to the progress of the Apartment Inspection Program which reviewed 27,531 units in FY 2009-10. Ms. O'Banner responded to citizens, advising that trash pickup along creeks is a cooperative effort between the City and private owners, and spoke regarding rental inspection program procedures, and policies related to occupancy limits. She advised that the residential rental inspection program is currently on hold.

Open Questions and Answers

Mayor Dyer spoke to the selection process for the City Manager and responded to citizens regarding consideration of formats for the roundtables. He spoke to volunteer opportunities and thanked those in attendance. The session was closed at 8:23 p.m.

Phil Dyer, Mayor

ATTEST:

Diane Zucco, City Secretary

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
February 14, 2011**

COUNCIL MEMBERS

Phil Dyer, Mayor
Lee Dunlap, Mayor Pro Tem
Pat Miner, Deputy Mayor Pro Tem
Ben Harris
André Davidson
Lissa Smith
Harry LaRosiliere
Jean Callison

STAFF

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

Mayor Dyer called the meeting to order at 5:07 p.m., Monday, February 14, 2011, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Council Member Callison arrived at 5:09 p.m. 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, Section 551.071; Personnel, Section 551.074 and to receive information regarding Economic Development, Section 551.087 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:16 p.m.

Consideration and Action Resulting From Executive Session

No items were considered.

Presentation and discussion re proposed improvements to US 75 and President George Bush Turnpike

Transportation Engineering Manager Neal spoke to the project under review by the City of Plano, Texas Department of Transportation, North Texas Tollway Authority, and DART addressing a consensus of needs from the various agencies. He spoke to corrective actions already taken including ramp reversals, HOV Lane Construction, frontage road speed revisions, and Parker Road interchange renovation.

Mr. Neal spoke to issues at US 75 and S.H. 190 including the high traffic volume, ramp backups, access to exits, frontage road queue jumps, access to area business and HOV operations. He spoke to the anticipated project length of 1.42 miles with a total cost of \$34 million, anticipated funding, and scheduling. Mr. Neal reviewed potential improvements including sign modification, lane and ramp revisions, changes to surface streets to improve flow, possible impact on access from Collin Creek Mall, and foundation work on the railroad south of Plano Parkway to accommodate double tracks. He responded to Deputy Mayor Pro Tem Miner regarding the potential for improvements to exit ramps and to Council Member Davidson regarding mall access and advised that improvements would be a regional shared partnership among participating agencies. He advised that while no timeframe has been developed, the area is in need of improvements.

Discussion and direction on Planning Activities for Proposed Rail Stations on the Cotton Belt Line

Planning Director Jarrell spoke to the North Central Texas Council of Governments and DART continuing to look at funding for a station, preliminary engineering studies and Plano's preference for a 12th Street station and one in the Research/Technology area. She advised regarding discussions related to the 12th Street station with support for the area becoming an extension of Downtown and benefits of a station in the Research/Technology area to serve employees and boost ridership of those in other communities. She requested Council direction to move forward with amendments to the Future Land Use Plan to designate the station locations to which the Council stated a consensus. Ms. Jarrell spoke to development of a conceptual plan for the 12th Street Station including general goals for housing and commercial space. Mayor Dyer spoke in support of beginning a layout and receiving Planning and Zoning Commission input regarding the number of housing units and potential for single-family infill. Ms. Jarrell spoke to rezoning the area once station locations are determined, development of incentives and utilization of public/private partnerships. She responded to the Council regarding the assignment of TIF No. 2 funds for projects, reviewing the potential impact on school populations and advised regarding the expansion of growth from the downtown area which would intensify with development of a 12th Street Station.

Discussion and direction re Heritage Preservation Plan Update

Heritage Commission Chair Anne Quaintance-Howard spoke to the plan as a guide for programs and policies, establishing a basis for decision making, and functioning similar to the Comprehensive Plan. She reviewed the content including an overview, context, current conditions/future considerations and strategic framework. Ms. Quaintance-Howard spoke to heritage preservation as the process of passing attributes from one generation to the next and determining a structure's significance based on its attributes and advised that it results from a sense of place connection. She spoke to the Plan's vision to recognize the ongoing transition facing the region and City, noting that redevelopment/revitalization can positively impact preservation and that preserving/re-using historic assets is consistent with sustainability. Ms. Quaintance-Howard spoke to the challenges of limited heritage resources, determining which structures are appropriate for designation, infill/redevelopment, Plano's geography and lack of physical connection with the historic areas, and limited contributions to preservation activities.

She reviewed opportunities including the Heritage Preservation Grant Program, Tax Exemption Program, Plano's Preservation Program, ongoing property restoration, local museums and new technologies. She spoke to the goals of resource identification, preservation and interpretation; heritage resource designation; promoting preservation and reinvestment in historic assets; education and community outreach; and implementation. The Council stated a consensus with the items recommended and directed Staff to move forward preparing the Plan for adoption.

Comprehensive Monthly Financial Report

Finance Director Tacke advised that for the month of December 2010, General Fund, Water/Sewer, Civic Center and Golf Course revenues were up as a percentage of budget when compared to last year. She advised that actual figures indicate the General Fund revenues were up due to a \$1.2 million increase in sales tax offset by a decrease in court fine revenues and spoke to expenditures down slightly as a percentage of budget. Ms. Tacke advised that actual expenditures were down \$1.2 million due to the timing of the September 2010 payroll and a reduction in the annual contribution to the 115 Trust. Ms. Tacke advised that the unemployment rate is up slightly at 7% and sales tax collections for December are up by 19.63%. She spoke to increases in actual water/sewer revenue due to the lack of rain and rate increases and expenditures down \$1.1 million. Ms. Tacke spoke to increases in municipal drainage revenues and a decline in expenses based on contract costs for debris hauling.

Personnel Appointments - Civil Service Commission

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 8-0 to appoint NiCole Freeman Williams as an interim member.

Council items for discussion/action on future agendas

Council Member Smith requested an update on the budget process, an item for discussion and direction regarding scheduling additional meetings for departmental budget reviews, and verified an upcoming report regarding the City's response to recent ice storms.

Consent and Regular Agenda

Council Member Smith requested that Consent Agenda Item "G," a resolution to authorize the purchase of a Northrop Grumman Remotec F6B Bomb Robot from Remotec, Inc., in the amount of \$242,672 be removed for individual consideration.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 7:01 p.m.

Phil Dyer, Mayor

ATTEST:

Diane Zucco, City Secretary

PLANO CITY COUNCIL
February 14, 2011

COUNCIL MEMBERS

Phil Dyer, Mayor
Lee Dunlap, Mayor Pro Tem
Pat Miner, Deputy Mayor Pro Tem
Ben Harris
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Bruce Glasscock, Deputy City Manager
Mark Israelson, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council directly from the Preliminary Open Meeting into the Regular Session on Monday, January 24, 2011, at 7:01 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Mayor Pro Tem Dunlap and the Pledge of Allegiance was led by Boy Scout Troop 404 of Prince of Peace Catholic Community.

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

CONSENT AGENDA

Upon the request of Council Member Smith, Consent Agenda Item "G" was removed for individual consideration.

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Smith, 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 24, 2011 - Special Called Session
January 24, 2011

Approval of Expenditures

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

Bid No. 2011-45-B for the purchase of one (1) Forestry Truck w/Aerial Bucket Lift for the Fleet Department to be utilized by Park Support Services to Grande Ford Truck Sales, Inc. in the amount of \$120,715 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "B")

Purchase from an Existing Contract

To approve the purchase of sixteen (16) Chevrolet Black & White Police Tahoe's and two (2) Chevrolet White Tahoe's in the amount of \$481,044 from Caldwell Country Chevrolet through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard Contract #358-10) (Consent Agenda Item "C")

Approval of Contract Modification

To approve and authorize Contract Modification No. 1 for the purchase of Engineering Services for Alley Reconstruction – Ports O'Call Area in the amount of \$2,590 from Criado & Associates, Inc. This modification will provide design services for the reconstruction of an additional 250 feet of alley between Papeete Drive and Cherbourg Drive. (Consent Agenda Item "D")

To approve and authorize Contract Modification No. 1 for increasing the professional services contract for Drainage Improvements - Ashington, Rosehill & Early Morn in the amount of \$31,500 with Jerry Parche' Consulting Engineers. (Consent Agenda Item "E")

Adoption of Resolutions

Resolution No. 2011-2-1(R): To approve the terms and conditions of an Agreement by and between the City of Plano, Texas and Alcatel-Lucent USA Inc., a sole source provider, to purchase additional services and products related to an upgrade and replacement of the existing microwave radio system; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "F")

Resolution No. 2011-2-2(R): To authorize the City Manager to enter into a Joint Election Agreement with the Plano Independent School District and the Frisco Independent School District for the purpose of conducting a joint election on May 14, 2011; and providing an effective date. (Consent Agenda Item "H")

Adoption of Ordinances

Ordinance No. 2011-2-3: To repeal Ordinance No. 2010-9-16; establishing the number of certain classifications within the Police and Fire Departments for fiscal year 2010-11; establishing the authorized number and effective dates of such positions for each classification effective February 14, 2011; establishing a salary plan for the Police and Fire Departments effective September 27, 2010; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item "I")

Ordinance No. 2011-2-4: To amend Section 12-103 of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to repeal the two hour duration time limit between the hours of 8:00 A.M. and 12:00 midnight for the parking spaces along the east side of Bishop Road between Martin Road and Lunsford Road and to amend Article V of Chapter 12 (Traffic Code) of the Code of Ordinances of the City of Plano by adding Section 12- 103.1 to Article V of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to limit the duration of parking to twenty minutes maximum between the hours of 8:00 A.M. and 12:00 midnight for the parking spaces along the east side of Bishop Road between Martin Road and Lunsford Road within the city limits of the City of Plano, declaring it unlawful and a misdemeanor to park motor vehicles in such parking spaces for longer than the time herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date. (Consent Agenda Item "J")

Ordinance No. 2011-2-5: To order an election to be held on May 14, 2011, for the purpose of electing four (4) Members of Council, Place No. 1 (District 1), Place No. 3 (District 3), Place No. 5 and Place No. 7 to the City Council to hold office for a period of three years; designating locations of polling places; ordering notices of election to be given as prescribed by law in connection with such election; and providing an effective date. (Consent Agenda Item "K")

END OF CONSENT

Resolution No. 2011-2-6(R): To authorize the purchase of the Northrop Grumman Remotec F6B Bomb Robot from Remotec, Inc., a sole-source provider, in the amount of \$242,672 for use by the Plano Police Department; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase; and providing an effective date. (Consent Agenda Item "G")

Chief Rushin advised the Council that the City has the only bomb squad in Collin County, provides the service per an agreement with the FBI who provides equipment and training, and that funding is through a Homeland Security grant.

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 8-0 to authorize the purchase of the Northrop Grumman Remotec F6B Bomb Robot from Remotec, Inc., a sole-source provider, in the amount of \$242,672; and further to adopt Resolution No. 2011-2-6(R).

Discussion and direction regarding the Undeveloped Land Study to include policy recommendations of the Economic Development and Land Use Elements; Housing Density, Infill and Mixed-Use Statements; and Rezoning Policy for the use of remaining undeveloped land in the City of Plano. (Regular Agenda Item “1”)

Senior Planner Sims advised that there are 3,900 acres remaining for development with 87% zoned for nonresidential uses and spoke regarding sites where less than a square mile of land remains for residential uses. He stated that multi-family may be the first sector to recover from the recession and development would reduce the tax burden on citizens. Mr. Sims reviewed the Undeveloped Land Policies: preserve land for economic development and employment; rezone land to meet demand using criteria; review housing density; encourage residential development for infill housing and retain the 1200 foot setback from S.H. 121; and identify locations and guidelines for mixed-use development. Mr. Sims spoke to the Commission’s recommendations, advising that there were mixed views on lower density multifamily development with a preference in mixed-use and urban centers, lower density as an option for corner retail sites, and retaining concentration and separation guidelines. He spoke to their recommendation to leave economic corridors and employment areas intact and their openness to consider higher density multifamily in mixed-use and urban centers. Mr. Sims advised that the Commission did not support single-family housing in expressway corridors or employment areas and did support of infill housing in areas where existing conditions support single-family development.

Citizen Dr. Robbie Robinson spoke to the planning of the Legacy area, current land use policies, and stated concern regarding rezoning acreage to residential uses. He spoke to the decrease in areas zoned for corporations and available for economic development, the impact on tax revenue, Legacy’s concept as a balanced mixed-use development, jobs created, and being a strong commercial area. He requested the Council modify the proposal to prohibit further rezoning of commercial land in Legacy to residential. Citizen Connor Chaddick spoke to consideration of multi-family development east of U.S. 75 and Mr. Sims advised that development at 15th Street and the DART rail has been delayed due to economic factors. Citizen Michael Ablon spoke to attracting a workforce by providing places to work/live/play, housing as a continuum and preserving land for corporate development while evolving housing. Roy Wilshire, representing the Haggard family, spoke to their efforts to preserve land and to future development of a mixed-use design.

Mayor Dyer spoke to considering the long-term implication of decisions related to multifamily development, the current supply of housing alternatives and stated concern in adding more unless they are tied to an urban center or master plan project. Deputy Mayor Pro Tem Miner stated support if existing multifamily regulations apply and areas considered are older retail corners. He stated concern regarding overcrowding in schools and spoke to the current strong demand for retail and office space in Legacy. Mayor Pro Tem Dunlap and Council Member Davidson stated concern regarding the broad base of the proposal and Council Member LaRosiliere spoke to the clear vision of Legacy. Development Review Manager Firgens advised that Council could revise the recommendations to address specific areas of the City and the Council requested Staff hone in on areas and provide a “snapshot” including geography, employment, residential components, transit, etc. Mayor Dyer requested information on “spot zoning” and Mr. Sims advised regarding pending rezoning requests.

Nothing further was discussed and Mayor Dyer adjourned the meeting at 7:05 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary

**PLANO CITY COUNCIL
SPECIAL CALLED SESSION
February 17, 2011**

COUNCIL MEMBERS

Phil Dyer, Mayor
Lee Dunlap, Mayor Pro Tem
Pat Miner, Deputy Mayor Pro Tem
Ben Harris
André Davidson
Lissa Smith
Harry LaRosiliere
Jean Callison

STAFF

LaShon Ross, Interim City Manager
Frank Turner, Deputy City Manager
Bruce D. Glasscock, Deputy City Manager
Mark Israelson, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Appointment of City Manager

Bruce D. Glasscock, City Manager

Mayor Dyer called the meeting to order at 7:00 p.m., Thursday, February 17, 2011, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were 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 discuss 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 7:05 p.m.

Consideration and Action Resulting From Executive Session - Discussion and Council Action to Appoint City Manager

Mayor Dyer and the Council spoke to the process and candidates.

Upon a motion made by Mayor Dyer and seconded by Mayor Pro Tem Dunlap, the Council voted 8-0 to appoint Bruce D. Glasscock as City Manager.

Mayor Dyer administered the oath of office.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 7:20 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:		2/28/11		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Bev Rogers ext. 7376				
CAPTION				
Bid No. 2011-57-B for Tree Planting and Irrigation Project - Park Blvd. and Brand Rd. for the Parks department to Whitmore and Sons, Inc. in the amount of \$65,329, and authorizing the City Manager or his/her 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: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	1,744	198,256	55,000	255,000
Encumbered/Expended Amount	-1,744	-383	0	-2,127
This Item	0	-65,329	0	-65,329
BALANCE	0	132,544	55,000	187,544
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This item, in the amount of \$65,329, will leave a current year balance of \$132,544 for the Roadway Median Landscaping project. STRATEGIC PLAN GOAL: Tree planting and irrigation for medians relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
The Parks and Recreation staff recommends the purchase of Tree Planting and Irrigation Project from Whitmore and Sons, Inc. as the lowest responsive, responsible bidder, in the estimated annual amount of \$65,329.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memorandum Bid Recap				

MEMORANDUM

TO: BEV ROGERS, BUYER
FROM: MICHAEL SULTAN, URBAN FORESTER
DATE: 01/31/2011
RE: **AWARD RECOMMENDATION 2011-57-B TREE PLANTING AND IRRIGATION PROJECT - PARK BLVD. AND BRAND RD.**

It is the recommendation of Parks and Recreation Department to award **Bid 2011-57-B Tree Planting and Irrigation Project - Park Blvd. and Brand Rd. to Whitmore and Sons**. After reviewing the vendor submittals and consulting with work history references, Whitmore and Sons appears capable of meeting the requirements of the aforementioned contract. As stated in the bid documentation, this contract is to be awarded to the lowest responsive, responsible bidder.

As shown in the bid re-cap, Whitmore and Sons is the lowest responsive, responsible bidder for this contract, which involves tree planting and irrigation in the Park Boulevard median from Shiloh Road to the east city limit and in the Brand Road median from F.M. 544 to the south city limit. The Parks and Recreation Department believes that awarding this Bid to the lowest responsive, responsible bidder is in the best interest of the City.

Total amount awarded for Bid 2011-57-B is \$65,328.71. This amount is approximately \$84,671.29 under the budgeted amount for this contract.

Please review and begin the necessary steps for award of this contract.

Attachments:
Vendor Bid Recap

CITY OF PLANO

BID NO. 2011-57-B Tree Planting and irrigation Project – Park Blvd. and Brand Rd. BID RECAP

Bid opening Date/Time: January 21, 2011 at 3:00 p.m.

Number of Vendors Notified: 3,575

Vendors Submitting “No Bids”: 4

Vendors Submitting “Partial Bids”: 0

Number of Bids Submitted: 15

Bidder(s):

Texas Environmental Management	Withdrawn
Whitmore and Sons	\$ 65,328.71
Jonesplan, Inc.	\$ 74,000.00
Grant Leighton Assoc. of Texas, Inc.	\$ 76,650.50
Bass Site Solutions, LLC	\$ 86,370.00
American Landscape Systems, Inc.	\$ 88,890.00
Denali Land Development	\$ 94,480.00
Superscape Landscaping	\$ 98,000.00
SLM Landscaping & Maintenance, Inc.	\$ 98,745.00
Palm, Inc.	\$106,883.00
Metroplex Garden Design Landscaping, LP	\$111,368.25
Central North Construction, LLC	\$111,464.00
Texas Tree Turf Co.	\$114,227.00
Exterior Expressions	\$124,745.00
Greener Pastures	\$154,279.00

Vendors Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Whitmore and Sons

Bev Rogers
Bev Rogers, Buyer

January 31, 2011
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:		February 28, 2011		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Dianna Wike x5512				
CAPTION				
To approve the purchase of Replacement of Cat Cages at the Animal Shelter in the amount of \$85,059 from Kellogg Brown & Root Services, Inc., through an existing contract/agreement with The Cooperative Purchasing Network (TCPN) and authorizing the City Manager or his/her authorized designee to execute all necessary documents. (TCPN Contract Number R4958)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	753,902	351,098	0	1,105,000
Encumbered/Expended Amount	-753,902	-133,146	0	-887,048
This Item	0	-85,059	0	-85,059
BALANCE	0	132,893	0	132,893
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2010-11 Capital Reserve. This item, in the amount of \$85,059, will leave a current year balance of \$132,893 for the Animal Shelter project. STRATEGIC PLAN GOAL: Replacement of cat cage purchases relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends approval of the purchase of Replacement of Cat Cages at the Animal Shelter from Kellogg Brown & Root Services, Inc., in the amount of \$85,059, conditioned upon timely execution of any necessary contract documents. This is to replace existing 10 year old laminated plywood cat cages with Plexiglas backs. KBR will install 66 new powder coated stainless steel cages with tempered glass backs and doors. The existing cages have deteriorated so much that the laminate has detached from the plywood and mold and bacteria have grown in the joints, as the sealants have decayed. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring Local governments to seek competitive sealed bids for items. (TCPN Contract Number R4958)				
List of Supporting Documents: Memorandum			Other Departments, Boards, Commissions or Agencies	



Phil Dyer
Mayor

Lee Dunlap
Mayor Pro Tem

Pat Miner
Deputy Mayor Pro Tem

Ben Harris
Place 2

André Davidson
Place 3

Lissa Smith
Place 4

Harry LaRosiliere
Place 5

Jean Callison
Place 7

LaShon Ross
Interim City Manager

February 16, 2011

Dianne Wike,

I am recommending approval of the proposal from KBR (Kellogg Brown & Root, Inc.) utilizing their cooperative Purchasing contract number R4958 with TCPN in the amount of \$85,059.00. This proposal is for the replacement of the existing 10 year old laminated plywood cat cages with Plexiglas backs. KBR will install 66 new powder coated stainless steel cages with tempered glass backs and doors. The existing cages have deteriorated so much that the laminate has detached from the plywood and mold and bacteria have grown in the joints as the sealants have decayed. This creates an unhealthy environment where disease is easily transmitted in the cat cage areas. The new cages will allow for a more permanent solution for Animal Shelter staff to properly clean the cages on a daily basis and maintain a healthy environment.

Additional proposals were received from Rawlins Construction, Inc in the amount of \$91,371.45 and Core Construction in the amount of \$109,222.00.

The funding for the project is in CRF account number 54425.

Please contact me if you have any questions.

Sincerely,

Richard Medlen
Facilities Maintenance Superintendent

Cc: Di Zucco



**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:	2/28/11
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

Approval of an Engineering Services Agreement by and between the City of Plano and BW2 Engineers, Inc. in the amount of \$68,650 for the design of the Chisholm Trail south connection to the City of Richardson and authorizing the City Manager or his/her authorized designee to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	580,823	1,150,177	0	1,731,000
Encumbered/Expended Amount	-580,823	-430,398	0	-1,011,221
This Item	0	-68,650	0	-68,650
BALANCE	0	651,129	0	651,129

FUND(S): PARK IMPROVEMENT CIP

COMMENTS: Funds are included in the 2010-11 Park Improvement CIP. This item, in the amount of \$68,650, will leave a current year balance of \$651,129 for the Trail Connections project.

STRATEGIC PLAN GOAL: Engineering design services for trail connections relate to the City's Goal of Great Neighborhoods -1st Choice to Live.

SUMMARY OF ITEM

This agreement provides for Engineering Services to prepare plans and construction documents for the Chisholm Trail connection to the City of Richardson. This trail connection is identified on the Six Cities Trail Plan.

The basic services fee of \$48,500 is 8.55% of the estimated construction budget of \$567,014. Additional services in the amount of \$20,150 are included for the hydraulic analysis, permitting, preparation of easement documents and geotechnical services. The total fee is 12.1% of the estimated construction budget. These fees are consistent with other engineering projects of similar scope.

The trail will connect from Accent Drive south of Plano Parkway to Alma Road north of the President George Bush Turnpike. The trail will connect to an existing trail in the City of Richardson.

BW2 Engineers, Inc. is on the 2010-11 list of selected consultants for Engineering Services.

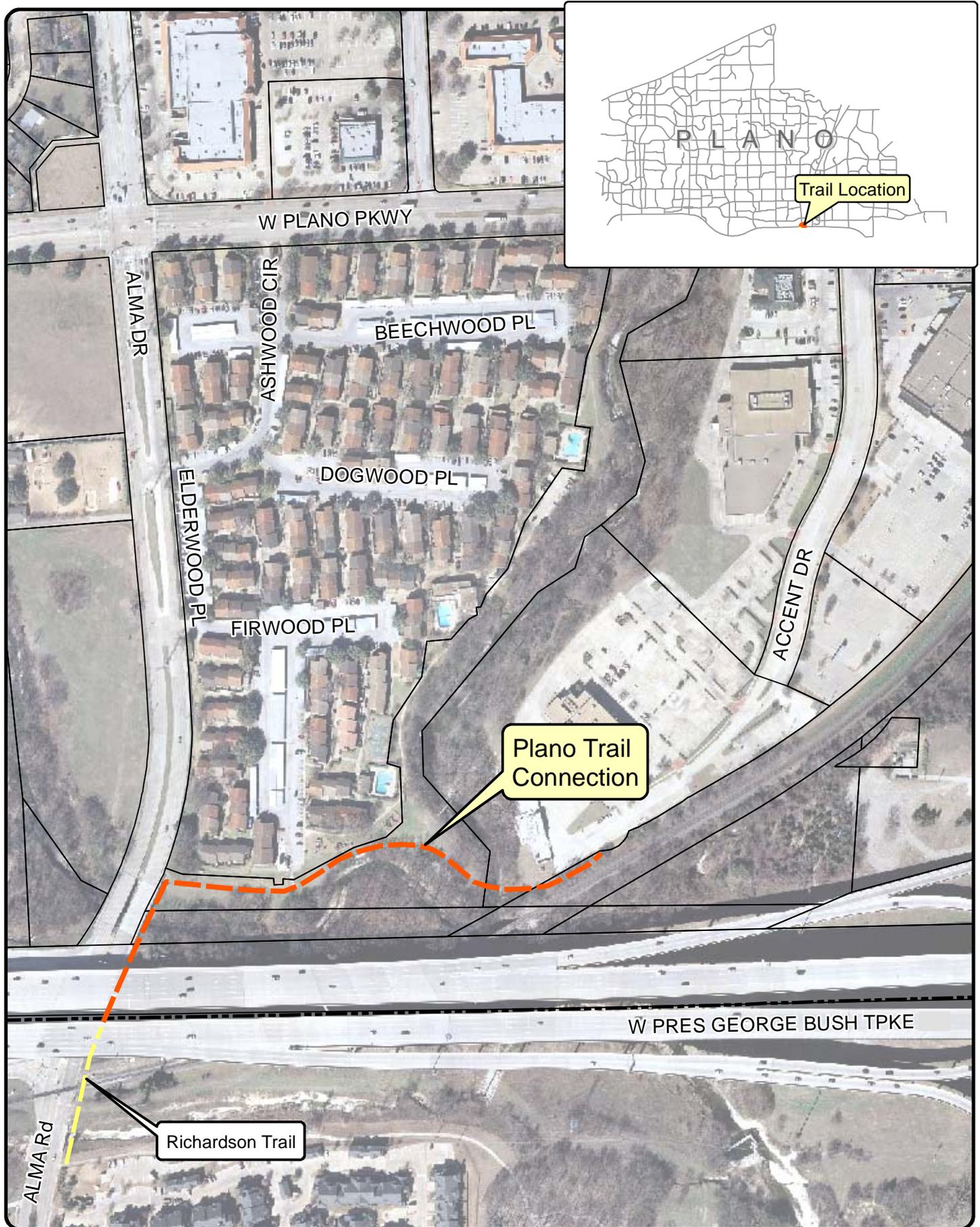


**CITY OF PLANO
COUNCIL AGENDA ITEM**

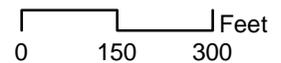
List of Supporting Documents: Location Map Agreement	Other Departments, Boards, Commissions or Agencies



Chisholm Trail Richardson Connector - Project #6125



C:\MXD's\2011 Agenda Items\Proposed Trail Connection Chisholm to Richardson.mxd Tina B. 2-9-2011



CHISHOLM TRAIL RICHARDSON CONNECTOR

PROJECT NO. 6125

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 **BW2 ENGINEERS, INC.**, a **TEXAS** Corporation, 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 **CHISHOLM TRAIL RICHARDSON CONNECTOR** 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 & Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

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

BW2 Engineers, Inc.
1919 South Shiloh Road, Suite 500, LB 27
Garland, TX 75042
Attn: Jim Waldbauer

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.

