

CITY COUNCIL

1520 AVENUE K



DATE: 7/23/2012
CALL TO ORDER: 7:00 p.m.
INVOCATION: Jessie Prince, Executive Pastor
Grace Outreach Center
PLEDGE OF ALLEGIANCE:

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p>OUR MISSION - THE CITY OF PLANO IS A REGIONAL AND NATIONAL LEADER, PROVIDING OUTSTANDING SERVICES AND FACILITIES THROUGH COOPERATIVE EFFORTS THAT ENGAGE OUR CITIZENS AND CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u></p> <p>Presentation: The Plano Rotary Club will present the trophy to the Police Department, winners of the "Battle of the Badges"</p> <p>Presentation: The Texas Comptroller has awarded Plano the 2012 Gold Leadership Circle Award</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u></p> <p>June 25, 2012</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p>	
(b)	CSP No. 2012-194-C for one (1) year annual contract with three (3) City optional renewals for street sweeping services estimated in the amount of \$108,047 to Sweeping Services of Texas – Operating, LP, and authorizing the City Manager to execute all necessary documents.	
(c)	Bid No. 2012-230-C for a one (1) year contract with three (3) city optional renewals to purchase Traffic Signal Controller Cabinets for Inventory Control & Asset Disposal (ICAD) from Paradigm Traffic Systems, Inc., in an estimated amount of \$110,278 and authorizing the City Manager to execute all necessary documents.	
(d)	Bid No. 2012-201-B for Alley Reconstruction – Ports O’Call Area to Estrada Concrete Co., LLC, in the amount of \$407,633 and authorizing the City Manager to execute all necessary documents.	
(e)	Bid No. 2012-235-B for Erosion Control Improvements on London Drive, Creekside Lane, and 2 Sanitary Sewer Crossings to ARK Contracting Services, L.L.C., in the amount of \$652,200 and authorizing the City Manager to execute all necessary documents.	
(f)	Bid No. 2012-237-P for the Residential and Arterial Concrete Pavement Under Sealing and Raising Contract, Project No. 6243 to Nortex Concrete Lift and Stabilization, Inc., in the amount of \$1,640,000 and authorizing the City Manager to execute all necessary documents.	
	<p>Purchase from an Existing Contract</p>	
(g)	To approve the purchase of replacement light pole structures to support the City’s Motomesh Devices, in the amount of \$220,077 from CoServ Electric through an existing franchise agreement, and authorizing the City Manager to execute all necessary documents (Ordinance No. 2008-4-42).	
	<p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p>	
(h)	To approve a Professional Services Agreement by and between the City of Plano and Walter P. Moore and Associates in the amount of \$62,360 for BNSF Railroad Right-of-Way Drainage Improvements and authorizing the City Manager to execute all necessary documents.	
(i)	To approve a Professional Services Agreement by and between the City of Plano and R-Delta Engineers, Inc., in the amount of \$231,375 for Royal Oaks Drive Paving and Water Line Replacement; and authorizing the City Manager to execute all necessary documents.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>Approval of Expenditure</p> <p>(j) To approve the purchase and installation of eight (8) "Car Detector" ALPR Systems (Automated License Plate Recognition System), including the necessary software licensing and conversion of one existing Platescan system, at a total of \$108,290 from Vigilant Video Inc., through an approved Houston Galveston Area Council (HGAC) cooperative purchasing agreement and authorizing the City Manager to execute all necessary documents. (HGAC Contract Number EF04-11)</p>	
	<p>(k) RFQ No. 2012-24-B for Next Generation 9-1-1 Project Management Consultant Services for Public Safety Communications to Mission Critical Partners, Inc., in an amount not to exceed \$200,000 and authorizing the City Manager to execute all necessary documents.</p>	
	<p><u>Adoption of Resolutions</u></p>	
	<p>(l) To approve the terms and conditions of an Economic Development Incentive Agreement by and between Tollway 121 Hotel, LP and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(m) To approve and grant an electric easement to Oncor Electric Delivery Company, L.L.C. on City property, Tennyson elevated water tank site, located at 6825 Communications Parkway; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(n) To approve the assignment agreement with the North Texas Municipal Water District for 12 easements located along Cottonwood Creek from the Rowlett Creek Regional Wastewater Treatment Plant to the Upper Cottonwood Creek Lift Station; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(o) To approve the terms and conditions of a Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs Pursuant to Texas Tax Code Chapter 351 by and between Tollway 121 Hotel, LP and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(p) To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Sachse, Texas to allow the employees of the City of Sachse to take classes offered by City of Plano Professional Development Center, authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(q) To nominate Denbury Onshore, LLC, to the Office of the Governor, Economic Development and Tourism through the Texas Economic Development Bank for designation as an Enterprise Project under the Texas Enterprise Zone Program pursuant to the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(r)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and the City of Allen, Texas and the City of The Colony, Texas permitting specified use of the Plano and Allen Public Safety Radio System by the City of The Colony, Texas; authorizing its execution by the City Manager; and providing an effective date.	
(s)	To approve the terms and conditions of an Agreement by and between the City of Plano, Texas and GIS Information Systems, Inc., d/b/a Polaris Library Systems, a sole source provider, for one year maintenance and subscription for a total of \$57,113 and five additional one year renewals not to exceed a five percent (5%) increase per year; authorizing its execution by the City Manager; and providing an effective date.	
(t)	To approve the terms and conditions of a development agreement by and between the City of Plano, Texas and Green Extreme Homes for providing funding for project costs associated with development of workforce housing on 1.5 acres of land located at the southwest corner of G Avenue and 14th Street; authorizing its execution by the City Manager; and providing an effective date.	
	<u>Adoption of Ordinances</u>	
(u)	To abandon all right, title and interest of the City, in and to a portion of that certain Water Line Easement recorded in Volume 4746, Page 481, of the Deed Records of Collin County, Texas and being situated in the G. H. Pegues Survey, Abstract No. 700 and the M. R. Foster Survey, Abstract No. 332, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owners, GSW Land Investors, Hallmark Land Holdings, Inc., and Parkway Heights Homeowners' Association, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.	
(v)	To amend Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limits for motor vehicles operating on certain sections of Bishop Road within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, a publication clause, and an effective date.	
(w)	To amend Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limit for motor vehicles operating on Brand Road within the corporate limits of the City of Plano; 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.	
(x)	To amend Chapter 2, Administration, of the Code of Ordinances of the City of Plano, Texas to include a new section allowing the City Council to remove board, commission, and committee members with or without cause, and providing a repealer clause, a savings clause, a severability clause, and an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<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> <p>(1) Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 129 for tax abatement consisting of a 4.624 acres tract of land located in the Samuel H. Brown Survey, Abstract No. 108 and the Jabez Degman Survey, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p> <p>(2) Consideration of a Resolution to approve the terms and conditions of an agreement by and between the City of Plano, Texas and Tollway 121 Hotel, LP providing for real and business personal property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.</p> <p>(3) Public Hearing and consideration of an Ordinance as requested in Zoning Case 2012-18 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 629 so as to allow the additional use of Day Care Center (In-home) on 0.1± acre of land located on the north side of Oakland Hills Drive, 640± feet west of Norman Drive, in the City of Plano, Collin County, Texas, presently zoned Single-Family Residence-7; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: Connie Cosgrove</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		07/23/2012		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: The Plano Rotary Club will present the trophy to the Police Department, winners of the "Battle of the Badges".				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	