DATE: 1/27/11

BW2 ENGINEERS, INC.
A Texas Corporation

BY: 
Jim Waldbauer
VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
~~Thomas H. Muchlenbeck~~
CITY MANAGER

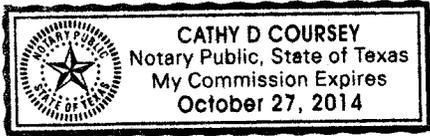
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 27th day of January, 2011, by **JIM WALDBAUER, VICE PRESIDENT** of **BW2 ENGINEERS, INC.**, a **TEXAS** corporation, on behalf of said corporation.



Cathy D. Coursey
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2011, by ~~THOMAS H. MUEHLENBECK, CITY~~ **MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT A
SCOPE OF SERVICES
CHISHOLM TRAIL (ACCENT DRIVE TO ALMA ROAD)
CONNECTOR PROJECT

BASIC SERVICES

A. Pre-Design

1. Meet with City of Plano and obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.
3. After completion of design survey, review existing conditions and prepare a schematic design of proposed improvements. Schematic design will be reviewed with City Staff and modified as needed for use as the proposed improvements.

B. Design Survey

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie right-of-way lines and corners, property lines and corners, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control baseline. Existing utility structures shall be located horizontally and referenced by utility name (i.e. T.U. Elec., Verizon Telephone, Atmos Gas, Etc.).
4. Vertical topographic information tying pavement, drives, walls, manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
5. When underground utilities are exposed, tie to project control baseline.
6. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

C. Plans, Specifications and Estimate

1. Prepare construction plans for the trail and pedestrian bridge. Prepare the following sheets at the appropriate engineering scale:
 - Cover sheet.
 - Project layout control sheet(s).
 - Summary of Quantities sheet.
 - Typical sections and construction detail sheets.
 - Erosion control plans.
 - Trail plan & profile sheets.
 - Pedestrian bridge sheets including structural design.

- Traffic Control Plans.
- Drainage/Channel Sheets (if required).
- SWPPP sheets meeting EPA and City of Plano requirements, if required.

Information required can be combined on sheets if the information can be clearly shown and is approved by the City of Plano project manager.

2. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.
3. Meet with City of Plano staff to discuss City comments on construction plans, specifications and cost estimates.
4. Revise and finalize preliminary plans incorporating comments from the City of Plano.
5. Incorporate comments from the utility companies.
6. Finalize special technical specifications and special conditions (if any).
7. Incorporate standard details into the construction plans and prepare additional details as required.

D. Bid Phase Services and Meetings

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
3. Prepare and distribute addenda to bid documents as necessary.
4. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
5. Submit a CD-ROM disk of the bid set plans in a PDF format.
6. Provide bid tabulation to the City of Plano.
7. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
8. Furnish ten sets of full size and three sets of half size final construction plans and one set of the contract documents manual to the City for construction.

E. Meetings

BW2 Engineers, Inc. will attend a pre-bid conference and a pre-construction meeting at the City of Plano, if requested.

SPECIAL SERVICES

F. Hydraulic Analyses and Permitting

The Engineer will complete the following services in relation to hydraulic analyses and permitting for the proposed pedestrian bridge.

1. Engineer will secure the existing hydraulic models for Spring Creek and Pittman Creek within the project area from the City. It is assumed that current models exist and that these models can be provided by the City. The existing hydraulic models and floodway models will be updated based on newly obtained topographic information. The models will be reviewed to determine resulting water surface elevations,

velocities and floodway location. This updated information will serve as the existing condition models for hydraulic design calculations.

The existing condition models will then be modified for the proposed trail and pedestrian bridge crossing. The initial models for proposed conditions will be based on the preliminary design plans prepared by BW2. The proposed improvements will be incorporated into the hydraulic models and resulting impacts will be determined. This will include impacts to:

1. Water surface elevations.
2. Channel and overbank velocities.
3. Valley storage within the floodplain.

Based on the results of the initial analysis, BW2 will modify the proposed condition models for both Spring Creek and Pittman Creek, as necessary. These adjustments may include relocation and/or resizing of the proposed pedestrian bridge and related appurtenances in order to minimize effects to the water surface elevations, velocities, and/or valley storage.

2. The hydraulic results and design evaluations will be summarized in a technical hydraulic report. The report will tabulate baseline conditions with respect to flood elevations, channel velocities, stream conveyance properties, and valley storage within the project area. The impacts of the proposed improvements will also be documented.

The report will also outline any necessary regulatory permits that may be required to implement the proposed improvements. Engineer will provide two (2) copies of the report for review and comment, and appropriate revisions will be made.

3. Spring Creek and Pittman Creek have been included in the National Flood Insurance Program as a detailed study area. A submittal to FEMA is included for a Conditional Letter of Map Revision (CLOMR). The CLOMR submittal will be prepared after the acceptance of any revisions to the aforementioned report. Engineer shall prepare the necessary documents for the CLOMR submittal and shall provide the coordination with FEMA during their review. A draft of the CLOMR submittal shall be provided to the City of Plano for review and comment. BW2 shall make appropriate revisions to the submittal to receive acceptance from FEMA.
4. Following the completion of the construction, a final LOMR will be submitted to revise the FIS maps. The LOMR submittal will be based on record drawings, with the assistance of the contractor in preparation of record drawings, and limited field survey by BW2 for verification. BW2 shall prepare the necessary documents for the LOMR submittal and shall provide the coordination with FEMA during their review.

It is assumed that no Section 404 Permit will be required as it is the intent to span the entire creek with the proposed pedestrian bridge.

G. Right-of-Way and/or Easement Document Services

BW2 will perform the services required to create easement documents for two (2) parcels in relation to the subject project. The proposed trail and pedestrian bridge alignment, in conjunction with other data, will be utilized in determining the limits of easements required.

The easement documents will include a certified plat map and a certified description for each parcel created to the standards of the *Manual of Practice for Land Surveying in the State of Texas*. The datum for this survey will be the Texas State Plane Coordinate System, North Central Zone.

H. Geotechnical Services

BW2 will retain the services of a geotechnical engineering firm to perform necessary soils investigations and provide recommendations for use during the design of the pedestrian bridge structural elements. This will include exploring subsurface soil conditions, obtaining physical soil properties by laboratory testing and providing recommendations for use during design of the pedestrian bridge. In general, the field investigation will consist of two (2) soil borings, one on each side of the main channel of Spring Creek (outside the top of bank) to a depth of 50' below grade or 10' into gray limestone, whichever is shallower.

I. Texas Department of Licensing and Regulation Approval

BW2 will retain the services of a registered accessibility specialist (RAS) for review and approval of the construction plans to confirm adherence with Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS) design guidelines. After approval of the construction plans and construction of the project, BW2 will also retain the RAS to complete a post-construction inspection in accordance with TDLR requirements.

ADDITIONAL SERVICES

The following items are excluded from this agreement, however, BW2 Engineers, Inc. can provide these services under separate agreement on an hourly basis and/or agreed upon fee:

- **Construction Administration Services**

**EXHIBIT B
SCHEDULE OF WORK
CHISHOLM TRAIL (ACCENT DRIVE TO ALMA ROAD)
CONNECTOR PROJECT**

SCHEDULE

Plans and specifications will be submitted according to the following schedule for completion, for review by the City prior to submittal of final documents. These will be submitted to the City of Plano Trail System Planner.

Percentage of Completion	Date of Submittal
Schematic Plans/Design Survey	8 weeks
50% Plans and Estimate	12 weeks
90% Plans w/Specifications and Estimate	10 weeks
100% Plans, Specifications and Estimate	4 weeks

Note that the above schedule is for BW2 Engineers, Inc. work effort only and does not include time required for review, other subconsultant services (geotech), and approval by the City of Plano and/or other regulatory agencies.

EXHIBIT C
COMPENSATION AND METHOD OF PAYMENT
AND
OPINION OF PROBABLE CONSTRUCTION COST
CHISHOLM TRAIL (ACCENT DRIVE TO ALMA ROAD)
CONNECTOR PROJECT

To assist in evaluating the appropriate compensation for the project, BW2 Engineers, Inc. has prepared an Opinion of Probable Construction Cost for the project. A copy of this estimate is provided in this section. The Opinion of Probable Construction Cost for the project is \$567,014. BW2 Engineers, Inc. provides the following fees for the scope of services as outlined in Attachment A, defined herein.

Fees

Basic Services <i>(Includes Design Surveying, Bid Phase Services, Meetings)</i>	\$ 48,500.00
Special Services <i>(Includes Hydraulic Analyses & Permitting, Easement Documents, Geotechnical Services and TDLR Approval)</i>	\$ 19,400.00
Reimbursable Expenses	\$ 750.00
Total Fixed Fee:	\$ 68,650.00

Basis for Compensation

BW2 Engineers, Inc. will perform the services outlined herein for a lump sum fee of \$68,650. Upon the execution of this agreement approval, BW2 will begin work on the tasks outlined herein.

Reimbursable expenses are those incurred by BW2 Engineers, Inc. which are not included in our Basic Services and Special Services fees. These costs will be invoiced separately at a cost of 1.1 times the actual expense incurred unless otherwise specified. We propose a budget of \$750 for these expenses. This budget will not be exceeded by BW2 Engineers, Inc. without the formal approval of the City of Plano. These costs include:

1. Printing of plan and specification sets in addition to bid sets specified (e.g., interim review sets (quantity undetermined), etc.)
2. Long-distance communication charges
3. Courier or delivery service
4. Postage
5. Travel outside of the metroplex

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.)

Coverages Required

Limits (Figures Denote Minimums)

- | | |
|---|--|
| <input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability | Statutory limits of State of Texas
\$100,000 accident \$100,000 disease
\$500,000 policy limit disease |
| <input type="checkbox"/> 2. For Future Use | |
| <input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program | 150,000 medical, safety program |
| <input checked="" type="checkbox"/> 4. General Liability | Complete entry No. 26
Minimum 500,000 each
1,000,000 |
| <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 |

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/26/2011

PRODUCER McLaughlin Brunson Insurance Agency, LLP 6600 LBJ Freeway, Suite 220 Dallas TX 75240 (214) 503-1212	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 BW2 Engineers, Inc. 1919 S. Shiloh Road, Suite 500, LB 27 Garland TX 75042	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURERS AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Travelers Lloyds Ins. Co. <i>AT</i></td> <td>41262</td> </tr> <tr> <td>INSURER B: Zurich American Insurance Co. <i>A</i></td> <td>16535</td> </tr> <tr> <td>INSURER C: Travelers Indem Co of Conn <i>AT</i></td> <td>25682</td> </tr> <tr> <td>INSURER D: Travelers Ind. Co. of America <i>AT</i></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Lloyds Ins. Co. <i>AT</i>	41262	INSURER B: Zurich American Insurance Co. <i>A</i>	16535	INSURER C: Travelers Indem Co of Conn <i>AT</i>	25682	INSURER D: Travelers Ind. Co. of America <i>AT</i>		INSURER E:	
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INSURER E:													

COVERAGES

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

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	PACP 4333L447 Indpt. Contractors	8/26/2010	8/26/2011	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 - COM/OP AGG \$ 2,000,000
D	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" 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	BA 4331L64A	8/26/2010	8/26/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
					AUTO ONLY - EA ACCIDENT \$
					OTHER THAN EA ACC AUTO ONLY: AGG \$
C	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	CUP 6921Y76A	8/26/2010	8/26/2011	EACH OCCURRENCE \$ 1,000,000
					AGGREGATE \$ 1,000,000
					\$
					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	UB 6925Y561	8/26/2010	8/26/2011	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
					E.L. EACH ACCIDENT \$ 500,000
					E.L. DISEASE - EA EMPLOYEE \$ 500,000
					E.L. DISEASE - POLICY LIMIT \$ 500,000
B	OTHER Professional Liab.	EOC5087033-06	8/26/2010	8/26/2011	\$1,000,000 Per Claim/ Annual Aggregate + Specific Client Excess Endorsement

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

The claims made professional liability coverage is the total aggregate limit for all claims presented within the policy period and is subject to a deductible. SPECIFIC CLIENT EXCESS ENDORSEMENT WITH \$2,000,000 LIMIT FOR THE CITY OF PLANO = \$3,000,000 TOTAL LIMIT OF LIABILITY ON THE PROFESSIONAL LIABILITY. City of Plano is shown as an additional insured on the general liability coverage as required by written contract. A waiver of subrogation is shown in favor of the City of Plano on the workers compensation. - RE: Chisholm Trail Richardson Connector - Project #6125

CERTIFICATE HOLDER City of Plano P. O. Box 860358 Plano TX 75086-0358	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY FIRST CLASS MAIL BY FIRST CLASS MAIL BY FIRST CLASS MAIL AUTHORIZED REPRESENTATIVE <i>Peterson P. McLaughlin</i>
---	---

IMPORTANT

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

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

DISCLAIMER

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of BW2 Engineers, Inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of BW2 Engineers, 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.

BW2 ENGINEERS, INC.

Name of Contractor

By:

James F. Waldbauer
Signature

JAMES F. WALDBAUER

Print Name

VICE PRESIDENT

Title

1/27/11

Date

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§



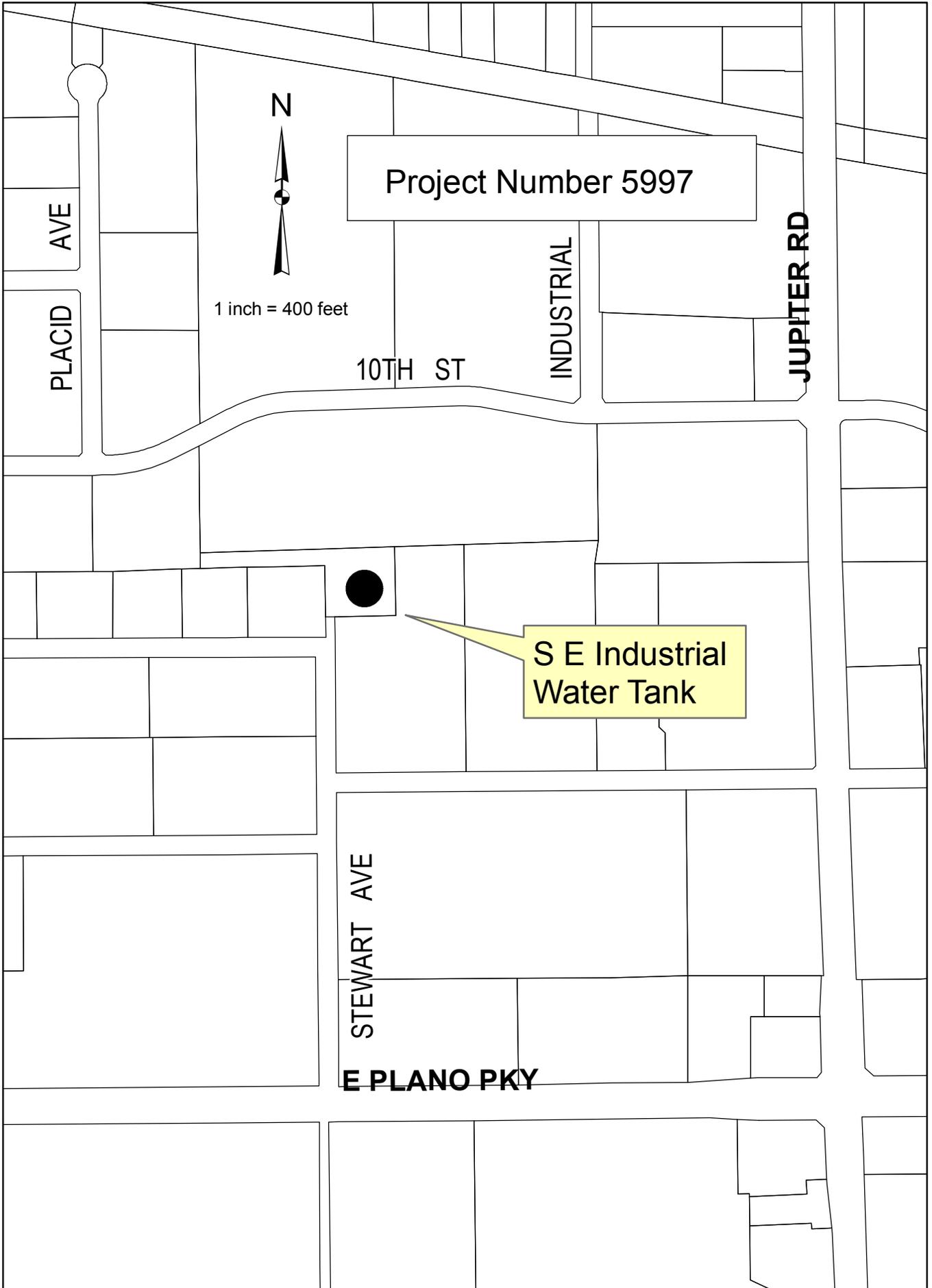
TO before me this 27th day of January, 2011.

Cathy D. Coursey
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:		02/28/2011		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5997
CAPTION				
To J. R. Stelzer Co., increasing the contract by \$28,560 for Southeast Industrial Water Tank Repair, Change Order No. 1. Original Bid No. 2010-198-B.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	32,137	1,003,863	0	1,036,000
Encumbered/Expended Amount	-32,137	-871,864	0	-904,001
This Item	0	-28,560	0	-28,560
BALANCE	0	103,439	0	103,439
FUND(s): WATER CIP				
<p>COMMENTS: Funds are included in the Water CIP for the Southeast Industrial Water Tank project. This change order, in the amount of \$28,560, will leave a current year balance of \$103,439 for the Southeast Industrial Water Tank project.</p> <p>STRATEGIC PLAN GOAL: Water tank repainting relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>This change order, in the amount of \$28,560.00, is for additional work related to the installation of water sampling ports, roof outlet for future mixing system and enlarging the existing roof vent.</p> <p>Staff recommends approval of the change order. The contract total will be \$869,620.00, which will increase the original contract cost by 3.4%</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map; Change Order No. 1			N/A	



Project Number 5997



1 inch = 400 feet

PLACID AVE

PLACID AVE

10TH ST

INDUSTRIAL

JUPITER RD

STEWART AVE

E PLANO PKY

S E Industrial Water Tank

CHANGE ORDER NO. 1

SOUTHEAST INDUSTRIAL WATER TANK REPAINT
PROJECT NO. 5997
PURCHASE ORDER NO. 103854
CIP NO. 68457
BID NO. 2010-198-B

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **J. R. STELZER CO.** for the **SOUTHEAST INDUSTRIAL WATER TANK REPAINT PROJECT**, dated September 13, 2010.

B. DESCRIPTION OF CHANGE

This change order covers the addition of facilities to allow water sampling at various levels in the elevated tank. Four water quality sample points will be added to the dry and wet riser inside the tank. Also covered is the addition of a roof outlet to facilitate the addition of a future mixing system for water quality. Also covered is the enlargement of the vent on top of the tank. During the preparation of the tank for blasting it was discovered the 24 inch roof outlet was reduced to 14 inches in the vent. The new vent will be a true 24 inches in diameter. Work on the roof will require modification to the safety rail to facilitate the vent and the future mixing system. The welding required will be completed prior to the coating of the tank. **The attached plans illustrate the proposed work in this change order.**

C. EFFECT OF CHANGE

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

ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
22	Twenty Four inch Aluminum Freeze Proof Vent	0	1	EA	\$5,400.00	\$5,400.00
23	Six inch Access Sleeve made of Carbon Steel	0	1	EA	\$600.00	\$600.00
24	Sample ports for water quality sampling	0	1	EA	\$18,500.00	\$18,500.00
25	Additional caulking on exterior between foundation and sidewalk	0	1	EA	\$560.00	\$560.00
26	Modifications to handrail	0	1	EA	\$3,500.00	\$3,500.00
	TOTAL:					\$28,560.00

Original Contract Amount	\$	<u>841,060.00</u>
Contract Amount (Including Previous Change Orders)	\$	<u>841,060.00</u>
Amount, Change Order No. 1	\$	<u>28,560.00</u>
Revised Contract Amount	\$	<u>869,620.00</u>
Total Percent Increase Including Previous Change Orders		<u>3.40%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 14 days to this project:

Original Contract Time	<u>169</u>
Amount (Including Previous Change Orders)	<u>169</u>
Amount, Change Order No. 1	<u>14</u>
Revised Contract Time	<u>183</u>
Total Percent Increase Including Previous Change Orders	<u>8.28%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **J.R. STELZER CO.**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated September 13, 2010.

F. 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.

OWNER: CITY OF PLANO

CONTRACTOR: J.R. STELZER CO.

By: _____
(signature)

By: James R. Stelzer
(signature)

Print Bruce D. Glasscock
Name: LaShon Ross

Print
Name: James R. Stelzer

Print
Title: -Interim City Manager

Print
Title: President

Date: _____

Date: 2-14-11

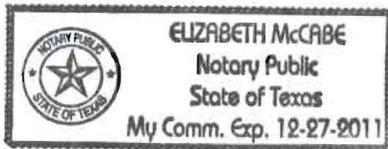
APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 14th day of February, 2011, by **JAMES R. STELZER, PRESIDENT** of **J.R. STELZER CO.**, a **NEBRASKA** corporation licensed to do business in the State of Texas, on behalf of said corporation.

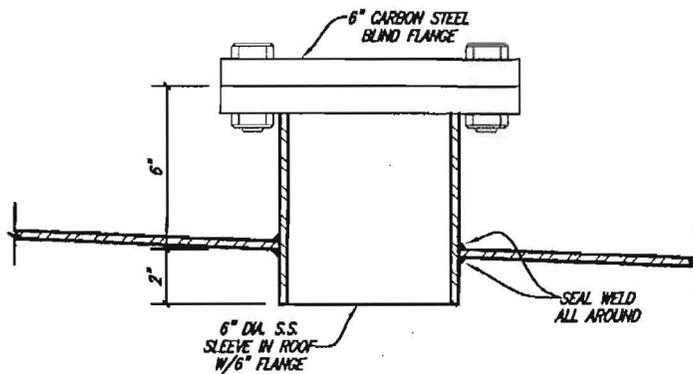


Elizabeth McCabe
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2011, by ~~LASHON ROSS, INTERIM CITY MANAGER~~ **BRUCE D. GLASSCOCK,** **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



**6" ACCESS SLEEVE FOR
TANK MIXING SYSTEM**

CARBON STEEL
NO SCALE

*JRS
2-14-11*

John W. Birkhoff
2/11/11

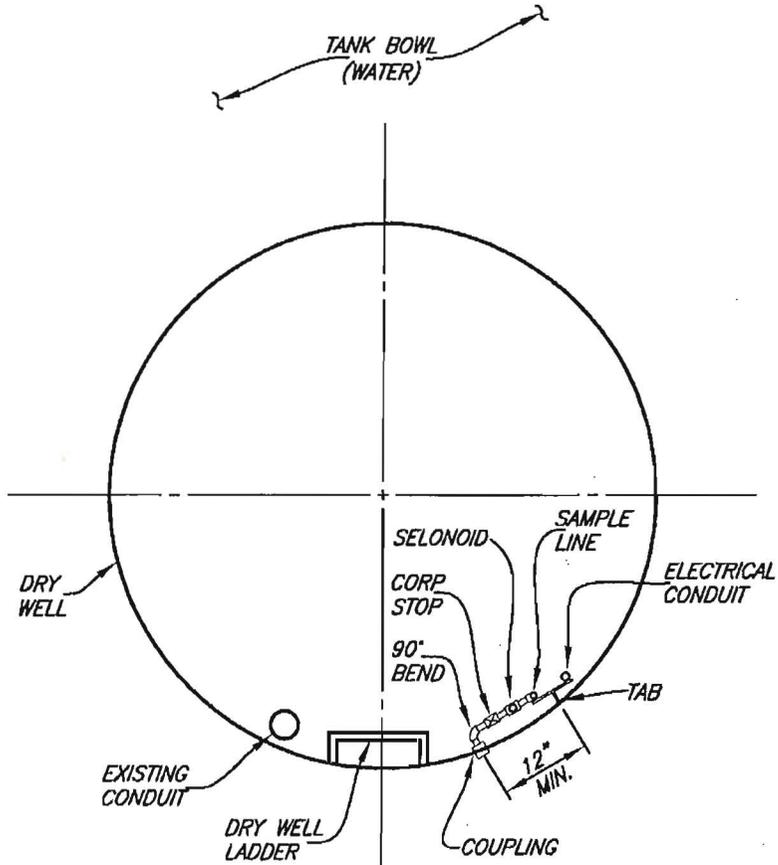


CITY OF PLANO, TEXAS

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
PROFESSIONAL ENGINEERS TEXAS FIRM F526
11910 GREENVILLE AVE., #600
DALLAS, TEXAS 75243 214-361-7900

**SOUTHEAST INDUSTRIAL ELEVATED TANK
DETAILS**

FEB. 2011



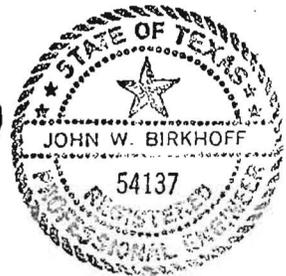
DRY RISER PLAN

NO SCALE

*JPS
2-14-11*

John W. Birkhoff

2/8/11

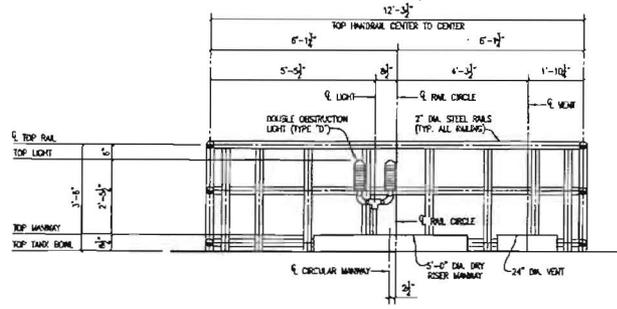


CITY OF PLANO, TEXAS

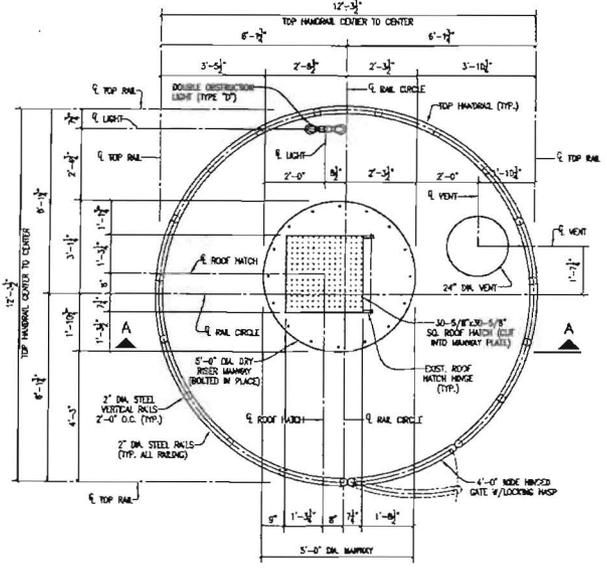
BIRKHOFF, HENDRICKS & CARTER, L.L.P.
 PROFESSIONAL ENGINEERS TEXAS FIRM F526
 11910 GREENVILLE AVE., #600
 DALLAS, TEXAS 75243 214-361-7900

**SOUTHEAST INDUSTRIAL ELEVATED TANK
 DETAILS**

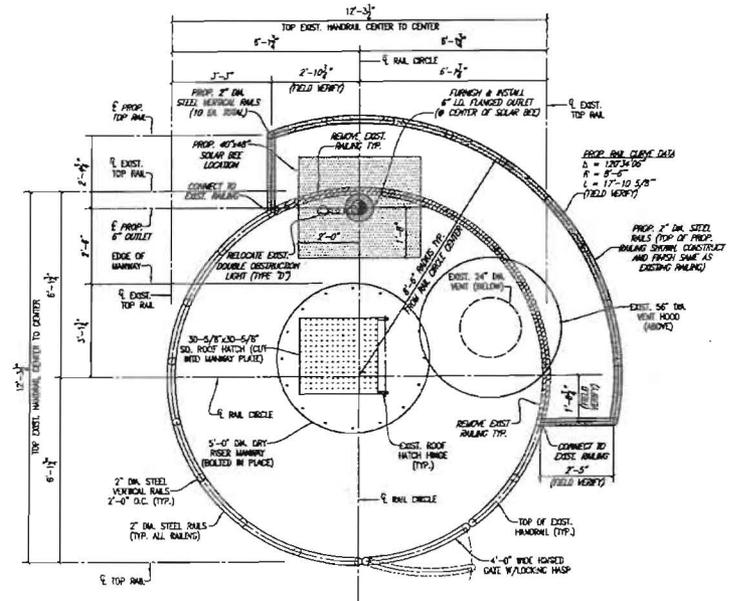
FEB. 2011



EXISTING TANK BOWL TOP MANWAY AND HANDRAIL ELEVATION A-A
SCALE: 1/2" = 1'-0"



EXISTING TANK BOWL TOP MANWAY AND HANDRAIL PLAN
SCALE: 1/2" = 1'-0"

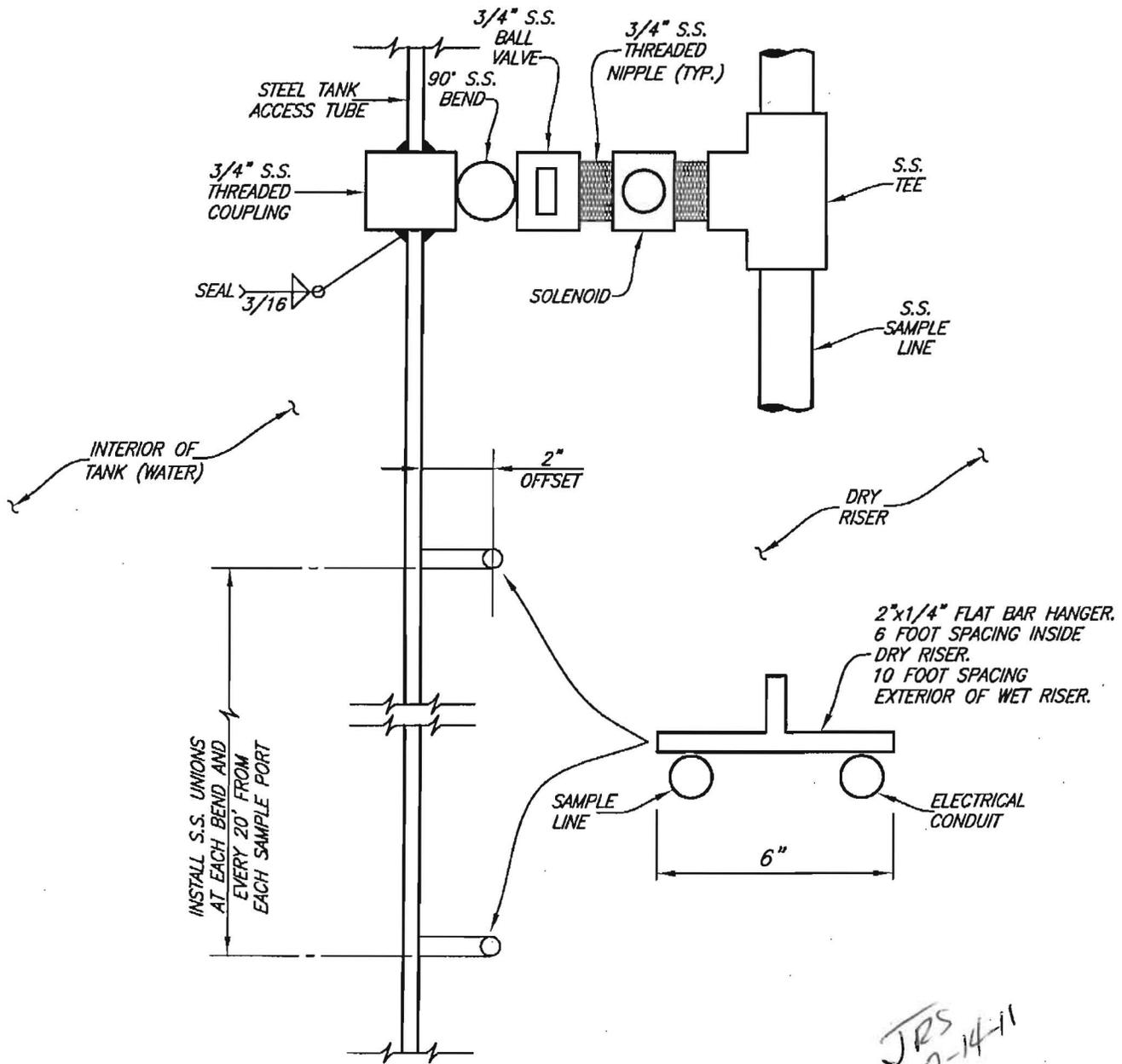


PROPOSED TANK BOWL TOP IMPROVEMENTS PLAN
SCALE: 1/2" = 1'-0"

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2/18/11
 11-1-11-6

	BIRKHOFF, HENDRICKS & CARTER, L.L.P. PROFESSIONAL ENGINEERS Texas Firm F526 11910 Greenville Ave., Suite 600 Dallas, Texas 75243 (214) 361-7900		<i>John W. Birkhoff</i> 2/18/11	CITY OF PLANO, TEXAS SOUTHEAST INDUSTRIAL ELEVATED TANK REPAIR TANK BOWL TOP DETAILS	BHC PROJECT NO. 2010-103 February 2011	SHEET NO.
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SAMPLE LINE

NO SCALE

John W. Birkhoff

2/8/11

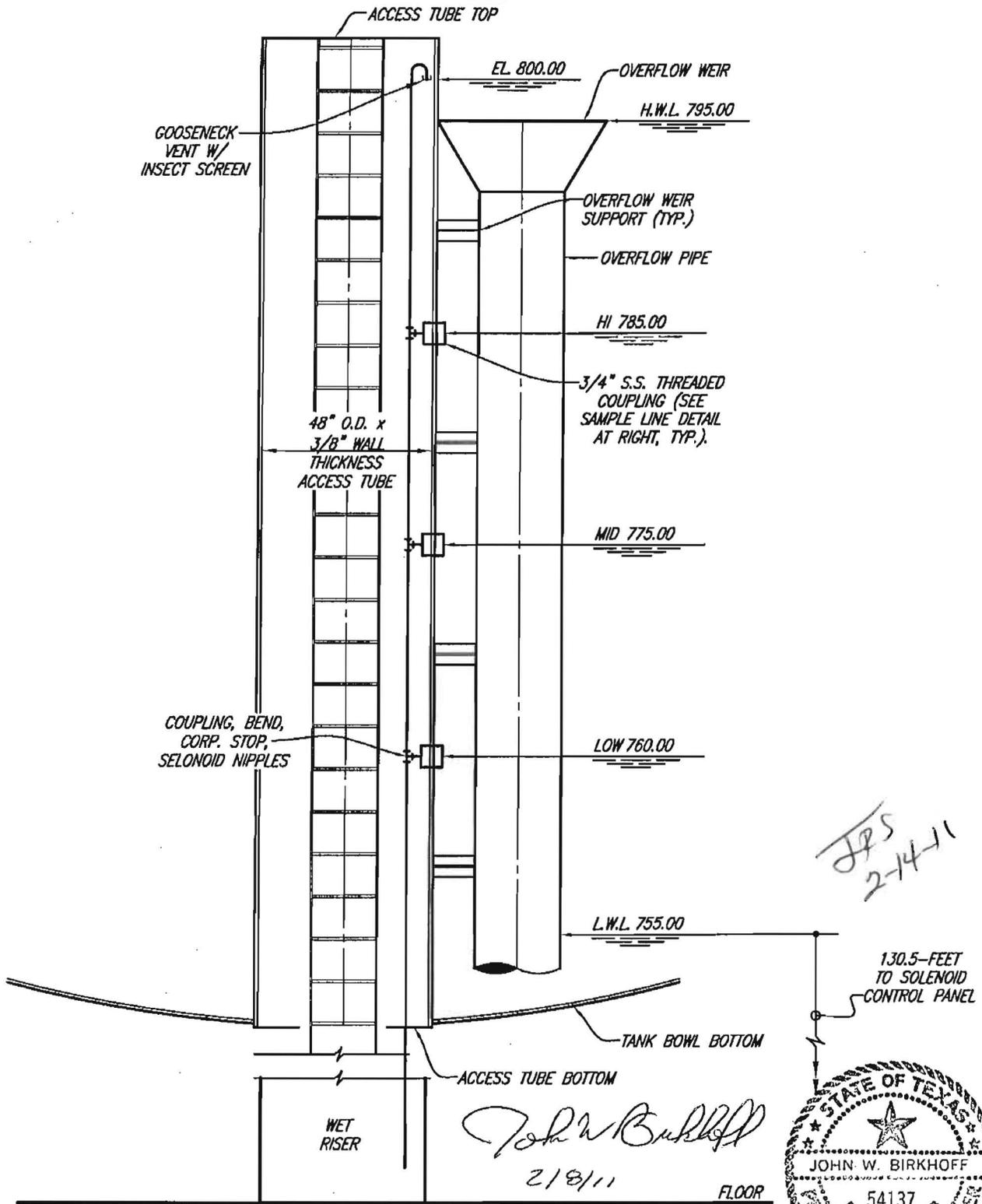


CITY OF PLANO, TEXAS

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
 PROFESSIONAL ENGINEERS TEXAS FIRM F526
 11910 GREENVILLE AVE., #600
 DALLAS, TEXAS 75243 214-361-7900

**SOUTHEAST INDUSTRIAL ELEVATED TANK
 DETAILS**

FEB. 2011



JPS
2-14-11

130.5- FEET
TO SOLENOID
CONTROL PANEL



John W. Birkhoff
2/8/11

SECTION THROUGH DRY RISER

NO SCALE

CITY OF PLANO, TEXAS

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
PROFESSIONAL ENGINEERS TEXAS FIRM F526
11910 GREENVILLE AVE., #600
DALLAS, TEXAS 75243 214-361-7900

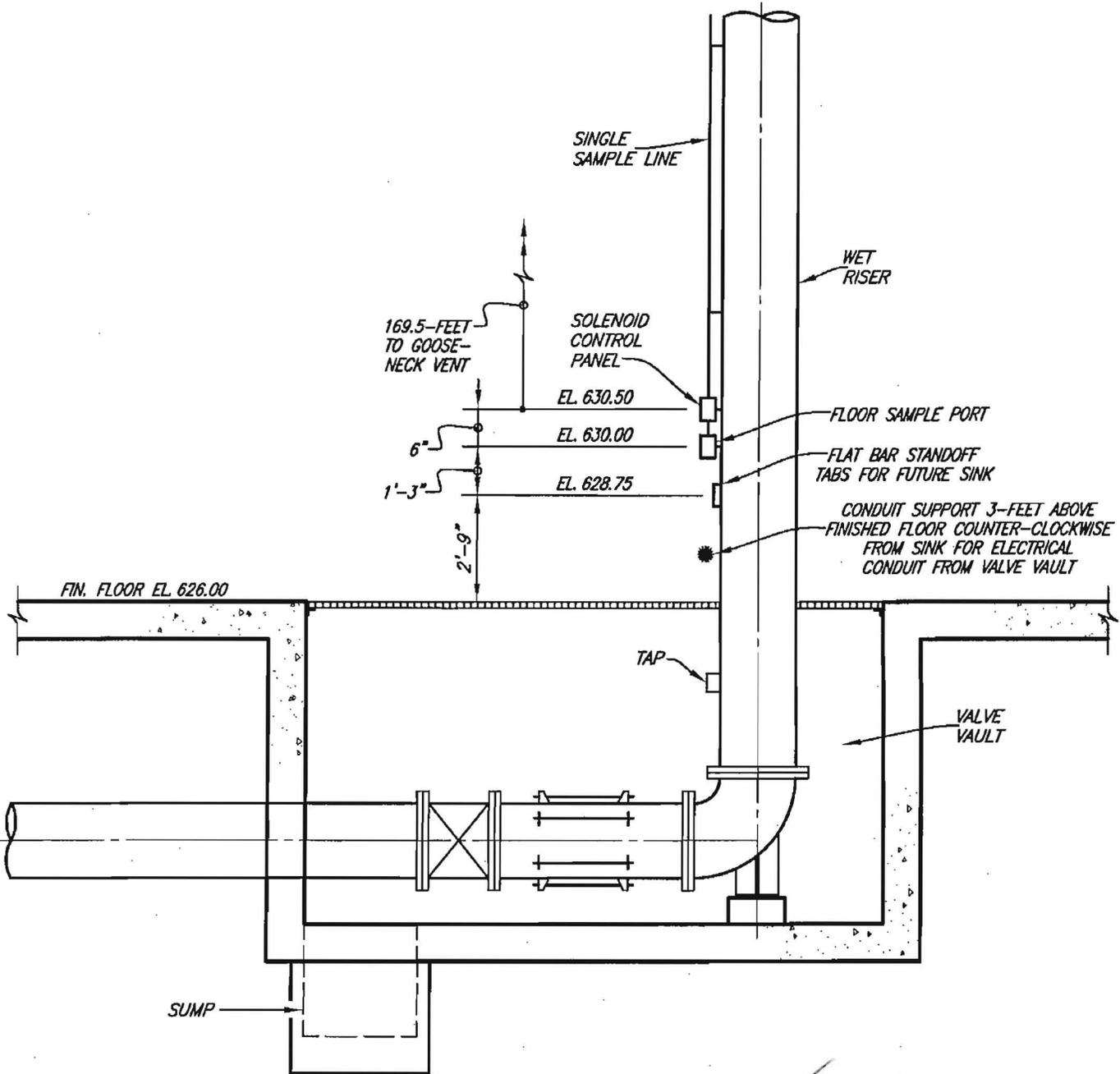
**SOUTHEAST INDUSTRIAL ELEVATED TANK
DETAILS**

FEB. 2011

PLOT SCALE: 1:1

PLOT STYLE: 22X34.ctb

PLOTTED BY: Gary Davis ON 2/2/2011



GROUND FLOOR DETAIL

NOT TO SCALE

John W Birkhoff
2/8/11

JES
2-14-11



CITY OF PLANO, TEXAS

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
PROFESSIONAL ENGINEERS TEXAS FIRM F526
11910 GREENVILLE AVE., #600
DALLAS, TEXAS 75243 214-361-7900

SOUTHEAST INDUSTRIAL ELEVATED TANK
DETAILS

FEB. 2011



**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:		02/28/11		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Bev Rogers 972-941-7376				
CAPTION				
Approval of a 90-day contract extension with Legacy Texas Bank for the City's Treasury department, for the limited purpose of depository services for Utility Billing funds that are currently direct deposited into Legacy Texas Bank and will be transitioned to direct deposit with Frost Bank, and authorizing the City Manager to execute the contract extension and all other necessary documents for bid no. 2009-217-C; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 10/11	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): WATER & SEWER FUND, SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND				
<p>COMMENTS: A 90-day extension to the City's current depository contract with LegacyTexas Bank is necessary to allow staff adequate time to changeover from LegacyTexas Bank to Frost Bank as the institution receiving utility billing funds. The city is not charged for these depository services; consequently this item has no financial impact to the City of Plano.</p> <p>STRATEGIC PLAN GOAL: Compliance with the State of Texas Local Government Code relates to the City's Goal of a "Financially Strong City with Service Excellence."</p>				
SUMMARY OF ITEM				
The Treasury staff recommends a 90-day contract extension to the current Bank Depository contract with LegacyTexas Bank to facilitate the transfer process to the new bank. In order to ensure a smooth transition for the Customer and Utility Services Department, the city is unable to move all transaction processing at this time.				
List of Supporting Documents: Recommendation Memo			Other Departments, Boards, Commissions or Agencies	



DATE: February 22, 2011
TO: Diane Palmer, Chief Purchasing Officer
CC: Bev Rogers, Buyer
FROM: Myra Conklin, Treasurer
SUBJECT: Extension of LegacyTexas Bank Depository Contract

Staff is requesting the approval of a 90-day extension to the current depository contract with LegacyTexas Bank to facilitate the transfer process to the new depository bank. The 90-day extension will be for the limited purpose of depository services for Utility Billing funds that are direct deposited in Frost Bank. In order to make the transition from LegacyTexas Bank to direct deposit with Frost Bank the City needs additional time for process changes. To make the transition immediately would not be cost effective; but it should be completed within the 90-day extension period.

Local Government Code Chapter 105 – Depositories for Municipal Funds, Subchapter E, Section 105.073 DEPOSIT OF FUNDS states: Not later than 60 days from the date the governing body of the municipality designates a depository in accordance with the provisions of Section 105.016, the designated officer of the municipality shall transfer to the depository all the municipal funds covered by the depository services contract under the control of the designated officer. The designated officer of the municipality shall as soon as practicable also deposit in the depository to the credit of the municipality any money covered by the depository services contract received after the depository is designated.

Customer and Utility Billing's transaction processing will be moved to the new bank as soon as practicable within the 90 day extension period.

Therefore, under mutual agreement with LegacyTexas Bank, it is recommended that the contract for these services be extended .

Feel free to contact me if you have any questions at (972) 941-5554.



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 28, 2011		
Department:		Library Administration		
Department Head		Cathy Ziegler		
Agenda Coordinator (include phone #): Mary Ann Dunnivant - Ext. 4208				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, authorizing the purchase of twenty (20) additional XpressCheck™ patron self-checkout stations in an amount not to exceed \$124,588.50 from Integrated Technology Group, the sole source provider of such equipment 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: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	-124,589	0	-124,589
Encumbered/Expended Amount	0	0	0	0
This Item	0	-124,589	0	-124,589
BALANCE	0	0	0	0
FUND(S): STATE LIBRARY GRANTS FUND AND SPROLES LIBRARY FUND				
<p>COMMENTS: Funds are included in the State Library Grants Fund and Sproles Library Fund for the purchase of ten (10) ITG XpressCheck™ Medallion Countertop Kiosks hardware, ten (10) Freestanding Kiosks Hardware, one (1) Custom ITG XpressCheck™ Finish and twenty (20) Mag Strip Readers. Expenditures will be made within the State Library Grants Fund grant appropriation.</p> <p>STRATEGIC PLAN GOAL: Providing XpressCheck™ Countertops and freestanding Kiosks Hardware purchases relates to the City's Goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Approval of this purchase from Integrated Technology Group (ITG) is requested in the amount of \$124,588.50. Funds for this purchase will come from the LoanStar Libraries Grant and Sproles Library Funds These XpressCheck™ patron self-checkout stations are being ordered in addition to 13 other existing stations purchased from ITG after City Council approval on January 25, 2010 (CSP 2009-145-C).</p> <p>ITG is the sole source provider for kiosks which are compatible with ITG's Management Console and Remove Messaging functionality. 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		
<ol style="list-style-type: none"> 1. Memo from Cathy Ziegler dated 01.28.2011 2. Quote from ITG dated 01.26.2011 3. ITG Sole Source Letter dated 01.27.2011 4. Affidavit of No Prohibited Interest from ITG dated 01.31.2011 				



City of Plano
Library Administration
2501 Coit Road
Plano, TX 75075-3892
Phone: 972.964.4208
Fax: 972.964.4269

Memorandum

Date: January 28, 2011
To: Sharron Mason, Purchasing
From: Cathy Ziegler, Director of Libraries *CZ*
Subject: Approval for ITG (Integrated Technology Group) XpressCheck™ Patron Self-Service Stations

I recommend that City Council approve purchase of twenty ITG XpressCheck™ patron self-service stations which are being purchased in addition to 13 previously purchased XpressCheck patron self-service stations.

These patron self-service stations are a necessary part of Plano Public Library System's implementation of the self-service business model.



Proprietary and Confidential

Quote #: 2011.01.26_PPLS_XC_20
Library Name: Plano Public Library System
Contact: Mike Shamel

Item #	Description	Unit List Price	Quantity	Your Unit Price	Unit	Your Extended Price
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Self-Checkout

[CLICK HERE](#) to download XpressCheck Self-Checkout Information Sheet

Hardware

Self-Service Kiosks

ITG XpressCheck Medallion Edition Kiosk

Countertop Kiosk is designed to sit on top of a library-supplied counter or desk. With the surface at the correct height, the unit is ADA-compliant.

Free-standing Kiosk is ADA compliant and can be located anywhere in the library where there is access to power and the library's Ethernet network, either by cable or wireless.

Includes:

- » NCR SelfServ 60™ Kiosk with 17" LCD Touch Screen Monitor
- » RFID antenna and reader
- » Built-in bar code scanner
- » Receipt printer (with optional dual-sided printing)
- » Exceptional, built-in cable management

Library provides

- » SIP2 from ILS Provider

RFID300CTMEDHW	ITG XpressCheck™ Medallion - Countertop Kiosk Hardware	\$ 8,495.00	10	\$ 5,496.75	Each	\$ 54,967.50
RFID300FSMEDHW	ITG XpressCheck™ Medallion - Freestanding Kiosk Hardware 5 w Castle Oak, 5 standard silver/black	\$ 8,995.00	10	\$ 6,296.50	Each	\$ 62,965.00

Optional Extras

CUSTOMXC	Custom ITG XpressCheck Finish (One price for unlimited number of identical units) 5-castle oak for Davis	\$ 300.00	1	\$ 300.00	Each	\$ 300.00
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Fines and Fees

[CLICK HERE](#) to download Fines and Fees Information Sheet

ITG XpressCheck's Fines and Fees patron self-payment module allows patrons to pay fines and fees with either credit or debit cards and, optionally, with cash.