**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:		07/23/2012		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: The Texas Comptroller has awarded Plano the 2012 Gold Leadership Circle Award.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
June 25, 2012**

COUNCIL MEMBERS PRESENT

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

COUNCIL MEMBERS ABSENT

Phil Dyer, Mayor
André Davidson

STAFF PRESENT

Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Pro Tem Smith called the meeting to order at 5:05 p.m., Monday, June 25, 2012, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was present. Mayor Pro Tem Smith 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; receive information regarding Economic Development, Section 551.087; and 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 Pro Tem Smith reconvened the meeting back into the Preliminary Open Meeting at 6:02 p.m.

Consideration and action resulting from Executive Session discussion: Personnel – Appointments/Reappointments

Board of Adjustment

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Gallagher, the Council voted 6-0 to reappoint William E. Gibson, Peter Krause and Edward J. Stankunas.

Building Standards Commission

Upon a motion made by Council Member Dunlap and seconded by Council Member Duggan, the Council voted 6-0 to reappoint James Mack Craft, Jim C. Kesterson, Mo Khoshkar, Joe W. Milkes, and Chris G. Polito.

DART Board of Directors

This item was held.

Heritage Commission

Council Member Dunlap advised that no reappointments would be made.

Planning and Zoning Commission

Council Member Miner advised that no reappointments would be made.

Personnel - Reappointments

Animal Shelter Advisory Committee

Upon a motion made by Council Member Miner and seconded by Council Member Gallagher, the Council voted 6-0 to reappoint Jamey Cantrell.

Civil Service Commission

Upon a motion made by Council Member Dunlap and seconded by Deputy Mayor Pro Tem Harris, the Council voted 6-0 to affirm Staff's recommendation and reappoint NiCole F. Williams.

Community Relations Commission

Upon a motion made by Mayor Pro Tem Smith and seconded by Council Member Dunlap, the Council voted 6-0 to reappoint Jean Dormier.