Card payment uses the Authorize.net payment gateway and the library's existing merchant account. Authorize.net license must be purchased directly from Authorize.net, which also charges transaction fees.

XCMAGST	Mag Stripe Reader	\$ 160.00	20	\$ 144.00	Each	\$ 2,880.00
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Shipping

SHIP	Shipping and Administrative Designated truck, inside delivery to 5 branches			\$ 3,476.00	Total	\$ 3,476.00
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Grand Total: \$ 124,588.50

Prices quoted above include first year's support and maintenance.

Annual Support and maintenance following first year:

\$ 8,745.00

15% Software: percentage of unit list price shown above.



Item #	Description	Unit List Price	Quantity	Your Unit Price	Unit	Your Extended Price
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5% Hardware: Percentage of unit list price shown above

10% Bundled/Sorters: Percentage of unit list price shown above

Note: A 25% discount on annual support and maintenance may be taken when payment is made at the time of system purchase.

Good through: **4/27/2011**
Today's Date: **1/27/2011**

Quoted By: **Candice G Oliver**
Approved By: **Ken Evans**

Accepted By: _____

Accepted Date: _____



January 27, 2011

Plano Public Library System
Mr. Mike Shamel
2501 Coit Road
Plano, TX 75075

Dear Mr. Shamel,

This letter is to confirm the Integrated Technology Group provides certain products which are unique to the RFID Library market, and as such, can only be acquired through ITG; namely, ITG's Management Console and Remote Management. Additionally, The ITG XpressCheck Self Checkout units we recently quoted you were a part of our response to your bid requirements (CSP No. 2009-145-C, CSP – Library RFID system). Pricing and availability were solidified in that document and we were notified that that business had been awarded to us. For further clarification on what would make our units stand out from others, please consider this list:

1) Management Console.

The Apex XpressCheck Management Console, provided to PPLS at no additional charge, allows system administrators to configure multiple Apex XpressCheck systems quickly and simply. Changes can be made to all machines simultaneously, or groups of machines selected by easily readable “friendly” machine names. Utilizing folder shares, over the customer’s network, the Apex XpressCheck Management Console can update configuration settings, image files, sound files, and distribute product patches or updates. Integration into the existing configuration interface is virtually seamless. The Management Console also includes one Apex XpressCheck™ license for the system administrator’s computer to facilitate remote configuration capabilities. This means that staff need not be present at remote sites or units to keep every unit at the same revision levels.

2) Remote Messaging

ITG is providing the Library with its remote messaging capabilities free of charge. This allows staff members to receive messages when patrons encounter checkout issues such as blocks due to fine/fee limits, expired cards and overdue materials. The remote messaging feature allows a single staff person to assist multiple patrons without having to leave the circulation desk. Remote Messaging can also be configured to alert staff when a sorter bin is full or if the sorter needs staff assistance. Additionally, the Library has plans to use ITG's Exit Watch application. This item identification software works in conjunction with our Remote Messaging system and alerts staff with item information on items that have passed through the security gates without being de-secured. The combination of items 1 and 2 above, combined with that same level of connectivity with other products in your ITG system, constitute ITG's *Connected Library*. The *Connected Library* is a very important product for a library of any size, but especially one the size of Plano Public Library.

3) Network Down Store and Forward

Store and Forward provides the ability to continue self-checkout transactions during times when the Library's SIP server is offline or unavailable. The self-checkout software will save patron checkouts locally. When the SIP server becomes available, the transactions will be sent automatically (or when the Library chooses) to the circulation database.

4) Language Support

Apex XpressCheck comes standard with English and Spanish supported. Up to four language choices can be available at any XpressCheck unit at a time. Custom language text, audio, and receipts can be added at any time. The powerful user-configurable nature of the system allows library staff to input languages of their choosing themselves. Alternatively, ITG can provide additional language translations for a nominal fee.

5) Self-Check-in

Apex XpressCheck provides an option to allow patrons to return materials at the self-checkout station. The return process will turn on the RFID security and update the patron records in the ILS via the SIP2 interface. Patrons can view account information and, if self-payment of fines and fees is enabled at the self-checkout, these services are available at check-in.

6) Credit Card Processing

Apex XpressChecks Fines and Fees module provides the ability for patrons to pay fines and charges at the self-service station. It will allow you to accept credit and debit card payments using the Authorize.net payment gateway and the Library's existing merchant account.

7) Reporting

The ability to do centralized reporting as a part of ITGs *Connected Library*.

Items 1, 2 & 7 above are available only to ITG system customers installing ITG XpressCheck Self-Checkout units.

In addition to the above list, a consistent patron experience is crucial to high self-checkout adoption rates. Having the same hardware and software at all patron interaction points will enhance and ensure a solid return on investment for your RFID and self-service system. This will also limit the amount of training and systems that staff have to be familiar with and comfortable using.

Sincerely,

Ken Evans

Vice President, Sales

877.207.3127 ext 133
www.integratedtek.com

A Resolution of the City Council of the City of Plano, Texas, authorizing the purchase of twenty (20) additional XpressCheck™ patron self-checkout stations in an amount not to exceed \$124,588.50 from Integrated Technology Group, the sole source provider of such equipment 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 Integrated Technology Group twenty (20) additional XpressCheck™ patron self-checkout stations with Integrated Technology Group's Management Console and Remote Messaging functionality for the City of Plano, Plano Public Library System; and

WHEREAS, Integrated Technology Group is the sole source provider for these XpressCheck™ patron self-checkout stations which are compatible with Integrated Technology Group's Management Console and Remote Messaging 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 an additional twenty (20) XpressCheck™ patron self-checkout stations in an amount not to exceed \$124,588.50; and

WHEREAS, the City Council is of the opinion that these self checkout stations are available only from one source, Integrated Technology Group, 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 that Integrated Technology Group is the sole source provider for the XpressCheck™ patron self-checkout stations, 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 Integrated Technology Group, the sole source provider, as necessary to effectuate the purchase of twenty (20) additional XpressCheck™ patron self-checkout stations.

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

DULY PASSED AND APPROVED this the 28th day of February, 2011.

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:		2/28/11		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
<p>An Ordinance of the City of Plano, Texas amending Sections 15-3, 15-56, 15-57, 15-59, 15-60, 15-61, and 15-65, Chapter 15, Parks and Recreation of the Code of Ordinances of the City of Plano, Texas to replace with provisions containing new language regarding prohibited activities, sports seasons, allocations, tournaments/meets/camps/clinics/ tryouts, practice sessions, user fees and insurance; and providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause, and 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: 2010/11	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				
<p>COMMENTS: The proposed changes to Chapter 15 - Parks & Recreation of the Code of Ordinances do not contain any substantive changes to user fee schedules or operational policies that will affect revenues from rental fees or charges from athletic field administration. Consequently this item has no financial impact to the City of Plano.</p> <p>STRATEGIC PLAN GOAL: Administration of the City's Athletic Fields relates to the City's Goal of a "Financially Strong City with Service Excellence."</p>				
SUMMARY OF ITEM				
<p>A framework for the disciplined management and use of the City's athletic facilities for league games, tournaments/meets, special uses, and practices is provided by sections dealing specifically with athletic facilities in the City's Code of Ordinances. These sections, last updated in March 2008, are reviewed periodically as stipulated in Section 15-55. Parks and Recreation staff and leadership of local sports organizations developed the proposed changes, which were reviewed and supported by the Parks and Recreation Planning Board at their January 4, 2011 meeting. Also included is cross-referencing of existing prohibited activities, specifically facsimile firearms, to Chapter 15 - Parks and Recreation.</p>				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Memo	Other Departments, Boards, Commissions or Agencies Reviewed and supported by the Parks and Recreation Planning Board

MEMORANDUM

TO: Amy Fortenberry, Director of Parks & Recreation

THROUGH: Jim Fox, Park Services Manager

FROM: Ed Voss, Athletic Superintendent

DATE: January 28, 2011

SUBJECT: REVIEW OF CODE OF ORDINANCES / CHAPTER 15 – PARKS & RECREATION

Code of Ordinances for Chapter 15 - Parks & Recreation have been reviewed resulting in recommendations for consideration by City Council that address athletic field use and weapons in the parks.

Ordinances that regulate the City of Plano's athletic fields and facilities were reviewed in the fall of 2010 by Parks and Recreation staff with the sports groups that schedule local leagues, tournaments, camps, clinics, tryouts, etc. Proposed athletic changes to local ordinance resulting from those discussions were then reviewed January 4 with the Parks and Recreation Planning Board, who provided unanimous support for the changes.

Proposed athletic changes to the Code of Ordinances enables the City to keep pace with trends in recreational sports by shifting starting and ending dates of sports seasons for local leagues. This change works in tandem with proposed changes in the tournament section to expand opportunities for economic impact in the community through cooperative facilitation of outdoor athletic events under sponsorship of the Plano Convention and Visitor's Bureau. Other proposed changes clarify intent of respective sections.

Ordinance changes are also proposed and have been reviewed with the City's legal department to cross-reference existing weapons ordinances to also appear in Chapter 15-Parks and Recreation that focus on facsimile firearms.

Following is a summary for items of significant change followed by section-by-section changes recommended by the Parks and Recreation staff for consideration by City Council.

Sec. 15-3. Prohibited Activities.

Section changes address park issues with facsimile firearms by cross-referencing Section 14-12. Facsimile Firearms.

Sec. 15-56. Sports Seasons.

It is proposed that starting and ending dates of the City's sports seasons change to make each of the three seasons longer. This creates a window for programs to provide practice time to its teams on playing fields before the start of each season and to mitigate disruptions that may occur by the facilitation of in-season tournaments solicited by the Plano Convention and Visitor's Bureau.

It is also proposed that sports seasons begin on weekdays rather than the traditional Saturdays to simplify scheduling by programs and to assist the Parks and Recreation Department in its preparation of fields and facilities for scheduled use each sports season.

Baseball and girls softball seasons for player pitch (competitive) programs move to a start in late March and ends in late June to match up with dates of surrounding communities, prepare qualifying teams for post-season championship play, and to take advantage of opportunities for the community to facilitate state, regional and national tournaments in July. The season for non-player pitch programs (recreational) remains in May and June.

Sec. 15-59. Tournaments/meets.

Processes for the facilitation of camps, clinics and tryouts are proposed in this section that are similar to existing field use requirements for tournaments and meets.

Recommended changes also provide the Plano Convention and Visitor's Bureau with the authority to sponsor one event with community economic impact per athletic venue each sports season by pre-empting league scheduling.

Sec. 15-61. User fees.

Changes clarify the assessment of team-oriented user fees or individual-based user fees for field use. Beginning in 2011, team-based sports pay team-based fees set by budget approval in lieu of individual fees, which will continue to be applicable for individual-based programs.

EXISTING

Sec. 15-3. - Prohibited activities.

(a)

It shall be unlawful for any person to knowingly do any of the acts specified in this section in or upon any park facility, except as otherwise specifically provided:

(2)

Weapons.

a.

To carry a concealed handgun, as that term is defined in section 14-5 of the Code of Ordinances of the City of Plano, in a city park, except those persons who are duly licensed by the state to carry a concealed handgun in accordance with the provisions of the Texas Concealed Weapons Act.

b.

To carry or discharge firearms (unless permitted under subsection (a)(2)a. above), fireworks, air guns, bows and arrows, slingshots or any device which would or could project any object which would or could create a fire hazard or any hazard or danger to the public, except with written approval of the parks and recreation director.

PROPOSED

Sec. 15-3. - Prohibited activities.

(a)

It shall be unlawful for any person to knowingly do any of the acts specified in this section in or upon any park facility, except as otherwise specifically provided:

(2)

Weapons.

a.

To carry a concealed handgun, as that term is defined in section 14-5 of the Code of Ordinances of the City of Plano, in a city park, except those persons who are duly licensed by the state to carry a concealed handgun in accordance with the provisions of the Texas Concealed Weapons Act.

b.

To carry or discharge firearms (unless permitted under subsection (a)(2)a. above), facsimile firearms (as defined in section 14-12 of the Code of Ordinances of the City of Plano), fireworks, air guns, bows and arrows, slingshots or any device which would or could project any object which would or could create a fire hazard or any hazard or danger to the public, except with written approval of the parks and recreation director.

PROPOSED (editing displayed)

Sec. 15-3. - Prohibited activities.

(a)

It shall be unlawful for any person to knowingly do any of the acts specified in this section in or upon any park facility, except as otherwise specifically provided:

(2)

Weapons.

a.

To carry a concealed handgun, as that term is defined in section 14-5 of the Code of Ordinances of the City of Plano, in a city park, except those persons who are duly licensed by the state to carry a concealed handgun in accordance with the provisions of the Texas Concealed Weapons Act.

b.

To carry or discharge firearms (unless permitted under subsection (a)(2)a. above), **facsimile firearms (as defined in section 14-12 of the Code of Ordinances of the City of Plano)**, fireworks, air guns, bows and arrows, slingshots or any device which would or could project any object which would or could create a fire hazard or any hazard or danger to the public, except with written approval of the parks and recreation director.

EXISTING

Sec. 15-56. - Sports seasons.

(a)

The following specific sports seasons and primary sports are established for the equitable use and allocation of athletic facilities:

Season	Primary Sport	Secondary Sport
Spring	Adult softball—First Monday in March through third Sunday in May Youth soccer—Second Saturday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May Adult soccer—Second Saturday in February through third Sunday in May	Competitive youth baseball/softball— Third Saturday in March through last Sunday in July Adult baseball—Third Saturday in March through third Sunday in August Youth and adult lacrosse, rugby, cricket, flag football, field hockey—Second Saturday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May
Summer	Youth baseball and youth softball—First Saturday in May through last Sunday in July Adult baseball and adult softball—Fourth Monday in May through third Sunday in August	Youth and adult cricket, flag football—First Saturday in May through last Sunday in July
Fall	Youth and adult football—Third Saturday in August for practices only; second Saturday in September through third Sunday in November for games	Youth and adult soccer—Second Saturday in September through third Sunday in November Adult softball—Fourth Monday in August through third Sunday in November Youth baseball/softball—Second Saturday in September through third Sunday in November Youth and adult lacrosse, rugby, cricket, field hockey—Second Saturday in September through third Sunday in November

(b)

The primary sport within each season shall be given first priority with regard to field or facility allocation and scheduling. Secondary sports facilities will be allocated on a space available basis. The director of parks and recreation or the director's designee shall determine the eligibility for classification within primary and secondary sports designations.

(c)

Time made available in public swimming pools for competitive or recreational aquatics programs will be allocated on a bi-annual basis with an annual review. The need for more frequent aquatic allocations may be conducted at the discretion of the director of parks and recreation as changes occur in the availability of time within facilities or as new facilities are added.

(d)

Sports other than primary or secondary will be addressed as the need arises, subject to:

(1)

Facility availability.

(2)

Allocated maintenance resources.

(3)

Determination by the parks and recreation department of capacity of fields or facilities to withstand additional use.

(e)

The youth sports associations may enter into a written agreement with the parks and recreation department that allows use of designated fields or facilities outside of the official sports season under special circumstances deemed appropriate by the director of the parks and recreation department.

(Ord. No. 84-12-18, § IV, 12-18-84; Ord. No. 90-4-24, § I, 4-23-90; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 99-1-2, § III, 1-11-99; Ord. No. 2003-5-4, § IV, 5-6-03; Ord. No. 2008-3-10, § I, 3-25-08; Ord. No. 2009-4-22, § I, 4-27-09)

PROPOSED

Sec. 15-56. - Sports seasons.

(a)

The following specific sports seasons and primary sports are established for the equitable use and allocation of athletic facilities:

Season	Primary Sport	Secondary Sport
Spring	Adult softball—Fourth Monday in February through third Sunday in May Youth soccer—Second Tuesday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May Adult soccer—Second Tuesday in February through third Sunday in May	Competitive youth baseball/softball— Third Monday in March through last Sunday in June Adult baseball—Third Monday in March through third Sunday in August Youth and adult lacrosse, rugby, cricket, flag football, field hockey—Second Tuesday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May
Summer	Recreational youth baseball /softball—First Monday in May through last Sunday in June Adult baseball and adult softball— Third Monday in May through third Sunday in August	Youth and adult cricket, flag football— Third Tuesday in May through third Sunday in August
Fall	Youth and adult football—Third Tuesday in August through second Sunday in November	Youth and adult soccer— Third Tuesday in August through second Sunday in November Youth and adult softball— Third Monday in August through-second Sunday in November Youth and adult baseball—Third Monday in August through second Sunday in November Youth and adult lacrosse, rugby, cricket, field hockey— Third Tuesday in August through second Sunday in November

(b)

The primary sport within each season shall be given first priority with regard to field or facility allocation and scheduling. Secondary sports facilities will be allocated on a space available basis. The director of parks and recreation or the director's designee shall determine the eligibility for classification within primary and secondary sports designations.

(c)

Time made available in public swimming pools for competitive or recreational aquatics programs will be allocated on a bi-annual basis with an annual review. The need for more frequent aquatic allocations may be conducted at the discretion of the director of parks and recreation as changes occur in the availability of time within facilities or as new facilities are added.

(d)

Sports other than primary or secondary will be addressed as the need arises, subject to:

(1)

Facility availability.

(2)

Allocated maintenance resources.

(3)

Determination by the parks and recreation department of capacity of fields or facilities to withstand additional use.

(e)

The youth sports associations may enter into a written agreement with the parks and recreation department that allows use of designated fields or facilities outside of the official sports season under special circumstances deemed appropriate by the director of the parks and recreation department.

(Ord. No. 84-12-18, § IV, 12-18-84; Ord. No. 90-4-24, § I, 4-23-90; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 99-1-2, § III, 1-11-99; Ord. No. 2003-5-4, § IV, 5-6-03; Ord. No. 2008-3-10, § I, 3-25-08; Ord. No. 2009-

PROPOSED (editing displayed)

Sec. 15-56. - Sports seasons.

(a)

The following specific sports seasons and primary sports are established for the equitable use and allocation of athletic facilities:

Season	Primary Sport	Secondary Sport
Spring	<p>Adult softball—First Fourth Monday in March February through third Sunday in May</p> <p>Youth soccer—Second Saturday Tuesday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May</p> <p>Adult soccer—Second Saturday Tuesday in February through third Sunday in May</p>	<p>Competitive youth baseball/softball— Third Saturday Monday in March through last Sunday in July June</p> <p>Adult baseball—Third Saturday Monday in March through third Sunday in August</p> <p>Youth and adult lacrosse, rugby, cricket, flag football, field hockey—Second Saturday Tuesday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May</p>
Summer	<p>Recreational Youth baseball and youth /softball—First Saturday Monday in May through last Sunday in July June</p> <p>Adult baseball and adult softball— Fourth Third Monday in May through third Sunday in August</p>	<p>Youth and adult cricket, flag football—First Saturday Third Tuesday in May through last third Sunday in July August</p>
Fall	<p>Youth and adult football—Third Saturday Tuesday in August for practices only; second Saturday in September through third second Sunday in November for games</p>	<p>Youth and adult soccer— Second Saturday Third Tuesday in September August through third second Sunday in November</p> <p>Youth and Aadult softball—Fourth Third Monday in August through third second Sunday in November</p> <p>Youth and adult baseball/softball—Second Saturday Third Monday in September August through third second Sunday in November</p> <p>Youth and adult lacrosse, rugby, cricket, field hockey—Second Saturday Third Tuesday in September August through third second Sunday in November</p>

(b)

The primary sport within each season shall be given first priority with regard to field or facility allocation and scheduling. Secondary sports facilities will be allocated on a space available basis. The director of parks and recreation or the director's designee shall determine the eligibility for classification within primary and secondary sports designations.

(c)

Time made available in public swimming pools for competitive or recreational aquatics programs will be allocated on a bi-annual basis with an annual review. The need for more frequent aquatic allocations may be conducted at the discretion of the director of parks and recreation as changes occur in the availability of time within facilities or as new facilities are added.

(d)

Sports other than primary or secondary will be addressed as the need arises, subject to:

(1)

Facility availability.

(2)

Allocated maintenance resources.

(3)

Determination by the parks and recreation department of capacity of fields or facilities to withstand additional use.

(e)

The youth sports associations may enter into a written agreement with the parks and recreation department that allows use of designated fields or facilities outside of the official sports season under special circumstances deemed appropriate by the director of the parks and recreation department.

(Ord. No. 84-12-18, § IV, 12-18-84; Ord. No. 90-4-24, § I, 4-23-90; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 99-1-2, § III, 1-11-99; Ord. No. 2003-5-4, § IV, 5-6-03; Ord. No. 2008-3-10, § I, 3-25-08; Ord. No. 2009-4-22, § I, 4-27-09)

Existing

Sec. 15-57. - Allocations.

(a)

Organizations requiring facilities for league games shall submit, in writing, their registration figures at the designated time determined by the parks and recreation department.

(b)

The parks and recreation department shall consider all requests and will allocate facilities in the best interest of the city. Guidelines which will be considered may include, but are not limited to, items listed under subsections (1) through (3) of this section. The director of parks and recreation or the director's designee may also consider any other alternatives in implementing the field or facility allocation for the various users, or make such variations or exceptions as the director deems in the best interest of the city, giving due consideration to the number of participants, facility requirements, nature of the activity, innovation of the program and other relevant factors.

Guidelines

(1)

Programs conducted the previous year. Groups who must reduce the number of their allocated fields or facility time from the previous season may be allowed to protect up to fifty (50) percent of fields or facility time of their choice. This alternative is available at the discretion of the parks and recreation department when reduced participation of the user group warrants this type of allocation.

(2)

Priority will be given to those individuals who reside within the city limits of the City of Plano. Participation by other individuals, teams and groups may be permitted by the parks and recreation department if facility availability permits.

(3)

Teams or sports requesting regular season play or meets with out-of-town teams on facilities owned by, leased or otherwise controlled by the city will be given consideration after fields or facility time has been allocated for all other teams of organizations made up of residents. Participation by such out-of-town teams is subject to approval by the parks and recreation department. If approved, such teams shall pay user fees as established by the city council.

(c)

The parks and recreation department may place more than one (1) organization on a given facility for the same sport. Primary sports will be accommodated prior to secondary sports.

(d)

Any existing organization wishing to initiate a new athletic program must meet with the parks and recreation department at least ninety (90) days prior to the proposed season starting date to discuss the availability of facilities. A new program is defined as any activity that is not currently offered by the requesting organization as determined by the parks and recreation department.

The parks and recreation department will attempt to accommodate new programs according to facility availability and considering participant registration.

(Ord. No. 84-12-18, § V, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 99-1-2, § IV, 1-11-99; Ord. No. 2003-5-4, § V, 5-6-03; Ord. No. 2009-4-22, § I, 4-27-09)

PROPOSED

Sec. 15-57. - Allocations.

(a) Organizations requiring facilities for league games shall submit, in writing, their registration figures at the designated time determined by the parks and recreation department.

(b) The parks and recreation department shall consider all requests and will allocate facilities in the best interest of the city. Guidelines which will be considered may include, but are not limited to, items listed under subsections (1) through (3) of this section. The director of parks and recreation or the director's designee may also consider any other alternatives in implementing the field or facility allocation for the various users, or make such variations or exceptions as the director deems in the best interest of the city, giving due consideration to the number of participants, facility requirements, nature of the activity, innovation of the program and other relevant factors.

Guidelines

(1) Programs conducted the previous year. Groups who must reduce the number of their allocated fields or facility time from the previous season may be allowed to protect up to fifty (50) percent of fields or facility time of their choice. This alternative is available at the discretion of the parks and recreation department when reduced participation of the user group warrants this type of allocation.

(2) Priority will be given to those individuals who reside within the city limits of the City of Plano. Participation by other individuals, teams and groups may be permitted by the parks and recreation department if facility availability permits.

(3) Teams or sports requesting regular season play or meets with out-of-town teams on facilities owned by, leased or otherwise controlled by the city will be given consideration after fields or facility time has been allocated for all other teams of organizations made up of residents. Participation by such out-of-town teams is subject to approval by the parks and recreation department. If approved, such teams shall pay fees and charges as established by the city council through the City's annual budget process.

(c) The parks and recreation department may place more than one (1) organization on a given facility for the same sport. Primary sports will be accommodated prior to secondary sports.

(d) Any existing organization wishing to initiate a new athletic program must meet with the parks and recreation department at least ninety (90) days prior to the proposed season starting date to discuss the availability of facilities. A new program is defined as any activity that is not currently offered by the requesting organization as determined by the parks and recreation department.

The parks and recreation department will attempt to accommodate new programs according to facility availability and considering participant registration.

(Ord. No. 84-12-18, § V, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 99-1-2, § IV, 1-11-99; Ord. No. 2003-5-4, § V, 5-6-03; Ord. No. 2009-4-22, § I, 4-27-09)

PROPOSED (editing displayed)

Sec. 15-57. - Allocations.

(a)

Organizations requiring facilities for league games shall submit, in writing, their registration figures at the designated time determined by the parks and recreation department.

(b)

The parks and recreation department shall consider all requests and will allocate facilities in the best interest of the city. Guidelines which will be considered may include, but are not limited to, items listed under subsections (1) through (3) of this section. The director of parks and recreation or the director's designee may also consider any other alternatives in implementing the field or facility allocation for the various users, or make such variations or exceptions as the director deems in the best interest of the city, giving due consideration to the number of participants, facility requirements, nature of the activity, innovation of the program and other relevant factors.

Guidelines

(1)

Programs conducted the previous year. Groups who must reduce the number of their allocated fields or facility time from the previous season may be allowed to protect up to fifty (50) percent of fields or facility time of their choice. This alternative is available at the discretion of the parks and recreation department when reduced participation of the user group warrants this type of allocation.

(2)

Priority will be given to those individuals who reside within the city limits of the City of Plano. Participation by other individuals, teams and groups may be permitted by the parks and recreation department if facility availability permits.

(3)

Teams or sports requesting regular season play or meets with out-of-town teams on facilities owned by, leased or otherwise controlled by the city will be given consideration after fields or facility time has been allocated for all other teams of organizations made up of residents. Participation by such out-of-town teams is subject to approval by the parks and recreation department. If approved, such teams shall pay user fees and charges as established by the city council through the City's annual budget process.

(c)

The parks and recreation department may place more than one (1) organization on a given facility for the same sport. Primary sports will be accommodated prior to secondary sports.

(d)

Any existing organization wishing to initiate a new athletic program must meet with the parks and recreation department at least ninety (90) days prior to the proposed season starting date to discuss the availability of facilities. A new program is defined as any activity that is not currently offered by the requesting organization as determined by the parks and recreation department.

The parks and recreation department will attempt to accommodate new programs according to facility availability and considering participant registration.

(Ord. No. 84-12-18, § V, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 99-1-2, § IV, 1-11-99; Ord. No. 2003-5-4, § V, 5-6-03; Ord. No. 2009-4-22, § I, 4-27-09)

EXISTING

Sec. 15-59. - Tournaments/meets.

(a)

Youth and adult sports tournament or meet requests which involve out-of-town teams will be considered on a space available basis subject to the following conditions:

(1)

The parks and recreation department may restrict the number, size, dates, and locations of tournaments or meets in order to protect field or facility conditions or to prevent overuse of fields or facilities. Defined criteria shall be utilized and communicated by the parks and recreation department in the process to approve or deny tournament or meet requests.

(2)

Requests for tournament play or meets will be restricted to Plano youth and adult athletic organizations meeting specified requirements of section 15-58, the Plano Convention and Visitor's Bureau, and Plano Parks and Recreation Department. Upon approval, fees shall be charged to the sponsoring organization for the city's standardized services involving lighting, personnel, materials, equipment and contractual resources utilized in support of the tournament or meet. The parks and recreation department shall estimate such expenses prior to approval based on the number of teams, scheduled use of fields and facilities, and number of games played or hours of use. The sponsoring organization shall also pay a designated tournament or meet fee.

(3)

Any request for tournament play or meets must be made in writing by the sponsoring organization no less than thirty (30) days prior to the scheduled tournament or meet. Existing tournaments or meets will receive first consideration. Approval of tournament play or meets does not guarantee field or pool condition or availability of parks and recreation personnel or equipment. Tournaments or meets with housing needs for teams, officials and administration must submit a plan for accommodating visitors to Plano that will be factored in the process for the event's approval or denial.

(4)

Prior to fields or facilities being allocated for youth sports associations for tournaments or meets, the tournament/meet usage agreement must be signed and on file with the parks and recreation department.

(b)

Inclement weather provisions for outdoor events are as follows:

(1)

The parks and recreation department may cancel a tournament or meet at any time in the interest of insuring the quality of the fields or pool and safety of the participants.

(2)

The decision to cancel the tournament or meet shall be made by authorized members from the parks and recreation department. Authorized representatives from the youth sports association may be contacted for their input in making the decision.

(3)

When the decision to cancel the tournament or meet due to inclement weather has been made, the head of the youth sports association will notify the tournament or meet director who will then cancel the tournament/meet at selected or all sites.

(4)

Whenever possible, games or the meet will first be delayed or postponed. The decision to resume play or the meet will rest with the parks and recreation department.

(5)

Failure to comply with this policy will result in the denial of future use of the facilities for tournaments or meets.

(c)

Churches, civic organizations, and teams based in Plano and individuals residing in Plano may request the use of the fields for the purpose of conducting softball tournaments subject to the following conditions. A designated reservation fee per field will be assessed which will be applied toward the tournament fee. The reservation fee is refundable only in the event of inclement weather as determined by the parks and recreation department.

Softball Tournament Regulations

(1)

Tournament use of facilities is subject to availability as determined by the director of parks and recreation or his authorized designee.

(2)

A designated tournament fee shall be assessed the sponsor and must be paid within three (3) working days prior to the tournament. A tournament bracket must accompany this fee. After the bracket is submitted, no additional teams may be accepted into the tournament.

(3)

All adult tournaments must be sanctioned by the Amateur Softball Association (ASA) and youth tournaments must be sponsored by locally recognized youth sports organizations meeting the requirements of section 15-58, or be sponsored by the City of Plano's Convention and Visitor's Bureau or Parks and Recreation Department.

(4)

If field space allows, more than one (1) tournament may be scheduled on any given date by the parks and recreation department.

(5)

The parks and recreation department will designate the maximum amount to be charged for entry fees.

(6)

Saturday games may not be scheduled to begin prior to 8:00 a.m. The final game or games may not be scheduled to start after 9:00 p.m. Sunday games may not be scheduled to begin prior to 8:00 a.m. Sunday games shall be complete and lighting extinguished by 9:00 p.m.

(7)

No rain dates will be allowed.

(8)

No refunds will be allowed after the reservation has been accepted by the parks and recreation department unless weather or city-related maintenance problems result in cancellation.

(9)

In the event that it rains within twenty-four (24) hours of the scheduled start of the tournament, permission to play must be gained from the athletic supervisor or his designated representative. Only approved drying agents may be used on the fields in the event of rain. At no time may any type of dirt be placed on or removed from the fields.

(10)

Umpires must be members of the Plano Softball Umpires Chapter of Dallas Metro ASA or affiliates. Two (2) umpires must be assigned to each game.

(11)

The sponsoring organization may not provide any type of concession services.

(12)

No special maintenance will be done to the fields during the tournament (dragging, marking, etc.) unless agreed to by the parks and recreation department. Tournament sponsors may employ approved independent contractors to drag and mark the fields or prepare the fields with hand tools following guidelines established by the parks and recreation department.

(13)

The City of Plano or the Plano Parks and Recreation Department's name shall not appear on any advertisement or promotion of the tournament.

(14)

Any individual or team involved in conducting the tournament shall not participate in the tournament as a manager, coach, player or umpire.

(15)

The Plano Parks and Recreation Department reserves the right to cancel any tournament reservation at any time should any of the above conditions not be followed.

(Ord. No. 84-12-18, § VI, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 92-9-19, § V, 9-14-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 96-6-29, § I, 6-24-96; Ord. No. 99-1-2, § VI, 1-11-99; Ord. No. 2008-3-10, § I, 3-25-08)

PROPOSED

Sec. 15-59. - Tournaments/meets/camps/clinics/tryouts.

(a)

Youth and adult sports tournament, meet, camp, clinic or tryout requests will be considered on a space available basis subject to the following conditions:

(1)

The parks and recreation department may restrict the number, size, dates, and locations of tournaments or meets in order to protect field or facility conditions or to prevent overuse of fields or facilities. Defined criteria shall be utilized and communicated by the parks and recreation department in the process to approve or deny tournament, meet, camp, clinic and tryout requests.

(2)

Requests for tournament play, meets, camps, clinics or tryouts will be restricted to Plano youth and adult athletic organizations meeting specified requirements of section 15-58, the Plano Convention and Visitor's Bureau, and Plano Parks and Recreation Department. Upon approval, fees shall be charged to the sponsoring organization for the city's standardized services involving lighting, personnel, materials, equipment and contractual resources utilized in support of the tournament, meet, camp, clinic or tryout. The parks and recreation department shall estimate such expenses prior to approval based on the number of teams or participants, scheduled use of fields and facilities, and number of games played or hours of use.

(3)

Any request for tournament play or meets, camps, clinics or tryouts must be made in writing by the sponsoring organization no less than thirty (30) days prior to the scheduled tournament or meet. Existing tournaments, meets, camps, clinics or tryouts will receive first consideration. Approval of the requested activity does not guarantee field or pool condition or availability of parks and recreation personnel or equipment. Tournaments, meets, camps, clinics or tryouts with housing needs for teams, officials and administration must submit a plan for accommodating visitors to Plano subject to review by the Plano Convention and Visitor's Bureau that will be factored in the process for the event's approval or denial. Plano Convention and Visitor's Bureau may sponsor events with community economic impact once per sports season at each athletic-oriented facility and pre-empt league scheduling only if notice can be provided to the Parks and Recreation Department prior to the allocation meeting for the respective season.

(4)

Prior to fields or facilities being utilized for tournaments, meets, camps, clinics or tryouts, a usage agreement must be signed and on file with the parks and recreation department. Insurance meeting specifications of the City's Risk Manager is required for events prior to access to athletic fields or facilities.

(b)

Inclement weather provisions for outdoor events are as follows:

(1)

The parks and recreation department may cancel a tournament, meet, camp, clinic or tryout at any time in the interest of insuring the quality of the fields or pool and safety of the participants.

(2)

The decision to cancel a tournament, meet, camp, clinic or tryout shall be made by authorized members from the parks and recreation department. Authorized representatives from the event sponsor may be contacted for their input in making the decision.

(3)

When the decision to cancel a tournament, meet, camp, clinic or tryout due to inclement weather has been made, the parks and recreation department will notify the event director who will then cancel the activity at selected or all sites.

(4)

Whenever possible, activity will first be delayed or postponed. The decision to resume activity will rest with the parks and recreation department.

(5)

Failure to comply with this policy may result in the denial of future use of the facilities for tournaments, meets, camps, clinics or tryouts.

(c)

Churches, civic organizations, teams based in Plano, businesses located in Plano and individuals residing in Plano may request the use of athletic fields for the purpose of conducting professionally officiated tournaments subject to the following conditions. These conditions also apply to tournaments sponsored by local adult and youth sports organizations, Plano Convention and Visitors Bureau and the Parks and Recreation Department. A designated reservation fee per field will be assessed which will be applied toward the tournament fees and charges. The reservation fee is refundable only in the event of inclement weather as determined by the parks and recreation department.

Tournament Regulations

- (1) Tournament use of facilities is subject to availability as determined by the director of parks and recreation or authorized designee.
- (2) Designated tournament fees and charges shall be assessed the sponsor and must be paid within three (3) working days prior to the tournament. A tournament bracket must accompany this fee. After the bracket is submitted, no additional teams may be accepted into the tournament.
- (3) All adult and youth softball tournaments must be sanctioned by the Amateur Softball Association (ASA) and youth tournaments must be sponsored by locally recognized youth sports organizations meeting the requirements of section 15-58, or be sponsored by the City of Plano's Convention and Visitor's Bureau or Parks and Recreation Department.
- (4) If field space allows, more than one (1) tournament may be scheduled on any given date by the parks and recreation department.
- (5) The parks and recreation department may designate the maximum amount to be charged for entry fees.
- (6) Saturday games may not be scheduled to begin prior to 8:00 a.m. The final game or games may not be scheduled to start after 9:00 p.m. Sunday games may not be scheduled to begin prior to 8:00 a.m. Sunday games shall be complete and lighting extinguished by 9:00 p.m.
- (7) No rain dates will be allowed.
- (8) No refunds will be allowed after the reservation has been accepted by the parks and recreation department unless weather or city-related maintenance problems result in cancellation.
- (9) In the event that it rains within twenty-four (24) hours of the scheduled start of the tournament, permission to play must be gained from the athletic superintendent or designated representative. Only approved drying agents may be used on the fields in the event of rain. At no time may any type of dirt be placed on or removed from the fields.
- (10) In the sport of softball, umpires must be members of the Plano Softball Umpires Chapter of Dallas Metro ASA or affiliates. Two (2) umpires must be assigned to each game. In other sports, professional referees or umpires are required meeting certification standards of the sport's sanctioning body.
- (11) The sponsoring organization may not provide any type of concession services.
- (12) No special maintenance will be done to the fields during the tournament (dragging, marking, etc.) unless agreed to by the parks and recreation department. Tournament sponsors may employ approved independent contractors to drag and mark the fields or prepare the fields with hand tools following guidelines established by the parks and recreation department.
- (13) The City of Plano or the Plano Parks and Recreation Department's name shall not appear on any advertisement or promotion of the tournament.
- (14) Any individual or team involved in conducting the tournament shall not participate in the tournament as a manager, coach, player, referee or umpire.
- (15) The Plano Parks and Recreation Department reserves the right to cancel any tournament reservation at any time should any of the above conditions not be followed.

PROPOSED (editing displayed)

Sec. 15-59. - Tournaments/meets/camps/clinics/tryouts.

(a)

Youth and adult sports tournament, meet, **camp, clinic or tryout** requests ~~which involve out-of-town teams~~ will be considered on a space available basis subject to the following conditions:

(1)

The parks and recreation department may restrict the number, size, dates, and locations of tournaments or meets in order to protect field or facility conditions or to prevent overuse of fields or facilities. Defined criteria shall be utilized and communicated by the parks and recreation department in the process to approve or deny tournament, meet, **camp, clinic and tryout** requests.

(2)

Requests for tournament play, meets, **camps, clinics or tryouts** will be restricted to Plano youth and adult athletic organizations meeting specified requirements of section 15-58, the Plano Convention and Visitor's Bureau, and Plano Parks and Recreation Department. Upon approval, fees shall be charged to the sponsoring organization for the city's standardized services involving lighting, personnel, materials, equipment and contractual resources utilized in support of the tournament, meet, **camp, clinic or tryout**. The parks and recreation department shall estimate such expenses prior to approval based on the number of teams **or participants**, scheduled use of fields and facilities, and number of games played or hours of use. ~~The sponsoring organization shall also pay a designated tournament or meet fee.~~

(3)

Any request for tournament play or meets, **camps, clinics or tryouts** must be made in writing by the sponsoring organization no less than thirty (30) days prior to the scheduled tournament or meet. Existing tournaments, meets, **camps, clinics or tryouts** will receive first consideration. Approval of ~~tournament play or meets the requested activity~~ does not guarantee field or pool condition or availability of parks and recreation personnel or equipment. Tournaments, meets, **camps, clinics or tryouts** with housing needs for teams, officials and administration must submit a plan for accommodating visitors to Plano **subject to review by the Plano Convention and Visitor's Bureau** that will be factored in the process for the event's approval or denial. **Plano Convention and Visitor's Bureau may sponsor events with community economic impact once per sports season at each athletic-oriented facility and pre-empt league scheduling only if notice can be provided to the Parks and Recreation Department prior to the allocation meeting for the respective season.**

(4)

~~Prior to fields or facilities being allocated for youth sports associations~~ utilized for tournaments, meets, **camps, clinics or tryouts**, ~~the tournament/meet a~~ usage agreement must be signed and on file with the parks and recreation department. **Insurance meeting specifications of the City's Risk Manager is required for events prior to access to athletic fields or facilities.**

(b)

Inclement weather provisions for outdoor events are as follows:

(1)

The parks and recreation department may cancel a tournament, meet, **camp, clinic or tryout** at any time in the interest of insuring the quality of the fields or pool and safety of the participants.

(2)

The decision to cancel ~~the a~~ tournament, meet, **camp, clinic or tryout** shall be made by authorized members from the parks and recreation department. Authorized representatives from ~~the youth sports association~~ **the event sponsor** may be contacted for their input in making the decision.

(3)

When the decision to cancel ~~the a~~ tournament, meet, **camp, clinic or tryout** due to inclement weather has been made, ~~the head of the youth sports association will~~ **parks and recreation department** will notify the ~~tournament or meet event~~ director who will then cancel the ~~tournament/meet~~ **activity** at selected or all sites.

(4)

Whenever possible, ~~games or the meet~~ **activity** will first be delayed or postponed. The decision to resume ~~play or the meet~~ **activity** will rest with the parks and recreation department.

(5)

Failure to comply with this policy ~~will~~ **may** result in the denial of future use of the facilities for tournaments, meets, **camps, clinics or tryouts**.

(c)

Churches, civic organizations, ~~and~~ teams based in Plano, **businesses located in Plano** and individuals residing in Plano may request the use of ~~the athletic~~ fields for the purpose of conducting ~~softball~~ **professionally officiated** tournaments subject to the following conditions. **These conditions also apply to tournaments sponsored by local adult and youth sports organizations, Plano Convention and Visitors Bureau and the Parks and Recreation Department.** A designated reservation fee per field will be assessed which will be applied toward the tournament

fees and charges. The reservation fee is refundable only in the event of inclement weather as determined by the parks and recreation department.

~~Softball~~ Tournament Regulations

- (1) Tournament use of facilities is subject to availability as determined by the director of parks and recreation or ~~his~~ authorized designee.
- (2) A ~~d~~ Designated tournament **fees and charges** shall be assessed the sponsor and must be paid within three (3) working days prior to the tournament. A tournament bracket must accompany this fee. After the bracket is submitted, no additional teams may be accepted into the tournament.
- (3) All adult **and youth softball** tournaments must be sanctioned by the Amateur Softball Association (ASA) and youth tournaments must be sponsored by locally recognized youth sports organizations meeting the requirements of section 15-58, or be sponsored by the City of Plano's Convention and Visitor's Bureau or Parks and Recreation Department.
- (4) If field space allows, more than one (1) tournament may be scheduled on any given date by the parks and recreation department.
- (5) The parks and recreation department ~~will~~ **may** designate the maximum amount to be charged for entry fees.
- (6) Saturday games may not be scheduled to begin prior to 8:00 a.m. The final game or games may not be scheduled to start after 9:00 p.m. Sunday games may not be scheduled to begin prior to 8:00 a.m. Sunday games shall be complete and lighting extinguished by 9:00 p.m.
- (7) No rain dates will be allowed.
- (8) No refunds will be allowed after the reservation has been accepted by the parks and recreation department unless weather or city-related maintenance problems result in cancellation.
- (9) In the event that it rains within twenty-four (24) hours of the scheduled start of the tournament, permission to play must be gained from the athletic ~~supervisor~~ **superintendent** or ~~his~~ designated representative. Only approved drying agents may be used on the fields in the event of rain. At no time may any type of dirt be placed on or removed from the fields.
- (10) **In the sport of softball,** umpires must be members of the Plano Softball Umpires Chapter of Dallas Metro ASA or affiliates. Two (2) umpires must be assigned to each game. **In other sports, professional referees or umpires are required meeting certification standards of the sport's sanctioning body.**
- (11) The sponsoring organization may not provide any type of concession services.
- (12) No special maintenance will be done to the fields during the tournament (dragging, marking, etc.) unless agreed to by the parks and recreation department. Tournament sponsors may employ approved independent contractors to drag and mark the fields or prepare the fields with hand tools following guidelines established by the parks and recreation department.
- (13) The City of Plano or the Plano Parks and Recreation Department's name shall not appear on any advertisement or promotion of the tournament.
- (14) Any individual or team involved in conducting the tournament shall not participate in the tournament as a manager, coach, player, **referee** or umpire.
- (15) The Plano Parks and Recreation Department reserves the right to cancel any tournament reservation at any time should any of the above conditions not be followed.

EXISTING

Sec. 15-60. - Practice sessions.

(a)

Youth practices. Baseball and softball game fields, unless they have been prepared that day or designated for scheduled use only, may be used for practice. Game fields for intensive turf sports such as soccer and football, unless they have been designated for scheduled use only, may be used for practice on Tuesday, Wednesday and Thursday afternoons subject to approval of the parks and recreation department. Each organization will schedule their teams during their allotted time frames at each field and not otherwise. There shall be no practices upon (1) Plano Independent School District designated game or practice fields, or (2) areas where games and practices have been cancelled due to rain.

(1)

Each organization shall require in its bylaws that any team under its jurisdiction, after receiving one (1) warning for violating any part of section 15-60, shall forfeit one (1) league game. Penalties may also be assessed as authorized by section 15-51.

(2)

Organizations desiring lighted practice areas shall comply with the following conditions:

a.

Practices must be scheduled through the parks and recreation department no later than the Tuesday preceding the Monday through Sunday period in which the practices are to occur.

b.

The applicable light usage fee must be paid.

c.

Each organization will schedule their teams during their allotted time frames at each field and not otherwise.

d.

Organizations may not schedule more than four (4) teams per field per practice session.

(3)

The scheduled turn-on and turn-off of lights shall be the responsibility of the parks and recreation department.

(b)

Adult and general public practices. All reservations for practices by the general public and adult practices are subject to the following conditions:

(1)

Reservation requests must be made through the athletic operations office.

(2)

The applicable reservation and light usage fee must be paid at the time the reservation is made.

(3)

An approved facility reservation form must be obtained from the parks and recreation department when the fee is paid.

(4)

No refunds will be made unless the reservation is cancelled by the parks and recreation department or in case of inclement weather.

(Ord. No. 84-12-18, § VII, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 99-1-2, § VII, 1-11-99; Ord. No. 2001-2-14, § I, 2-12-01; Ord. No. 2008-3-10, § I, 3-25-08)

PROPOSED

Sec. 15-60. - Practice sessions.

(a)

Youth practices. Baseball and softball game fields, unless they have been prepared that day or designated for scheduled use only, may be reserved for practice by sponsoring leagues during identified sports seasons. Game fields for intensive turf sports such as soccer and football, unless they have been designated for scheduled use only, may be reserved for practice on Tuesday, Wednesday and Thursday afternoons or evenings for practice by sponsoring leagues during identified sports seasons. Teams scheduled for practices by sponsoring leagues must be documented with the Parks and Recreation Department for purposes of assessing fees and charges. There shall be no practices upon (1) Plano Independent School District designated game or practice fields, or (2) areas where games and practices have been cancelled due to rain.

(1)

Each organization shall require in its bylaws that any team under its jurisdiction, after receiving one (1) warning for violating any part of section 15-60, shall forfeit one (1) league game. Penalties may also be assessed as authorized by section 15-51.

(2)

Organizations desiring lighted practice areas shall comply with the following conditions:

a.

Practices must be scheduled through the parks and recreation department no later than the Tuesday preceding the Monday through Sunday period in which the practices are to occur.

b.

The applicable light usage fee and field reservation fee must be paid.

c.

Each organization will schedule their teams during their allotted time frames at each field and not otherwise.

d.

Organizations may not schedule more than four (4) teams per field per practice session.

(3)

The scheduled turn-on and turn-off of lights shall be the responsibility of the parks and recreation department.

(b)

Adult and general public practices. All reservations for practices by the general public and adult practices are subject to the following conditions:

(1)

Reservation requests must be made through the athletic operations office.

(2)

The applicable reservation and light usage fee must be paid at the time the reservation is made.

(3)

An approved facility reservation form must be obtained from the parks and recreation department when the fee is paid.

(4)

No refunds will be made unless the reservation is cancelled by the parks and recreation department or in case of inclement weather.

PROPOSED (editing displayed)

Sec. 15-60. - Practice sessions.

(a)

Youth practices. Baseball and softball game fields, unless they have been prepared that day or designated for scheduled use only, may be reserved used for practice by sponsoring leagues during identified sports seasons. Game fields for intensive turf sports such as soccer and football, unless they have been designated for scheduled use only, may be reserved used for practice on Tuesday, Wednesday and Thursday afternoons or evenings for practice by sponsoring leagues during identified sports seasons subject to approval of the parks and recreation department. Each organization will schedule their teams during their allotted time frames at each field and not otherwise. Teams scheduled for practices by sponsoring leagues must be documented with the Parks and Recreation Department for purposes of assessing fees and charges. There shall be no practices upon (1) Plano Independent School District designated game or practice fields, or (2) areas where games and practices have been cancelled due to rain.

(1)

Each organization shall require in its bylaws that any team under its jurisdiction, after receiving one (1) warning for violating any part of section 15-60, shall forfeit one (1) league game. Penalties may also be assessed as authorized by section 15-51.

(2)

Organizations desiring lighted practice areas shall comply with the following conditions:

a.

Practices must be scheduled through the parks and recreation department no later than the Tuesday preceding the Monday through Sunday period in which the practices are to occur.

b.

The applicable light usage fee and field reservation fee must be paid.

c.

Each organization will schedule their teams during their allotted time frames at each field and not otherwise.

d.

Organizations may not schedule more than four (4) teams per field per practice session.

(3)

The scheduled turn-on and turn-off of lights shall be the responsibility of the parks and recreation department.

(b)

Adult and general public practices. All reservations for practices by the general public and adult practices are subject to the following conditions:

(1)

Reservation requests must be made through the athletic operations office.

(2)

The applicable reservation and light usage fee must be paid at the time the reservation is made.

(3)

An approved facility reservation form must be obtained from the parks and recreation department when the fee is paid.

(4)

No refunds will be made unless the reservation is cancelled by the parks and recreation department or in case of inclement weather.

EXISTING

Sec. 15-61. - User fees.

(a)

The city council has determined that it is necessary and proper to establish and levy user fees to be charged for the use of the city's public parks and recreation facilities.

(b)

All individuals who are members of any city adult or youth athletic team will pay prescribed user fees as established by the city council. User fees will be deposited by the parks and recreation department into the city's general fund.

(1)

It shall be the responsibility of each sponsoring organization to collect all user fees and to submit these fees with corresponding documentation to the parks and recreation department no later than two (2) weeks after the start of season. A delinquent notice shall be mailed to any organization that fails to pay user fees and supply corresponding documentation within two (2) weeks after the start of the season. Delinquent notices shall specify a deadline upon which user groups must submit all user fees and corresponding documentation or pay a late fee of two hundred dollars (\$200.00) per day that city offices are open and available to accept payment after the delinquent notice's stated due date. Payments of user fees and any delinquent penalty must be submitted with corresponding documentation or scheduled use of athletic fields may be refused as provided in section 15-51.

(2)

Rosters must be available for inspection by the parks and recreation department.