Cultural Affairs Commission

Upon a motion made by Council Member Gallagher and seconded by Deputy Mayor Pro Tem Harris, the Council voted 6-0 to reappoint Lisa Foster, Gregory R. Huckaby and Allen B. Safir.

Library Advisory Board

Council Member Miner advised that no reappointments would be made.

Parks and Recreation Planning Board

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Miner, the Council voted 6-0 to reappoint Son Giep and Chris L. White.

Photographic Traffic Signal Advisory Committee

Deputy Mayor Pro Tem Harris reappointed Alyse Ferguson-Evans and Council Member Dunlap reappointed Mike Shea. Mayor Dyer's appointment was held.

Plano Housing Authority

Upon a motion made by Council Member Dunlap and seconded by Deputy Mayor Pro Tem Harris, the Council voted 6-0 to reappoint Jeanine Boehl and Paul J. Gephart, Jr.

Retirement Security Plan Committee

Upon a motion made by Council Member Dunlap and seconded by Council Member Miner, the Council voted 6-0 to reappoint Myra Conklin and Robert Smouse.

Self Sufficiency Committee

This item was held.

Senior Citizens Advisory Board

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Miner, the Council voted 6-0 to reappoint Karen E. Mitchell.

Council Appointments to Various Committees and Organizations

City Secretary Zucco read the following into the record.

- Animal Shelter Advisory Committee – Pat Miner and Patrick Gallagher
- The Arts Center of North Texas – Mayor Phil Dyer
- Board of Adjustment – Deputy Mayor Pro Tem Ben Harris and Patrick Gallagher
- Building Standards Commission – Lee Dunlap and Jim Duggan
- Civil Service Commission - City Manager Bruce D. Glasscock
- Collin County Appraisal District Board – Jim Duggan and Patrick Gallagher
- Community Relations Commission – Deputy Mayor Pro Tem Ben Harris and André Davidson
- Cultural Affairs Commission – André Davidson and Patrick Gallagher
- DART Board of Directors – Loretta Ellerbe and Faye Moses Wilkins
- Heritage Commission – Mayor Pro Tem Lissa Smith and Lee Dunlap
- Library Advisory Board – Mayor Pro Tem Lissa Smith and Pat Miner
- North Texas Municipal Water District Board – Mayor Pro Tem Lissa Smith and Deputy Mayor Pro Tem Ben Harris
- Parks and Recreation Planning Board – Pat Miner and Jim Duggan
- Photographic Traffic Signal Advisory Committee – André Davidson and Patrick Gallagher
- Planning and Zoning Commission – Lee Dunlap and Pat Miner
- Plano Housing Authority – Lee Dunlap and Jim Duggan

- Retirement Security Plan Committee – City Manager Bruce D. Glasscock
- Self Sufficiency Committee – André Davidson and Jim Duggan
- Senior Citizens Advisory Board – Deputy Mayor Pro Tem Ben Harris and André Davidson
- Tax Increment Financing Reinvestment Zone No. 2 Board – Pat Miner and Patrick Gallagher

Discussion and Direction Regarding a request for financial assistance for a redevelopment project at G Avenue and 14th Street

Director of Planning Jarrell advised that the non-profit Texas State Affordable Housing Corporation (TSAHC) recently purchased 1.5 acres located at the southwest corner of G Avenue and 14th Street from the Plano Housing Authority and will partner with Green Extreme Homes CDC, a non-profit affordable housing builder, to redevelop the property with 40-50 new for-sale units. She further advised that Green Homes is requesting reimbursement from the City for the cost of building demolition and environmental remediation, in an amount not to exceed \$150,000. Ms. Jarrell spoke to redevelopment of the property eliminating abandoned and boarded up buildings and addressing a need for affordable housing with access to transit and funding coming from Tax Increment Finance District #2. She stated that the reimbursement is contingent on approval by the City of a development agreement, rezoning of the property to allow residential development, and submission and approval of a preliminary site plan.

Steve Brown of Green Extreme Homes CDC spoke to the goal of constructing an energy efficient flagship project and other developments completed in Plano. Ms. Jarrell responded to the Council advising of development incentives offered in the past.

The Council stated a consensus directing Staff to bring an agreement forward at the next Council meeting.

Consideration of a request to approve the use of the City of Plano Logo

Director of Policy and Government Relations Israelson spoke to receipt of a request for use of the City's logo as a headstone inscription for former City Manager David Griffin and to City policy requiring Council approval.

Upon a motion made by Council Member Dunlap and seconded by Council Member Duggan, the Council voted 6-0 to approve this use of the City of Plano Logo.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agendas

Council Member Dunlap requested that Consent Agenda Items "C," Bid No. 2012-213-B for Drainage Improvements – Briarwood, Liverpool & Stoney Point to Jim Bowman Construction Company, LP, in the amount of