(3)

Nonresidents may use Plano facilities as a participant in camps, clinics and classes or on a team in locally sponsored leagues if field availability permits. These individuals will be assessed the non-resident user fee.

(4)

Nonresident adults may play on a team in Plano if they work within the city or worship in Plano when participating, respectively, on a church-sponsored or business-sponsored team and shall pay resident user fees. All other non-resident adults may play in locally sponsored leagues if field availability permits. These individuals will be assessed the appropriate user fee.

(c)

An additional field use fee at a rate determined by city council shall be assessed per game or per practice for the preferred use of any surplus field not provided through the allocation process during each respective sports season.

(Ord. No. 84-12-18, § VIII, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 90-4-24, § I, 4-23-90; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 96-6-29, § I, 6-24-96; Ord. No. 2001-2-14, § II, 2-12-01; Ord. No. 2009-4-22, § I, 4-27-09)

Cross reference—User fees, § 15-81 et seq.

PROPOSED

Sec. 15-61. - User fees.

(a)

The city council has determined that it is necessary and proper to establish and levy user fees to be charged for the use of the city's public parks and recreation facilities.

(b)

All individuals or teams who are participants of any city adult or youth athletic activity will pay prescribed user fees as established by the city council. User fees will be deposited by the parks and recreation department into the city's general fund.

(1)

It shall be the responsibility of each sponsoring organization to collect all user fees and to submit these fees with corresponding documentation to the parks and recreation department no later than two (2) weeks after the start of season. A delinquent notice shall be mailed to any organization that fails to pay user fees and supply corresponding documentation within two (2) weeks after the start of the season. Delinquent notices shall specify a deadline upon which user groups must submit all user fees and corresponding documentation or pay a late fee of two hundred dollars (\$200.00) per day that city offices are open and available to accept payment after the delinquent notice's stated due date. Payments of user fees and any delinquent penalty must be submitted with corresponding documentation or scheduled use of athletic fields may be refused as provided in section 15-51.

(2)

Rosters must be available for inspection by the parks and recreation department.

(3)

Nonresidents may use Plano facilities as a participant in camps, clinics and classes or on a team in locally sponsored leagues if field availability permits. These individuals or teams will be assessed the non-resident user fee.

(4)

Nonresident adults and teams may participate in Plano leagues and athletic activities if they work within the city or worship in Plano when participating, respectively, on a church-sponsored or business-sponsored team and shall pay resident user fees. All other non-resident adults and teams may play in locally sponsored leagues and participate in Plano athletic activities if field availability permits. These individuals and teams will be assessed the appropriate user fee.

(c)

Field use reservation fees established by city council shall be assessed per game or per practice for the scheduled use of athletic fields by leagues or athletic activities in which individual or team registration is not documented or can not be verified.

(Ord. No. 84-12-18, § VIII, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 90-4-24, § I, 4-23-90; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 96-6-29, § I, 6-24-96; Ord. No. 2001-2-14, § II, 2-12-01; Ord. No. 2009-4-22, § I, 4-27-09)

Cross reference—User fees, § 15-81 et seq.

PROPOSED (editing displayed)

Sec. 15-61. - User fees.

(a)

The city council has determined that it is necessary and proper to establish and levy user fees to be charged for the use of the city's public parks and recreation facilities.

(b)

All individuals **or teams** who are ~~members~~ **participants** of any city adult or youth athletic ~~team~~ **activity** will pay prescribed user fees as established by the city council. User fees will be deposited by the parks and recreation department into the city's general fund.

(1)

It shall be the responsibility of each sponsoring organization to collect all user fees and to submit these fees with corresponding documentation to the parks and recreation department no later than two (2) weeks after the start of season. A delinquent notice shall be mailed to any organization that fails to pay user fees and supply corresponding documentation within two (2) weeks after the start of the season. Delinquent notices shall specify a deadline upon which user groups must submit all user fees and corresponding documentation or pay a late fee of two hundred dollars (\$200.00) per day that city offices are open and available to accept payment after the delinquent notice's stated due date. Payments of user fees and any delinquent penalty must be submitted with corresponding documentation or scheduled use of athletic fields may be refused as provided in section 15-51.

(2)

Rosters must be available for inspection by the parks and recreation department.

(3)

Nonresidents may use Plano facilities as a participant in camps, clinics and classes or on a team in locally sponsored leagues if field availability permits. These individuals **or teams** will be assessed the non-resident user fee.

(4)

Nonresident adults **and teams** may **participate** ~~play on a team~~ in Plano **leagues and athletic activities** if they work within the city or worship in Plano when participating, respectively, on a church-sponsored or business-sponsored team and shall pay resident user fees. All other non-resident adults **and teams** may play in locally sponsored leagues **and participate in Plano athletic activities** if field availability permits. These individuals **and teams** will be assessed the appropriate user fee.

(c)

~~An additional field use fee at a rate determined by city council shall be assessed per game or per practice for the preferred use of any surplus field not provided through the allocation process during each respective sports season.~~ **Field use reservation fees established by city council shall be assessed per game or per practice for the scheduled use of athletic fields by leagues or athletic activities in which individual or team registration is not documented or can not be verified.**

(Ord. No. 84-12-18, § VIII, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 90-4-24, § I, 4-23-90; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 96-6-29, § I, 6-24-96; Ord. No. 2001-2-14, § II, 2-12-01; Ord. No. 2009-4-22, § I, 4-27-09)

Cross reference—User fees, § 15-81 et seq.

EXISTING

Sec. 15-65. - Insurance.

Organizations or associations conducting organized leagues, tournaments, practices or other activities must provide and keep in force for the duration of the season or event with an insurance company duly licensed in the State of Texas and rated A- or better by A.M. Best, general liability insurance in an amount specified by the city's risk manager. Insurance limits will be reviewed on an annual basis for leagues and on an activity basis otherwise. In addition, the policy shall include the City of Plano as an additional named insured. No games may be played until an acceptable proof of insurance has been received by the parks and recreation department and reviewed for adequacy by the city's risk manager.

(Ord. No. 84-12-18, § XII, 12-18-84; Ord. No. 88-1-7, § I, 1-11-88; Ord. No. 92-2-9, § I, 2-10-92; Ord. No. 94-5-26, § I, 5-23-94; Ord. No. 2008-3-10, § I, 3-25-08)

PROPOSED

Sec. 15-65. - Insurance.

Organizations or associations conducting organized leagues, tournaments, practices or other activities must provide and keep in force for the duration of the season or event with an insurance company duly licensed in the State of Texas and rated A- or better by A.M. Best, general liability insurance in an amount specified by the city's risk manager. Insurance limits will be reviewed on an annual basis for leagues and on an activity basis otherwise. In addition, the policy shall include the City of Plano as an additional named insured. No games may be played or activity conducted until an acceptable proof of insurance has been received by the parks and recreation department and reviewed for adequacy by the city's risk manager.

PROPOSED (editing displayed)

Sec. 15-65. - Insurance.

Organizations or associations conducting organized leagues, tournaments, practices or other activities must provide and keep in force for the duration of the season or event with an insurance company duly licensed in the State of Texas and rated A- or better by A.M. Best, general liability insurance in an amount specified by the city's risk manager. Insurance limits will be reviewed on an annual basis for leagues and on an activity basis otherwise. In addition, the policy shall include the City of Plano as an additional named insured. No games may be played **or activity conducted** until an acceptable proof of insurance has been received by the parks and recreation department and reviewed for adequacy by the city's risk manager.

An Ordinance of the City of Plano, Texas amending Sections 15-3, 15-56, 15-57, 15-59, 15-60, 15-61, and 15-65, Chapter 15, Parks and Recreation of the Code of Ordinances of the City of Plano, Texas to replace with provisions containing new language regarding prohibited activities, sports seasons, allocations, tournaments/meets/camps/clinics/tryouts, practice sessions, user fees and insurance; and providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause, and an effective date.

WHEREAS, the Parks and Recreation staff have reviewed and suggested changes to Article III of Chapter 15 of the Code of Ordinances related to the use and athletic activities conducted on Plano athletic facilities, and

WHEREAS, the Parks and Recreation Planning Board has reviewed the changes suggested by the Parks and Recreation staff and recommend their adoption by the Plano City Council, and

WHEREAS, the City Council deems it in the best interest of the citizens of the City of Plano that Sections 15-3, 15-56, 15-57, 15-59, 15-60, 15-61, and 15-65 of the Code of Ordinances be amended as set forth herein.

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

Section I. The following sections of Article III Athletic Activities of Chapter 15 Parks and Recreation of the Code of Ordinances of the City of Plano are hereby amended to read in their entirety as follows:

“Sec. 15-3. Prohibited activities.

- (a) It shall be unlawful for any person to knowingly do any of the acts specified in this section in or upon any park facility, except as otherwise specifically provided:
 - (2) *Weapons.*
 - a. To carry a concealed handgun, as that term is defined in section 14-5 of the Code of Ordinances of the City of Plano, in a city park, except those persons who are duly licensed by the state to carry a concealed handgun in accordance with the provisions of the Texas Concealed Weapons Act.
 - b. To carry or discharge firearms (unless permitted under subsection (a)(2)a. above), facsimile firearms (as defined in section 14-12 of the Code of Ordinances of the City of Plano), fireworks, air guns, bows and arrows, slingshots or any device which would or could project any object which would or could create a fire hazard or any hazard or danger to the public, except with written approval of the parks and recreation director.

“Sec. 15-56. Sports seasons.

- (a) The following specific sports seasons and primary sports are established for the equitable use and allocation of athletic facilities:

Season	Primary Sport	Secondary Sport
Spring	Adult softball—Fourth Monday in February through third Sunday in May Youth soccer—Second Tuesday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May Adult soccer—Second Tuesday in February through third Sunday in May	Competitive youth baseball/softball— Third Monday in March through last Sunday in June Adult baseball—Third Monday in March through third Sunday in August Youth and adult lacrosse, rugby, cricket, flag football, field hockey—Second Tuesday in February through last Sunday in April; fields unencumbered by Summer sports season to third Sunday in May
Summer	Recreational youth baseball /softball— First Monday in May through last Sunday in June Adult baseball and adult softball— Third Monday in May through third Sunday in August	Youth and adult cricket, flag football— Third Tuesday in May through third Sunday in August
Fall	Youth and adult football—Third Tuesday in August through second Sunday in November	Youth and adult soccer— Third Tuesday in August through second Sunday in November Youth and adult softball— Third Monday in August through-second Sunday in November Youth and adult baseball—Third Monday in August through second Sunday in November Youth and adult lacrosse, rugby, cricket, field hockey— Third Tuesday in August through second Sunday in November

- (b) The primary sport within each season shall be given first priority with regard to field or facility allocation and scheduling. Secondary sports facilities will be allocated on a space available basis. The director of parks and recreation or the director's designee shall determine the eligibility for classification within primary and secondary sports designations.
- (c) Time made available in public swimming pools for competitive or recreational aquatics programs will be allocated on a bi-annual basis with an annual review. The need for more frequent aquatic allocations may be conducted at the discretion of the director of parks and recreation as changes occur in the availability of time within facilities or as new facilities are added.
- (d) Sports other than primary or secondary will be addressed as the need arises, subject to:
 - (1) Facility availability.
 - (2) Allocated maintenance resources.
 - (3) Determination by the parks and recreation department of capacity of fields or facilities to withstand additional use.
- (e) The youth sports associations may enter into a written agreement with the parks and recreation department that allows use of designated fields or facilities outside of the official sports season under special circumstances deemed appropriate by the director of the parks and recreation department.

“Sec. 15-57. Allocations.

- (a) Organizations requiring facilities for league games shall submit, in writing, their registration figures at the designated time determined by the parks and recreation department.
- (b) The parks and recreation department shall consider all requests and will allocate facilities in the best interest of the city. Guidelines which will be considered may include, but are not limited to, items listed under subsections (1) through (3) of this section. The director of parks and recreation or the director's designee may also consider any other alternatives in implementing the field or facility allocation for the various users, or make such variations or exceptions as the director deems in the best interest of the city, giving due consideration to the number of participants, facility requirements, nature of the activity, innovation of the program and other relevant factors.

Guidelines

- (1) Programs conducted the previous year. Groups who must reduce the number of their allocated fields or facility time from the previous season may be allowed to protect up to fifty (50) percent of fields or facility time of their choice. This alternative is available at the discretion of the parks and recreation department when reduced participation of the user group warrants this type of allocation.
 - (2) Priority will be given to those individuals who reside within the city limits of the City of Plano. Participation by other individuals, teams and groups may be permitted by the parks and recreation department if facility availability permits.
 - (3) Teams or sports requesting regular season play or meets with out-of-town teams on facilities owned by, leased or otherwise controlled by the city will be given consideration after fields or facility time has been allocated for all other teams of organizations made up of residents. Participation by such out-of-town teams is subject to approval by the parks and recreation department. If approved, such teams shall pay fees and charges as established by the city council through the City's annual budget process.
- (c) The parks and recreation department may place more than one (1) organization on a given facility for the same sport. Primary sports will be accommodated prior to secondary sports.
- (d) Any existing organization wishing to initiate a new athletic program must meet with the parks and recreation department at least ninety (90) days prior to the proposed season starting date to discuss the availability of facilities. A new program is defined as any activity that is not currently offered by the requesting organization as determined by the parks and recreation department.

The parks and recreation department will attempt to accommodate new programs according to facility availability and considering participant registration.

“Sec. 15-59. Tournaments/meets/camps/clinics/tryouts.

- (a) Youth and adult sports tournament, meet, camp, clinic or tryout requests will be considered on a space available basis subject to the following conditions:
- (1) The parks and recreation department may restrict the number, size, dates, and locations of tournaments or meets in order to protect field or facility conditions or to prevent overuse of fields or facilities. Defined criteria shall be utilized and communicated by the parks and recreation department in the process to approve or deny tournament, meet, camp, clinic and tryout requests.
 - (2) Requests for tournament play, meets, camps, clinics or tryouts will be restricted to Plano youth and adult athletic organizations meeting specified requirements of section 15-58, the Plano Convention and Visitor's Bureau, and Plano Parks and Recreation Department. Upon approval, fees shall be charged to the sponsoring organization for the city's standardized services involving lighting, personnel, materials, equipment and contractual resources utilized in support of the tournament, meet, camp, clinic or tryout. The parks and recreation department shall estimate such expenses prior to approval based on the number of teams or participants, scheduled use of fields and facilities, and number of games played or hours of use.
 - (3) Any request for tournament play or meets, camps, clinics or tryouts must be made in writing by the sponsoring organization no less than thirty (30) days prior to the scheduled tournament or meet. Existing tournaments, meets, camps, clinics or tryouts will receive first consideration. Approval of the requested activity does not guarantee field or pool condition or availability of parks and recreation personnel or equipment. Tournaments, meets, camps, clinics or tryouts with housing needs for teams, officials and administration must submit a plan for accommodating visitors to Plano subject to review by the Plano Convention and Visitor's Bureau that will be factored in the process for the event's approval or denial. Plano Convention and Visitor's Bureau may sponsor events with community economic impact once per sports season at each athletic-oriented facility and pre-empt league scheduling only if notice can be provided to the Parks and Recreation Department prior to the allocation meeting for the respective season.
 - (4) Prior to fields or facilities being utilized for tournaments, meets, camps, clinics or tryouts, a usage agreement must be signed and on file with the parks and recreation department. Insurance meeting specifications of the City's Risk Manager is required for events prior to access to athletic fields or facilities.

- (b) Inclement weather provisions for outdoor events are as follows:
- (1) The parks and recreation department may cancel a tournament, meet, camp, clinic or tryout at any time in the interest of insuring the quality of the fields or pool and safety of the participants.
 - (2) The decision to cancel a tournament, meet, camp, clinic or tryout shall be made by authorized members from the parks and recreation department. Authorized representatives from the event sponsor may be contacted for their input in making the decision.
 - (3) When the decision to cancel a tournament, meet, camp, clinic or tryout due to inclement weather has been made, the parks and recreation department will notify the event director who will then cancel the activity at selected or all sites.
 - (4) Whenever possible, activity will first be delayed or postponed. The decision to resume activity will rest with the parks and recreation department.
 - (5) Failure to comply with this policy may result in the denial of future use of the facilities for tournaments, meets, camps, clinics or tryouts.
- (c) Churches, civic organizations, teams based in Plano, businesses located in Plano and individuals residing in Plano may request the use of athletic fields for the purpose of conducting professionally officiated tournaments subject to the following conditions. These conditions also apply to tournaments sponsored by local adult and youth sports organizations, Plano Convention and Visitors Bureau and the Parks and Recreation Department. A designated reservation fee per field will be assessed which will be applied toward the tournament fees and charges. The reservation fee is refundable only in the event of inclement weather as determined by the parks and recreation department.

Tournament Regulations

- (1) Tournament use of facilities is subject to availability as determined by the director of parks and recreation or authorized designee.
- (2) Designated tournament fees and charges shall be assessed the sponsor and must be paid within three (3) working days prior to the tournament. A tournament bracket must accompany this fee. After the bracket is submitted, no additional teams may be accepted into the tournament.
- (3) All adult and youth softball tournaments must be sanctioned by the Amateur Softball Association (ASA) and youth tournaments must be sponsored by locally recognized youth sports organizations meeting the requirements of section 15-58, or be sponsored by the City of Plano's Convention and Visitor's Bureau or Parks and Recreation Department.
- (4) If field space allows, more than one (1) tournament may be scheduled on any given date by the parks and recreation department.
- (5) The parks and recreation department may designate the maximum amount to be charged for entry fees.
- (6) Saturday games may not be scheduled to begin prior to 8:00 a.m. The final game or games may not be scheduled to start after 9:00 p.m. Sunday games may not be scheduled to begin prior to 8:00 a.m. Sunday games shall be complete and lighting extinguished by 9:00 p.m.
- (7) No rain dates will be allowed.
- (8) No refunds will be allowed after the reservation has been accepted by the parks and recreation department unless weather or city-related maintenance problems result in cancellation.
- (9) In the event that it rains within twenty-four (24) hours of the scheduled start of the tournament, permission to play must be gained from the athletic superintendent or designated representative. Only approved drying agents may be used on the fields in the event of rain. At no time may any type of dirt be placed on or removed from the fields.
- (10) In the sport of softball, umpires must be members of the Plano Softball Umpires Chapter of Dallas Metro ASA or affiliates. Two (2) umpires must be assigned to each game. In other sports, professional referees or umpires are required meeting certification standards of the sport's sanctioning body.
- (11) The sponsoring organization may not provide any type of concession services.

- (12) No special maintenance will be done to the fields during the tournament (dragging, marking, etc.) unless agreed to by the parks and recreation department. Tournament sponsors may employ approved independent contractors to drag and mark the fields or prepare the fields with hand tools following guidelines established by the parks and recreation department.
- (13) The City of Plano or the Plano Parks and Recreation Department's name shall not appear on any advertisement or promotion of the tournament.
- (14) Any individual or team involved in conducting the tournament shall not participate in the tournament as a manager, coach, player, referee or umpire.
- (15) The Plano Parks and Recreation Department reserves the right to cancel any tournament reservation at any time should any of the above conditions not be followed.

“Sec. 15-60. Practice sessions.

- (a) *Youth practices.* Baseball and softball game fields, unless they have been prepared that day or designated for scheduled use only, may be reserved for practice by sponsoring leagues during identified sports seasons. Game fields for intensive turf sports such as soccer and football, unless they have been designated for scheduled use only, may be reserved for practice on Tuesday, Wednesday and Thursday afternoons or evenings for practice by sponsoring leagues during identified sports seasons. Teams scheduled for practices by sponsoring leagues must be documented with the Parks and Recreation Department for purposes of assessing fees and charges. There shall be no practices upon (1) Plano Independent School District designated game or practice fields, or (2) areas where games and practices have been cancelled due to rain.
 - (1) Each organization shall require in its bylaws that any team under its jurisdiction, after receiving one (1) warning for violating any part of section 15-60, shall forfeit one (1) league game. Penalties may also be assessed as authorized by section 15-51.
 - (2) Organizations desiring lighted practice areas shall comply with the following conditions:
 - a. Practices must be scheduled through the parks and recreation department no later than the Tuesday preceding the Monday through Sunday period in which the practices are to occur.
 - b. The applicable light usage fee and field reservation fee must be paid.
 - c. Each organization will schedule their teams during their allotted time frames at each field and not otherwise.
 - d. Organizations may not schedule more than four (4) teams per field per practice session.
 - (3) The scheduled turn-on and turn-off of lights shall be the responsibility of the parks and recreation department.
- (b) *Adult and general public practices.* All reservations for practices by the general public and adult practices are subject to the following conditions:
 - (1) Reservation requests must be made through the athletic operations office.
 - (2) The applicable reservation and light usage fee must be paid at the time the reservation is made.
 - (3) An approved facility reservation form must be obtained from the parks and recreation department when the fee is paid.
 - (4) No refunds will be made unless the reservation is cancelled by the parks and recreation department or in case of inclement weather.

“Sec. 15-61. User fees.

- (a) The city council has determined that it is necessary and proper to establish and levy user fees to be charged for the use of the city's public parks and recreation facilities.
- (b) All individuals or teams who are participants of any city adult or youth athletic activity will pay prescribed user fees as established by the city council. User fees will be deposited by the parks and recreation department into the city's general fund.
 - (1) It shall be the responsibility of each sponsoring organization to collect all user fees and to submit these fees with corresponding documentation to the parks and recreation department no later than two (2) weeks after the start of season. A delinquent notice shall be mailed to any organization that fails to pay user fees and supply corresponding documentation within two (2) weeks after the start of the season. Delinquent notices shall

specify a deadline upon which user groups must submit all user fees and corresponding documentation or pay a late fee of two hundred dollars (\$200.00) per day that city offices are open and available to accept payment after the delinquent notice's stated due date. Payments of user fees and any delinquent penalty must be submitted with corresponding documentation or scheduled use of athletic fields may be refused as provided in section 15-51.

- (2) Rosters must be available for inspection by the parks and recreation department.
- (3) Nonresidents may use Plano facilities as a participant in camps, clinics and classes or on a team in locally sponsored leagues if field availability permits. These individuals or teams will be assessed the non-resident user fee.
- (4) Nonresident adults and teams may participate in Plano leagues and athletic activities if they work within the city or worship in Plano when participating, respectively, on a church-sponsored or business-sponsored team and shall pay resident user fees. All other non-resident adults and teams may play in locally sponsored leagues and participate in Plano athletic activities if field availability permits. These individuals and teams will be assessed the appropriate user fee.

(c) Field use reservation fees established by city council shall be assessed per game or per practice for the scheduled use of athletic fields by leagues or athletic activities in which individual or team registration is not documented or cannot be verified.

“Sec. 15-65. Insurance.

Organizations or associations conducting organized leagues, tournaments, practices or other activities must provide and keep in force for the duration of the season or event with an insurance company duly licensed in the State of Texas and rated A- or better by A.M. Best, general liability insurance in an amount specified by the city's risk manager. Insurance limits will be reviewed on an annual basis for leagues and on an activity basis otherwise. In addition, the policy shall include the City of Plano as an additional named insured. No games may be played or activity conducted until an acceptable proof of insurance has been received by the parks and recreation department and reviewed for adequacy by the city's risk manager.

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

Section IV. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

Section V. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VI. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 28th day of February, 2011.

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:		02/28/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
An Ordinance of the City of Plano, Texas repealing Ordinance No. 2006-11-27 designating a certain area within the City of Plano as Reinvestment Zone No. 103 for a tax abatement consisting of a 2.8383 acre tract of land located at the southwest intersection of Bishop Road and Infinity Avenue in the City of Plano, Texas; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 10-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: This item has no fiscal impact.				
SUMMARY OF ITEM				
The City Council adopted Ordinance No. 2006-11-27 on November 27, 2006, designating a certain area within the City of Plano as Reinvestment Zone No. 103 for a tax abatement. It was later found that the boundaries of such zone are partially the same as the boundaries for Reinvestment Zone No. 124 and therefore Ordinance No. 2006-11-27 should be repealed.				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas repealing Ordinance No. 2006-11-27 designating a certain area within the City of Plano as Reinvestment Zone No. 103 for a tax abatement consisting of a 2.8383 acre tract of land located at the southwest intersection of Bishop Road and Infinity Avenue in the City of Plano, Texas; and providing an effective date.

WHEREAS, the City Council adopted Ordinance No. 2006-11-27 on November 27, 2006, designating a certain area within the City of Plano as Reinvestment Zone No. 103; and

WHEREAS, no properties within the Reinvestment Zone No. 103 are currently receiving a tax abatement; and

WHEREAS, the City Council finds that the boundaries of such zone are partially the same as the boundaries for Reinvestment Zone No. 124 and therefore Ordinance No. 2006-11-27 should be repealed.

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

Section I. The City Council hereby repeals Ordinance No. 2006-11-27.

Section II. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 28th day of February, 2011.

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:		2/28/2011		
Department:		Legal		
Department Head		Diane Wetherbee		
Agenda Coordinator (include phone #): Betsy # 7545				
CAPTION				
An Ordinance of the City of Plano, Texas amending Section 2-25. Attendance at council meetings, etc., of Article II. City Manager, of Chapter 2. Administration of the Code of Ordinances of the City of Plano, Texas to allow the City Manager to assign a designee to attend council meetings on his behalf; and providing a repealer clause, a severability clause, and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS: This item has no fiscal impact.				
SUMMARY OF ITEM				
This item amends the existing provision to allow the City Manager to designate an employee to attend council meetings when he is unable to do so.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas amending Section 2-25. Attendance at council meetings, etc., of Article II. City Manager, of Chapter 2. Administration of the Code of Ordinances of the City of Plano, Texas to allow the City Manager to assign a designee to attend council meetings on his behalf; and providing a repealer clause, a severability clause, and an effective date.

WHEREAS, the City Code requires the City Manager to attend all City Council meetings; and

WHEREAS, the City Council finds that the City Manager may be absent from the City or be unable to attend every council meeting; and

WHEREAS, the City Council has determined that the City Manager should be authorized to appoint a designee to attend council meetings on his behalf.

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

Section I. Section 2-25. Attendance at council meetings, etc., of Article II. City Manager, of Chapter 2. Administration of the Code of Ordinances of the City of Plano Texas is hereby amended to read in its entirety as follows:

“Section 2-25. Attendance at council meetings; right to participate in discussion.

The City Manager shall attend all regular and special called meetings of the City Council with the right to take part in the discussion, but having no vote. If the City Manager is unable to attend the meeting, he shall notify the Council and designate a person to attend on his behalf.”

Section II. All provisions of the Code of 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 Code of 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 III. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

Section IV. This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 28th day of February, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

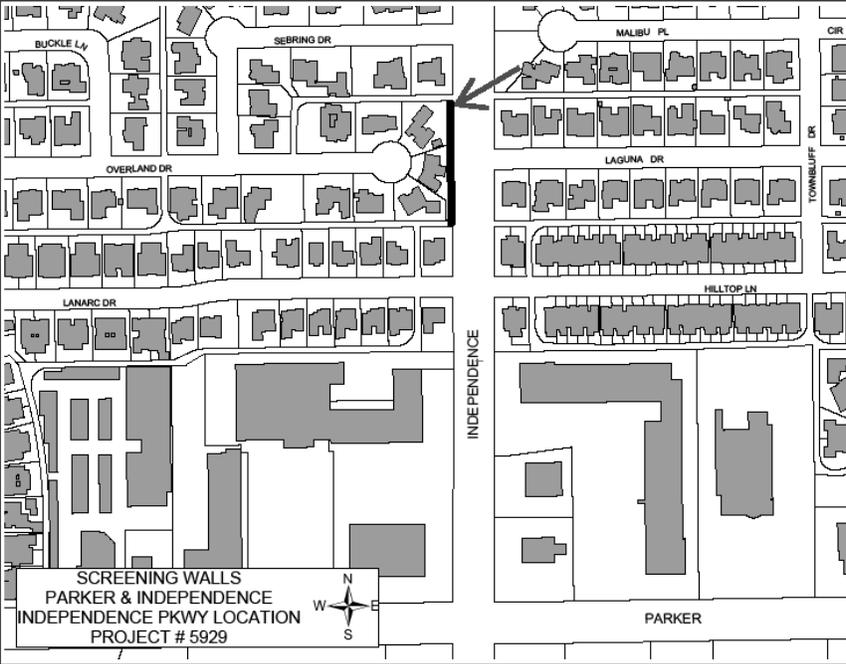
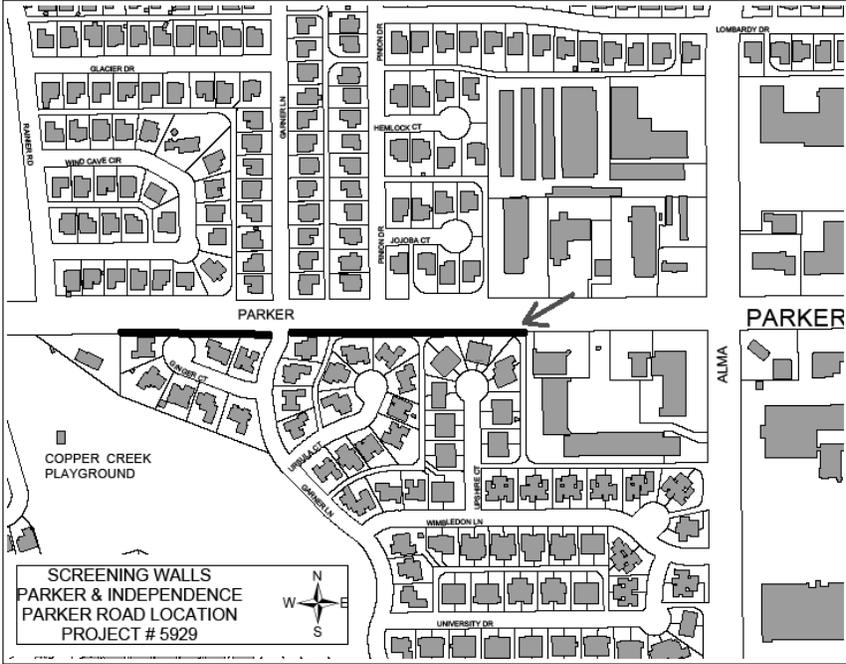
Diane C. Wetherbee, CITY ATTORNEY



**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:		02/28/11		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5929
CAPTION				
Bid No. 2011-68-B for Screening Wall – Parker & Independence project to Quality Excavation, Ltd. in the amount of \$350,157 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: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	59,847	386,153	0	446,000
Encumbered/Expended Amount	-59,847	-35,627	0	-95,474
This Item	0	-350,157	0	-350,157
BALANCE	0	369	0	369
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This item in the amount of \$350,157, will leave a current year balance of \$369 for the Screening Wall – Parker & Independence project. STRATEGIC PLAN GOAL: Screening wall removal and replacement relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the bid of Quality Excavation, Ltd. in the amount of \$350,156.77, for the base bid which is for green cement, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents. The second vendor being recommended is Ratliff Hardscape, Ltd. in the amount of \$388,848.00, for the base bid. Engineer's estimate was \$380,000.00. The project includes the removal and replacement of existing screening walls. The total length of new wall at two locations, Parker Road and Independence Parkway adds up to approximately 1,400 linear feet. The project also includes approximately 7,300 square feet of adjacent sidewalks.				
List of Supporting Documents: Location Map, Bid Summary			Other Departments, Boards, Commissions or Agencies N/A	

SCREENING WALLS PARKER & INDEPENDENCE PROJECT # 5929 LOCATION PLAN



CITY OF PLANO

Bid No. 2011-68-B
Screening Wall - Parker & Independence - Project No. 5929
Bid Recap

Bid opening Date/Time: January 21, 2011 at 2:00 PM

Number of Vendors Notified: 1,153

Vendors Submitting "No Bids": 0

Number of Bids Submitted: 7

Vendors	Base Bid	Alternate Bid
Quality Excavation	\$ 350,156.77	\$ 350,156.77
Ratliff Hardscape, Ltd	\$ 388,848.00	\$ 388,848.00
American Buildings of Texas	\$ 405,879.90	\$ 412,880.10
Denco Construction Specialists	\$ 406,498.60	\$ 406,498.60
Tracon Ventures, LTD	\$ 407,159.00	\$ 409,341.40
RoeschCo Construction, Inc	\$ 471,717.00	\$ 471,717.00
Turnkey Construction Company	\$ 479,211.82	\$ 486,264.72

Proposals Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Quality Excavation

Heather Parkerson

Heather Parkerson, Buyer

February 9, 2011

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:		02/28/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Applied Concepts, Inc. and the City of Plano; authorizing its execution by the City Manager or his/her authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,179,503	0	12,179,503
Encumbered/Expended Amount	0	-2,878,500	-5,240,500	-8,119,000
This Item	0	-101,600	-148,400	-250,000
BALANCE	0	9,199,403	-5,388,900	3,810,503
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Applied Concepts, Inc. for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Applied Concepts agrees to occupy not less than 31,400 sq. ft of commercial space and retain, transfer or create 104 jobs on or before 2/28/11. Applied Concepts also has the option of creating up to an additional 36 jobs on or before 12/31/14.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Applied Concepts, Inc. and the City of Plano; authorizing its execution by the City Manager or his/her authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between Applied Concepts, Inc. and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this the 28th day of February, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Applied Concepts, Inc., a Texas corporation, (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the business of the design and manufacturing of speed measurement technology and plans to add \$500,000.00 of real property improvements and \$200,000.00 of business personalty to the existing \$3,529,000.00 of business personalty at 2609 Technology Drive, Plano, Texas 75074;

WHEREAS, Company agrees to occupy 31,400 square feet of “ Real Property” in Plano and maintain or create up to 140 Job Equivalents to be located on the Property for the term of this Agreement; and

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

WHEREAS, the Council finds that the occupancy of 31,400 square feet of Property, and the retention, creation or transfer of up to 140 Job Equivalents within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

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

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

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

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

Article I Definitions

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

“Company” shall mean Applied Concepts, Inc..

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

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s operations in the City. An economic down turn shall not constitute an event of force majeure.

“Job Equivalent” shall mean one or more Company employees, whether individual or combined with other employees, who are located at the Property and each Job Equivalent is paid a total 2080 hours annually and issued an Internal Revenue Service W-2 form by the Company.

“Real Property” shall mean 2609 Technology Drive, Plano, Texas 75074.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until September 30, 2017 unless sooner terminated as provided herein.

Article III Obligations of Company

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

- (a) On or before February 28, 2011, occupy not less than 31,400 square feet of commercial space on the Real Property throughout the term of the Agreement; and,
- (b) Retain, create or transfer at least 104 Job Equivalents to the Real Property by February 28, 2011 and at Company’s option create up to a total of 36 additional Job Equivalents on or before December 31, 2014 and maintain those Job

Equivalents on the Real Property throughout the Agreement. The specific schedule for the Job Equivalents is set out in 4.02; and,

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

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant up to Two Hundred Fifty Thousand Dollars (\$250,000.00) as long as Company meets each of the obligations set out in Article III above and complies with the certification schedule and requirements set out in 4.02 below.

4.02 **Grant Payment Requirements and Schedule** Except as otherwise indicated, the Company shall be entitled to the grant award in accordance with the following requirements and schedule:

(a)(i) By February 28, 2011, occupy not less than 31,400 square feet of commercial space and have at least 104 Job Equivalents at the Real Property to be eligible to receive the initial payment of One Hundred One Thousand Six Hundred Dollars (\$101,600.00). The payment will not be pro-rated. Company must submit the Initial Certification form attached hereto as Exhibit "A" verifying compliance with the obligations set forth in this provision not later than May 31, 2011. A failure to provide this form by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the entire grant.

City will make the first payment within thirty (30) days of receipt of the initial certification unless the City reasonably objects to the certification.

(ii) As of December 31, 2011, if Company continues to occupy not less than 31,400 square feet of commercial space and continues to maintain at least 104 Job Equivalents at the Real Property, it is entitled to a second payment of One Hundred One Thousand Six Hundred Dollars (\$101,600.00). The payment will not be pro-rated. Company must submit its second certification verifying compliance with this provision using the form attached hereto as Exhibit "B" not later than January 31, 2012. A failure to provide this certification by that date is an event of default and, if not cured, results in a complete forfeiture of the remaining outstanding grant.

City will make the second payment within thirty (30) days of receipt of this certification unless the City reasonably objects to the certification.

(iii) If Company adds up to an additional 36 Job Equivalents to the existing initial 104 Job Equivalents on the Real Property by December 31, 2014 so that the total potential number of Job Equivalents on the Property is 140, it is entitled to a third payment of up to Forty Six Thousand Eight Hundred Dollars (\$46,800.00). This amount will be pro-rated at One Thousand Three Hundred Dollars (\$1,300.00) per Job Equivalent for each Job Equivalent added by Company over the initial 104 Job Equivalents and up to 36 additional Job Equivalents for a total

of up to 140 Job Equivalents. Company must have complied with (ii) above and have added up to an additional 36 Job Equivalents to the existing initial 104 Job Equivalents to receive this portion of the grant award. Company shall not receive any payment for Job Equivalents added after December 31, 2014. Company must submit its third certification verifying compliance with this provision on the form attached as Exhibit "C" not later than March 31, 2015. A failure to provide this certification by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the remaining outstanding grant.

City will make the third payment not to exceed \$46,800.00 within thirty (30) days of receipt of this certification unless the City reasonably objects to the certification. Total amount of the grant payments shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

(b) Beginning January 2013, Company must submit an annual certification on the form attached hereto as Exhibit "D" not later than January 31 of each year for the duration of this agreement verifying compliance with Article III above. The certification must be based upon the number of Job Equivalents for which the Company has received a grant. A failure to file the annual certification by the January 31 deadline during the remaining years of the Agreement shall result in a default and a right to a full refund of all grant amounts previously paid as set out in 4.03.

(c) All certifications must be verified by the Company's chief executive or financial officer.

4.03 Refund/Default

(a) If following the receipt of a grant payment, the Company fails to meet the required number of Job Equivalents for more than 180 consecutive days at any time during the term of this Agreement and the loss is not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Three Hundred Dollars (\$1,300.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, the Company shall certify to the City as set out in Section 4.02 above the actual number of Job Equivalents at the Real Property for the compliance period using the forms attached as Exhibits "B", "C" & "D". All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. A failure to make the refund payment within thirty (30) days shall constitute an event of default. If a refund is due for one or more Job Equivalent(s), Company is not entitled to any future payment for that lost Job Equivalent(s) notwithstanding that it subsequently complies with the Job Equivalent requirements of this Agreement.

(b) If the Company defaults on the payment of any refund or fails to provide any annual certification, the full amount of the Grant paid shall be refunded by Company to the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including attorney fees and costs incurred by City. This obligation shall survive termination of this Agreement.

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

Article V Termination

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

(a) By expiration of the term and where no defaults have occurred;

(b) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

5.02 **Effect of Termination/Survival of Obligations** . The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VI Retention and Accessibility of Records

6.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of: (1) Five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

6.02 Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and real property belonging to or in use by Company pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any

information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance for Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquires and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII Assignment

7.01 **Assignment.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) above, the Company must obtain the prior approval of the City through its City Manager and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article VIII Miscellaneous

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

8.01.1 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

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

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

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

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

If intended for the Company:
Applied Concepts, Inc.
Attention: Chief Financial Officer
2609 Technology Drive
Plano, Texas 75074

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

8.05 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action

concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

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

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

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

8.09. **Authorized to Bind**. The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

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

EXECUTED on this _____ day of _____, 20__.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

Applied Concepts, Inc.

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Applied Concepts, Inc. has occupied 31,400 square feet of commercial space and retained, transferred or added at least 104 Job Equivalent positions at the Real Property by February 28, 2011 and is in compliance with the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(i) of that Agreement. The actual number of job equivalents is _____.
- _____ b. I hereby certify that Applied Concepts, Inc. has failed to occupy 31,400 square feet of commercial space and failed to retain, transfer or add at least 90 Job Equivalent positions at the Property by February 28, 2011 and is not in compliance with the Agreement and is not entitled to receive payment in accordance with Section 4.02 (a)(i) of that Agreement. The actual number of job equivalents is _____.

ATTEST:

Applied Concepts, Inc., a Texas Company

By: _____
Name: _____
Chief Financial Officer

_____ Date

This Certification is due by May 31, 2011.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "B"

SECOND CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Applied Concepts, Inc. has continued to occupy 31,400 square feet of commercial space and maintain at least 104 Job Equivalents at the Real Property on or before December 31, 2011 and is in compliance with all terms of the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(ii). The actual number of Job Equivalents is _____.
- _____ b. I hereby certify that Applied Concepts, Inc. has failed to occupy 31,400 square feet of commercial space and maintain at least 104 Job Equivalents at the Property as of December 31, 2011. The actual number of Job Equivalents is _____. I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement.

ATTEST:

Applied Concepts, Inc., a Texas Company

By: _____
Name: _____
Chief Financial Officer

Date

This form is due by January 31, 2012.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "C"

THIRD CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Applied Concepts, Inc.. has retained, transferred or added up to 36 additional Job Equivalents to the existing initial 104 Job Equivalents at the Real Property by December 31, 2014 and is in compliance with all terms of the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(iii). The actual number of Job Equivalents is _____ .
- _____ b. I hereby certify that Applied Concepts, Inc. has not retained, transferred or added up to 36 additional Job Equivalents to the existing initial 90 Job Equivalents at the Property by December 31, 2014 pursuant to the Agreement. The actual number of Job Equivalents is _____ . I further certify that the City of Plano is not required to pay an additional payment to Applied Concepts, Inc. and has been refunded any appropriate amounts as required by Section 4.03 of the Agreement.

ATTEST:

Applied Concepts, Inc., a Texas Company

By: _____
Name: _____
Chief Financial Officer

Date

This form is due by March 31, 2015.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "D"

**ANNUAL CERTIFICATE OF COMPLIANCE
(Following final grant payment)**

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Applied Concepts, Inc. is in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has not fallen below the number for which Applied Concepts, Inc. has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____.
- _____ b. I hereby certify that Applied Concepts, Inc. is not in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has fallen below the number for which Applied Concepts, Inc. has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____. I further certify that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

ATTEST:

Applied Concepts, Inc., a Texas Company

By: _____
Name: _____
Chief Financial Officer

_____ Date

NOTE:

This form is due by January 31 of each year beginning on January 31, 2013 and as long as this Agreement is in effect with the final annual certification due on September 30, 2017.

This Certificate of Compliance should be mailed to:

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



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		02/28/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Keste, LLC and the City of Plano; authorizing its execution by the City Manager or his/her authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,179,503	0	12,179,503
Encumbered/Expended Amount	0	-2,878,500	-5,240,500	-8,119,000
This Item	0	-45,000	-105,000	-150,000
BALANCE	0	9,256,003	-5,345,500	3,910,503
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Keste, LLC for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Keste agrees to occupy not less than 32,000 sq. ft of office space and retain, transfer or create 90 jobs on or before 6/1/11. Keste also has the option of creating up to an additional 60 jobs on or before 6/30/12.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Keste, LLC and the City of Plano; authorizing its execution by the City Manager or his/her authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between Keste, LLC and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this the 28th day of February, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Keste, LLC, a Texas limited liability company, (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the business of software solutions and development and plans to add not less than \$858,000 of real property improvements and not less than \$500,000 of business personalty to the existing approximately \$134,000 of business personalty at 6100 W. Plano Parkway, Suite 1800, Plano, Texas 75093;

WHEREAS, Company agrees to occupy 32,000 square feet of “ Real Property” in Plano and retain, create, transfer or add up to 150 Job Equivalents to be located on the Property for the term of this Agreement; and

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

WHEREAS, the Council finds that the occupancy of 32,000 square feet of Property, and the retention, creation or transfer of up to 150 Job Equivalents within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

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

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

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

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

Article I Definitions

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

“Company” shall mean Keste, LLC.

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

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s operations in the City. An economic down turn shall not constitute an event of force majeure.

“Job Equivalent” shall mean one or more Company employees, whether individual or combined with other employees, who are located at the Property and each Job Equivalent is paid a total 2080 hours annually and issued an Internal Revenue Service W-2 form by the Company.

“Real Property” shall mean 6100 W. Plano Parkway Suite 1800, Plano, Texas 75093.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until April 30, 2018, unless sooner terminated as provided herein.

Article III Obligations of Company

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

- (a) Retain, create or transfer at least 90 Job Equivalents to the Real Property by June 1, 2011 and at Company’s option create up to a total of 60 additional Job Equivalents on or before June 30, 2012 and maintain those Job Equivalents on the

Real Property throughout the Agreement. The specific schedule for the Job Equivalents is set out in 4.02; and,

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

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant up to One Hundred Fifty Thousand Dollars (\$150,000.00) as long as Company meets each of the obligations set out in Article III above and complies with the certification schedule and requirements set out in 4.02 below.

4.02 **Grant Payment Requirements and Schedule** Except as otherwise indicated, the Company shall be entitled to the grant award in accordance with the following requirements and schedule:

(a)(i) By June 1, 2011, Company must have at least 90 Job equivalents on the Real Property to be eligible to receive the initial payment of Forty Five Thousand Dollars (\$45,000.00). Company must submit the Initial Certification form attached hereto as Exhibit "A" verifying compliance with the obligations set forth in this provision not later than September 1, 2011. A failure to provide this form by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the entire grant.

City will make the first payment within thirty (30) days of receipt of the initial certification unless the City reasonably objects to the certification.

(ii) If Company continues to maintain at least 90 Job Equivalents on the Real Property as of December 31, 2011, it is entitled to a second payment of Forty Five Thousand Dollars (\$45,000.00). This amount will not be pro-rated. Company must submit its second certification verifying compliance with this provision using the form attached hereto as Exhibit "B" not later than January 31, 2012. A failure to provide this certification by that date is an event of default and, if not cured, results in a complete forfeiture of the remaining outstanding grant.

City will make the second payment within thirty (30) days of receipt of this certification unless the City reasonably objects to the certification.

(iii) If Company adds up to an additional 60 Job Equivalents to the existing initial 90 Job Equivalents on the Real Property by June 30, 2012 so that the total potential number of Job Equivalents on the Property is 150, it is entitled to a third payment of up to Sixty Thousand Dollars (\$60,000.00). This amount will be pro-rated at One Thousand Dollars (\$1,000.00) per Job Equivalent for each Job Equivalent added by Company over the initial 90 Job Equivalents and up to 60 additional Job Equivalents for a total of up to 150 Job Equivalents. Company must have complied with (ii) above and have added up to an additional 60 Job Equivalents to the existing initial 90 Job Equivalents to receive this portion of the grant award. Total amount of the

combined grant payments shall not exceed One Hundred Fifty Thousand Dollars (\$150,000). Company shall not receive any payment for Job Equivalents added after June 30, 2012. Company must submit its third certification verifying compliance with this provision on the form attached as Exhibit "C" not later than September 30, 2012. A failure to provide this certification by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the remaining outstanding grant.

City will make the third pro-rata payment of up to \$60,000.00 within thirty (30) days of receipt of this certification unless the City reasonably objects to the certification.

(b) Beginning January, 2013, Company must submit an annual certification on the form attached hereto as Exhibit "D" not later than January 31 of each year for the duration of this agreement verifying compliance with Article III above. The certification must be based upon the number of Job Equivalents for which the Company has received a grant. A failure to file the annual certification by the January 31 deadline during the remaining years of the Agreement shall result in a default and a right to a full refund of all grant amounts previously paid as set out in 4.03.

(c) All certifications must be verified by the Company's chief executive or financial officer.

4.03 **Refund/Default**

(a) If following the receipt of a grant payment, the Company fails to meet the required number of Job Equivalents for more than 180 consecutive days at any time during the term of this Agreement and the loss is not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Dollars (\$1,000.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, the Company shall certify to the as set out in Section 4.02 above the actual number of Job Equivalents at the Real Property for the compliance period using the forms attached as Exhibits "B", "C" & "D".. All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. A failure to make the refund payment within thirty (30) days shall constitute an event of default. If a refund is due for one or more Job Equivalent(s), Company is not entitled to any future payment for that lost Job Equivalent(s) notwithstanding that it subsequently complies with the Job Equivalent requirements of this Agreement.

(b) If the Company defaults on the payment of any refund or fails to provide any annual certification, the full amount of the Grant paid shall be refunded by Company to the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including attorney fees and costs incurred by City. This obligation shall survive termination of this Agreement.

(c) At any time during the term of this Agreement the Company is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with

interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V Termination

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

(a) By expiration of the term and where no defaults have occurred;

(b) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

5.02 **Effect of Termination/Survival of Obligations**. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VI Retention and Accessibility of Records

6.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of: (1) Five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

6.02 Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and real property belonging to or in use by Company pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance

for Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquires and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII Assignment

7.01 **Assignment.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) above, the Company must obtain the prior approval of the City through its City Manager and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article VIII Miscellaneous

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

8.01.1 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

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

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

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

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

If intended for the Company:
Keste, LLC
Attention: Chief Financial Officer
1600 W. Plano Parkway, Suite ____ Plano, Texas 75093

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

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

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

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

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

8.09. **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

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

EXECUTED on this _____ day of _____, 2011.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

Keste, LLC

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Keste, LLC has retained, transferred or added at least 90 Job Equivalent positions to the Property by June, 1 2011 and is in compliance with the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(i) of that Agreement. The actual number of job equivalents is _____.
- _____ b. I hereby certify that Keste, LLC has failed to retain, transfer or add at least 90 Job Equivalent positions to the Property by June, 1 2011 and is not in compliance with the Agreement and is not entitled to receive payment in accordance with Section 4.02 (a)(i) of that Agreement. The actual number of job equivalents is _____.

ATTEST:

Keste, LLC, a Texas Company

By: _____
Name: _____
Chief Financial Officer

Date

This Certification is due by September 1, 2011.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "B"

SECOND CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Keste, LLC has continued to maintain at least 90 new Job Equivalents at the Property on or before December 31, 2011 and is in compliance with all terms of the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(ii). The actual number of Job Equivalents is _____.
- _____ b. I hereby certify that Keste, LLC has failed to maintain at least 90 new Job Equivalents on the Property as of December 31, 2011. The actual number of Job Equivalents is _____. I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement.

ATTEST:

Keste, LLC, a Texas Company

By: _____

Name: _____

Chief Financial Officer

Date

This form is due by January 31, 2012.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "C"

THIRD CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Keste, LLC. has retained, transferred or added up to 60 new additional Job Equivalents to the existing initial 90 Job Equivalents at the Property by June 30, 2012 and is in compliance with all terms of the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(iii). The actual number of Job Equivalents is _____ .
- _____ b. I hereby certify that Keste, LLC has not retained, transferred or added up to 60 new Job Equivalents to the existing initial 90 Job Equivalents at the Property by June 30, 2012 pursuant to the Agreement. The actual number of Job Equivalents is _____ . I further certify that the City of Plano is not required to pay an additional payment to Keste, LLC and has been refunded any appropriate amounts as required by Section 4.03 of the Agreement.

ATTEST:

Keste, LLC, a Texas Company

By: _____
Name: _____
Chief Financial Officer

Date

This form is due by September 30, 2012.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "D"

**ANNUAL CERTIFICATE OF COMPLIANCE
(Following final grant payment)**

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Keste, LLC is in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has not fallen below the number for which Keste, LLC has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____.
- _____ b. I hereby certify that Keste, LLC is not in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has fallen below the number for which Keste, LLC has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____. I further certify that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

ATTEST:

Keste, LLC, a Texas Company

By: _____
Name: _____
Chief Financial Officer

_____ Date

NOTE:

This form is due by January 31 of each year beginning on January 31, 2013 and as long as this Agreement is in effect with the final annual certification due on April 30, 2018.

This Certificate of Compliance should be mailed to:

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



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/28/2011		
Department:		City Manager		
Department Head		LaShon Ross		
Agenda Coordinator (include phone #): Betsy Allen # 7545				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas establishing the area defined herein as the "Plano Eruv District," for the purpose of accommodating Orthodox Jewish citizens to "carry" and transport within said "Plano Eruv District" on the Sabbath and other Jewish Holy Days in accordance with Jewish religious law; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2010-11	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	1	0
BALANCE		0	1	0
FUND(S): GENERAL FUND				
COMMENTS: Approval of this item will result in a one-time rental fee of \$1, to the City, as requested by the residents of Jewish faith. The term of this rental is ninety-nine years.				
STRATEGIC PLAN GOAL: Establishing an area defined as the "Plano Eruv District" relates to the city's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
The Orthodox Jewish Community of Plano has requested the City to consider a rental agreement for the purpose of establishing an eruv for an area of the City. Under Jewish law, an eruv is a boundary demarcation that allows observant Jews to push or carry persons and things outside their homes on Sabbath and other Holy Days. The eruv must be approved by the local entity where it is established, and the common method for identifying an eruv is attaching thin black strips and/or filament known as lechis on utility poles and wires. The eruv will not create any property rights, and no city funds or resources will be required in the establishment of the district.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution; Exhibit "A"				

A Resolution of the City Council of the City of Plano, Texas establishing the area defined herein as the “Plano Eruv District,” for the purpose of accommodating Orthodox Jewish citizens to “carry” and transport within said “Plano Eruv District” on the Sabbath and other Jewish Holy Days in accordance with Jewish religious law; and providing an effective date.

WHEREAS, the Orthodox Jewish community of Plano, Texas, by and through Chabad of Plano/Collin County, Inc. and DATA of Plano, wishes to establish an Eruv District within a portion of Plano, Texas, within which District said persons will, pursuant to their own religious laws and beliefs, have the liberty to “carry” on certain days, and without which District they would be forbidden by their own religious laws and beliefs from doing so; and

WHEREAS, Eruv districts have been used for 2,500 years by countless Orthodox Jewish communities including ancient Israel, throughout Eastern Europe, and present-day cities including Paris, London, New York, Los Angeles, Dallas, and Washington D.C.; and

WHEREAS, Chabad of Plano/Collin County, Inc. and DATA of Plano, Texas has requested that the City of Plano join in the establishing of an Eruv District as defined herein; and

WHEREAS, an Eruv is neither worshipped nor is it a religious symbol and an Eruv boundary is identified by the installation of lechis on utility poles and lines and is established to permit Jews to carry and transport within the Plano Eruv District on their Sabbath and holidays; and

WHEREAS, Chabad of Plano/Collin County, Inc. and DATA of Plano plan to enter into agreements with the owners of utility poles and lines for the installation and maintenance of any lechis to utilities, appurtenances, and encroachments needed for the construction of an Eruv; and

WHEREAS, it is in the public interest that Orthodox Jewish citizens of Plano, Texas be able to establish and utilize this Eruv District, the establishment of said district will be of no detriment to the rights and general welfare of any other citizens or members of the public and is done for the purpose of accommodating religious exercise; and

WHEREAS, no citizen of any faith, or of no faith, will be excluded from, designated as, or be given preferential treatment within said Eruv District, and said Eruv District shall have no purpose or effect other than as stated herein; and

WHEREAS, the permission of the Plano City Council allowing the establishment of an Eruv District creates no duties or obligations on the part of the City and does not, nor shall not diminish, increase, waive, or alter any rights or restrictions imposed by federal, state, or local law.

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

Section I. This Resolution adopts the recitals above as true and correct and are copied verbatim as if fully set forth at length.

Section II. The Plano Eruv District is approved as described in Exhibit "A."

Section III. This designation is subject to the following:

- (a) No religious symbols or messages shall be attached to any infrastructure;
- (b) This Resolution does not create any right or obligation to attach markers (lechis) to any poles or utility lines, such rights are exclusively reserved to the owners of such poles and lines to grant such rights;
- (c) No public funds or resources shall be used to install or maintain the lechis;
- (d) In the event lechis create a danger to the public use and enjoyment of the right of way or interfere with City operations, they shall be removed or modified to eliminate those concerns.

Section IV. The City Council of Plano deems it to be in the public interest to grant the delineation of this Eruv at a one-time rental of \$1 as requested by the residents of Jewish faith and the term of this rental is ninety-nine years. This designation shall not convey any actual or real property or property rights beyond the scope of what is described herein, nor shall this designation grant the right or permission to encroach, impede, limit, or violate the rights of others, laws, regulations, or statutes of the City of Plano, Texas, the State of Texas, or the United States.

Section V. This designation is nonexclusive and is made expressly subject and subordinate to the right of the City to use the area for any public purpose. The City of Plano reserves the right to terminate and cancel this designation. Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and canceled and the City of Plano shall not be held liable by reason thereof.

Section VI. This Resolution shall become effective immediately upon its passage and payment of the above stated consideration.

DULY PASSED AND APPROVED this the 28th day of February, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT “A”

BOUNDARIES OF THE PLANO ERUV DISTRICT

The area described as the Plano Eruv District is demarcated by the following boundaries:

To the WEST the Plano Eruv District is bound by North Dallas Tollway.

To the EAST the Plano Eruv District is bound by US 75 Central Expressway.

To the NORTH the Plano Eruv District is bound by Legacy Drive.

To the SOUTH the Plano Eruv District is bound by West Plano Parkway.

DATE: February 22, 2011
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of February 21, 2011

**AGENDA ITEM NO. 8 - PUBLIC HEARING
ZONING CASE 2011-02
APPLICANT: CITY OF PLANO**

Request to amend Subsections 2.824 (RC - Regional Commercial), 2.825 (RE - Regional Employment), 2.827 (LI-1 - Light Industrial-1), and 2.828 (LI-2 - Light Industrial-2) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), and Subsection 3.302 (Nonresidential Uses) of Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations), and related sections of the Zoning Ordinance regarding the use of metal as an exterior wall construction material in nonresidential zoning districts.

APPROVED: 6-2 **DENIED:** _____ **TABLED:** _____

The commissioners recommended approval of the request as submitted, and allowing for a higher percentage of metal to be used on high-rise buildings within the Regional Employment and Regional Commercial zoning districts.

The commissioners voting in opposition believed that for non-high-rise buildings, allowing a lower percentage of metal by right was more appropriate.

RECOMMENDATION:

Recommended for approval as follows: (Additions are indicated in underlined text; deletions are indicated in strikethrough text.)

1. Amend Subsection 3.302 (Nonresidential Uses) of Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations) to read as follows:

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

~~Metal and membrane exterior wall construction is permitted in the Light Industrial-1 and Light Industrial-2 districts with approval of a facade plan as part~~

~~of the site plan review process by the Planning & Zoning Commission only under the following conditions:~~

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

2. Metal exterior wall construction within nonresidential zoning districts shall be permitted provided that a maximum of 25% of any exposed exterior wall may consist of metal. This percentage may be exceeded in accordance with the following:

a. For high-rise buildings only, a maximum of 50% of any exposed exterior wall may consist of metal. High-rise buildings shall be defined by the International Building Code, and as amended by the city.

b. Within the LI-1 and LI-2 districts only, up to 100% of any exposed exterior wall may consist of metal with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:

i.a. The metal exterior wall is not visible from a public thoroughfare or residential zoning district.

ii.b. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.

3. Membrane exterior wall construction is permitted within the LI-1 And LI-2 districts only, with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:

a. The membrane exterior wall is not visible from a public thoroughfare or residential zoning district.

b. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.

4.2. Special Requirements for Parking Structures

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

2. Amend Subsection 2.827 (LI-1 - Light Industrial-1) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), such portion of Subsection to read as follows:

6. Special District Requirements

- a. ~~Metal exterior buildings are prohibited in the LI-1 district, except that such buildings may be permitted by approval of a site plan. See Subsection 3.302 (Nonresidential Uses) for provisions regarding metal and membrane exterior building materials.~~

3. Amend Subsection 2.828 (LI-2 - Light Industrial-2) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), such portion of Subsection to read as follows:

6. Special District Requirements

- a. ~~Metal exterior buildings are prohibited in the LI-1 district, except that such buildings may be permitted by approval of a site plan. See Subsection 3.302 (Nonresidential Uses) for provisions regarding metal and membrane exterior building materials.~~

4. Amend Subsection 2.824 (RC - Regional Commercial) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), such portion of Subsection to read as follows:

6. Special District Requirements

- b. Seventy-five percent of any exposed exterior wall of main buildings, parking structures, and accessory buildings shall consist of glass, native stone, clay-fired brick or tile, or a combination of these materials. All exterior building materials made of glass shall have a maximum exterior visible reflectance of 20%. Other finishes and materials may be used at the sole discretion of the Planning & Zoning Commission if adopted as part of the site plan approval and if permitted by building and fire codes. Any finish and material permitted by building and fire codes may be used on the remaining 25% of any exposed exterior wall, except that for high-rise buildings only this percentage may be increased to 50% for use of metal only. The Planning & Zoning Commission may allow, at its sole discretion, the use of concrete, concrete block, and tile, as described in the City of Plano Building Code on exterior walls that are not visible from public thoroughfares. These finishes must be consistent in color with the remainder of the building. These would include the walls of service courts and other facilities that are secluded from view by the specific design of a building or group of buildings.

5. Amend Subsection 2.825 (RE - Regional Employment) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), such portion of Subsection to read as follows:

6. Special District Requirements

- ii. Seventy-five percent of any exposed exterior wall of main buildings, parking structures, and accessory buildings shall consist of glass, native stone, clay-fired brick or tile, or a combination of these materials. All exterior building materials made of glass shall have a maximum exterior visible reflectance of 20%. Other finishes and materials may be used at the sole discretion of the Planning & Zoning Commission if adopted as part of the site plan approval and if permitted by building and fire codes. Any finish and material permitted by building and fire codes may be used on the remaining 25% of any exposed exterior wall, except that for high-rise buildings only this percentage may be increased to 50% for use of metal only. The Planning & Zoning Commission may allow, at its sole discretion, the use of concrete, concrete block, and tile, as described in the City of Plano Building Code on exterior walls that are not visible from public thoroughfares. These finishes must be consistent in color with the remainder of the building. These would include the walls of service courts and other facilities that are secluded from view by the specific design of a building or group of buildings.

EH/dw

CITY OF PLANO
PLANNING & ZONING COMMISSION

February 21, 2011

Agenda Item No. 8

Public Hearing: Zoning Case 2011-02

Applicant: City of Plano

DESCRIPTION:

Request to amend Subsections 2.824 (RC - Regional Commercial), 2.825 (RE - Regional Employment), 2.827 (LI-1 - Light Industrial-1), and 2.828 (LI-2 - Light Industrial-2) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), and Subsection 3.302 (Nonresidential Uses) of Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations), and related sections of the Zoning Ordinance regarding the use of metal as an exterior wall construction material in nonresidential zoning districts.

REMARKS:

Recently, staff has received several requests to allow the use of metal as an exterior wall construction material in nonresidential zoning districts. Currently, the Zoning Ordinance allows metal as an exterior wall material in the Light Industrial-1 (LI-1) and Light Industrial-2 (LI-2) zoning districts only with approval of a facade plan by the Planning & Zoning Commission. For the most part, the requests to use metal have not been for solid metal buildings, but instead to use metal as an accent or feature on a building which is mostly constructed of stone, brick, pre-cast concrete, or another non-metallic finish. Due to the frequency of the requests that staff has received; we believe it is appropriate to consider amendments to the Zoning Ordinance's regulations of metal.

Plano's current regulations were created in order to address quality and aesthetic concerns associated with metal buildings. Previous ordinances were written in order to limit the use of these buildings and similar structures within the city. In recent years, staff has received more requests to use metal as an exterior facade material. Many architects prefer to use metal as it can be a sturdy, durable, attractive, and sustainable facade material. The appearance and benefits of metal as an exterior material are something that many architects and developers are beginning to favor, and staff anticipates more requests in the future to use metal as an exterior wall material.

ISSUES:

The following are issues to consider pertaining to the use of metal exterior wall construction materials. The proposed ordinance amendment options are a result of the discussion and direction received from the Commission at their meeting on February 7, 2011.

Metal in Nonresidential Zoning Districts (Excluding Industrial Districts)

There are many different types of metal used as an exterior wall material including steel, aluminum, copper, bronze, and many composites. Metal can be shaped, molded, colored, and used to fit almost any structure and design. Some cities have made distinctions between the types of metal that are allowed and prohibited within their ordinances. However, since there are so many different types of metal products, staff recommends not creating distinctions between types of metals in the Zoning Ordinance, but instead specifying a maximum allowable percentage for each building elevation as a method for limiting the amount of metal. The reason for this is that it would allow for a limited amount of metal as an exterior wall material, yet the majority of the building would still be composed of brick, stone, glass, pre-cast concrete, or other non-metallic building material.

Staff has developed several options for potential ordinance language which could regulate the allowance of metal on buildings within nonresidential zoning districts.

Option 1:

A maximum of 10% of any exposed exterior wall may consist of metal. This requirement may be exceeded in accordance with the following:

1. A maximum of 25% percent of any exposed exterior wall may consist of metal with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission.
2. Within the LI-1 and LI-2 districts only, up to 100% of any exposed exterior wall may consist of metal with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:
 - a. The metal exterior wall is not visible from a public thoroughfare or residential zoning district.
 - b. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.

Option 2:

A maximum of 25% of any exposed exterior wall may consist of metal construction. This requirement may be exceeded within the LI-1 and LI-2 districts in accordance with the following:

Up to 100% of any exposed exterior wall may consist of metal with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:

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

Staff recommends Option 2 because we believe that 25% is an acceptable percentage of metal to be allowed on each facade of buildings in nonresidential zoning districts. This percentage would allow an architect to use metal panels or other metal features to create a unique look, while the majority of the building would retain its traditional brick, stone, glass, pre-cast concrete, or other non-metallic finish similar to other buildings within the city.

Staff is also suggesting that facade plan approvals be maintained at an administrative level for those buildings that are not requesting special considerations from the Commission, as is currently the practice today. Given the subjective review associated with facade plan requests, staff is concerned that without appropriate criteria in order to objectively review the use of metal on proposed buildings, it will be difficult for the Commission to be consistent in their review of facade plans. If the Commission believes that a certain percentage of metal may be appropriate, then it should consider allowing that percentage by right.

High-rise Buildings

Metal as an exterior wall material is a preferred or common material particularly for high-rise buildings. A high-rise building is a building having any floor used for human occupancy located more than 55 feet above the lowest level of fire department vehicle access, as defined in the International Building Code. High-rise buildings have larger building facades, and could benefit from the use of metal because it is a cost effective, durable, and attractive material.

Staff has developed several options for potential ordinance language regulating metal as an exterior wall material for high-rise buildings.

Option 1:

For high-rise buildings only, a maximum of 25% of any exposed exterior wall may consist of metal.

Option 2:

For high-rise buildings only, a maximum of 25% of any exposed exterior wall 2 stories or 35 feet and below may consist of metal; above 2 stories or 35 feet a maximum of 50% of any exposed exterior wall may be metal except where building materials are regulated elsewhere in this ordinance. (Example: RE/RC districts.)

Option 3:

For high-rise buildings only, a maximum of 50% of any exposed exterior wall may consist of metal except where building materials are regulated elsewhere in this ordinance. (Example: RE/RC districts.)

Staff recommends Option 3 because we believe that 50% is an acceptable percentage of metal for high-rise office buildings due to the larger area encompassed by their building facades. There are many examples of quality high-rise buildings with 50% or greater percentages of metal on their facades in other cities. Staff believes that the requests to use metal on high-rise buildings will increase with future developments within the city.

Light Industrial-1 and Light Industrial-2 Districts

Currently, the use of metal is allowed in the LI-1 and LI-2 districts with the approval of a facade plan as part of the site plan process. If the city is to allow metal as a facade material in other nonresidential zoning districts, staff recommends moving the ordinance language out of the LI-1 and LI-2 districts to Article 3 (Supplementary Regulations), and modifying the language to be consistent with other nonresidential zoning districts. If, for example, the city were to allow 25% of facades in other nonresidential zoning districts to be metal, staff would recommend these allowances also extend to the LI-1 and LI-2 districts. Any use of metal above and beyond the 25% would still require facade plan approval by the Commission as part of the site plan process as long as the buildings meet specific separation and visibility provisions, which is consistent with current regulations.

Regional Employment and Regional Commercial Districts

After discussing the RE and RC districts with the Commission at their meeting on February 7, 2011, staff is not proposing any additional materials be added to the 75% glass, native stone, clay-fired brick, or tile requirements. However, consideration needs to be given to high-rise buildings within these districts. If the Commission determines that 25% or less is an acceptable percentage of metal on high-rise buildings, this percentage would be consistent with the existing material requirements, and metal could be allowed as part of the maximum 25% alternate material allowances in the RE and RC districts. If a percentage greater than 25% is recommended, whether it be on all buildings or only on high-rise buildings, specific language would have to be included within Article 3 (Supplementary Regulations) and Subsections 2.824 and 2.825 (RC - Regional Commercial and RE - Regional Employment) of Article 2 (Zoning Districts and Uses) to address the additional allowance for metal.

Reflectance of Metal

At its meeting on February 7, 2011, the Commission expressed concern regarding visible reflectivity of metal facade materials. Some metal building materials, such as stainless steel, have a high visible reflectivity, and can reflect a large amount of direct sunlight away from their surfaces. Because there are many different types of metal exterior wall materials, with different types of glosses and finishes, staff believes it will be difficult to create an appropriate percentage of maximum visible reflectivity that will adequately regulate all types and forms of metal exterior wall materials. If the Commission is concerned about the issue of limiting the visible reflectivity, staff suggests limiting the percentage of allowable metal on an exterior facade, instead of imposing a maximum percentage of visible reflectivity. Staff believes that the maximum percentages of metal which are being proposed in the ordinance language in this report will sufficiently address the issue of visible reflectivity.

Additionally, the U.S. Energy Star program encourages the use of reflective materials. Reflecting sunlight away from buildings reduces energy costs and diminishes the damaging effects of high temperature and intense sunlight which over time can damage exterior surfaces. Limiting the reflectivity would limit building designs that meet Energy Star, LEED, and other similar sustainable building design ratings. In recent years, the use of sustainable building materials has become an important design element in many developments. Staff believes it would not be prudent for the city to create regulations which may inhibit sustainable development practices.

RECOMMENDATION:

Recommended for approval as follows: (Additions are indicated in underlined text; deletions are indicated in strikethrough text.)

1. Amend Subsection 3.302 (Nonresidential Uses) of Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations) to read as follows:

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

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

- ~~a. The metal or membrane exterior wall construction is not visible from a public thoroughfare or residential zoning district.~~

~~b. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.~~

2. Metal exterior wall construction within nonresidential zoning districts shall be permitted as follows:

A maximum of 25% of any exposed exterior wall may consist of metal. This percentage may be exceeded in accordance with the following:

a. For high-rise buildings only, a maximum of 50% of any exposed exterior wall may consist of metal except where building materials are regulated elsewhere in this ordinance.

b. Within the LI-1 and LI-2 districts only, up to 100% of any exposed exterior wall may consist of metal construction with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:

i.a. The metal exterior wall is not visible from a public thoroughfare or residential zoning district.

ii.b. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.

c. Membrane exterior wall construction is permitted within the LI-1 and LI-2 districts only, with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:

i.a. The membrane exterior wall is not visible from a public thoroughfare or residential zoning district.

ii.b. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.

3.2. Special Requirements for Parking Structures

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

2. Amend Subsection 2.827 (LI-1 - Light Industrial-1) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses) to read as follows:

6. Special District Requirements

- a. ~~Metal exterior buildings are prohibited in the LI-1 district, except that such buildings may be permitted by approval of a site plan. See Subsection 3.302 (Nonresidential Uses) for provisions regarding metal and membrane exterior building materials.~~

3. Amend Subsection 2.828 (LI-2 - Light Industrial-2) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses) to read as follows:

6. Special District Requirements

- a. ~~Metal exterior buildings are prohibited in the LI-1 district, except that such buildings may be permitted by approval of a site plan. See Subsection 3.302 (Nonresidential Uses) for provisions regarding metal and membrane exterior building materials.~~

Zoning Case 2011-02

An Ordinance of the City of Plano, Texas, amending Subsections 2.824 (RC - Regional Commercial), 2.825 (RE - Regional Employment), 2.827 (LI-1 - Light Industrial-1), and 2.828 (LI-2 - Light Industrial-2) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), and Subsection 3.302 (Nonresidential Uses) of Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, regarding the use of metal as an exterior wall construction material in nonresidential zoning districts; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 28th day of February, 2011, for the purpose of considering a change in the Zoning Ordinance; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of February, 2011; and

WHEREAS, the City Council is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. Subsection 3.302 (Nonresidential Uses) of Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such Subsection to read as follows:

Section 3.300 Exterior Wall Construction Standards for Structures

Subsection 3.302 Nonresidential Uses

1. Except as otherwise regulated by this ordinance, exterior wall construction in districts permitting nonresidential uses shall be of such material that conforms to the International Building Code unless an alternative has been approved by the Building Official.
2. Metal exterior wall construction within nonresidential zoning districts shall be permitted provided that a maximum of 25% of any exposed exterior wall may consist of metal. This percentage may be exceeded in accordance with the following:
 - a. For high-rise buildings only, a maximum of 50% of any exposed exterior wall may consist of metal. High-rise buildings shall be defined by the International Building Code, and as amended by the city.
 - b. Within the LI-1 and LI-2 districts only, up to 100% of any exposed exterior wall may consist of metal with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:
 - i. The metal exterior wall is not visible from a public thoroughfare or residential zoning district.
 - ii. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.
3. Membrane exterior wall construction is permitted within the LI-1 and LI-2 districts only, with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:
 - a. The membrane exterior wall is not visible from a public thoroughfare or residential zoning district.
 - b. The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.

4. Special Requirements for Parking Structures

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

Section II. Subsection 2.827 (LI-1 - Light Industrial-1) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such portion of Subsection to read as follows:

Section 2.800 District Charts

Subsection 2.827 LI-1 - Light Industrial-1

6. Special District Requirements

- a. See Subsection 3.302 (Nonresidential Uses) for provisions regarding metal and membrane exterior building materials.

Section III. Subsection 2.828 (LI-2 - Light Industrial-2) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such portion of Subsection to read as follows:

Section 2.800 District Charts

Subsection 2.828 LI-2 - Light Industrial-2

6. Special District Requirements

- a. See Subsection 3.302 (Nonresidential Uses) for provisions regarding metal and membrane exterior building materials.

Section IV. Subsection 2.824 (RC - Regional Commercial) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such portion of Subsection to read as follows:

Section 2.800 District Charts

Subsection 2.824 RC - Regional Commercial

6. Special District Requirements

- b. Seventy-five percent of any exposed exterior wall of main buildings, parking structures, and accessory buildings shall consist of glass, native stone, clay-fired brick or tile, or a combination of these materials. All exterior building materials made of glass shall have a maximum exterior visible reflectance of 20%. Other finishes and materials may be used at the sole discretion of the Planning & Zoning Commission if adopted as part of the site plan approval and if permitted by building and fire codes. Any finish and material permitted by building and fire codes may be used on the remaining 25% of any exposed exterior wall, except that for high-rise buildings only this percentage may be increased to 50% for use of metal only. The Planning & Zoning Commission may allow, at its sole discretion, the use of concrete, concrete block, and tile, as described in the City of Plano Building Code on exterior walls that are not visible from public thoroughfares. These finishes must be consistent in color with the remainder of the building. These would include the walls of service courts and other facilities that are secluded from view by the specific design of a building or group of buildings.

Section V. Subsection 2.825 (RE - Regional Employment) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such portion of Subsection to read as follows:

Section 2.800 Districts Charts

Subsection 2.825 RE - Regional Employment

6. Special District Requirements

- ii. Seventy-five percent of any exposed exterior wall of main buildings, parking structures, and accessory buildings shall consist of glass, native stone, clay-fired brick or tile, or a combination of these materials. All exterior building materials made of glass shall have a maximum exterior visible reflectance of 20%. Other finishes and materials may be used at the sole discretion of the Planning & Zoning Commission if adopted as part of the site plan approval and if permitted by building and fire codes. Any finish and material permitted by building and fire codes may be used on the remaining 25% of any exposed exterior wall, except that for high-rise buildings only this percentage may be increased to 50% for use of metal only. The Planning & Zoning Commission may allow, at its sole discretion, the use of concrete, concrete block, and tile, as described in the City of Plano Building Code on

exterior walls that are not visible from public thoroughfares. These finishes must be consistent in color with the remainder of the building. These would include the walls of service courts and other facilities that are secluded from view by the specific design of a building or group of buildings.

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

Section VII. The repeal of any ordinance or part of ordinances 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 ordinance at the time of passage of this Ordinance.

Section VIII. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section IX. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section X. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 28TH DAY OF FEBRUARY, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY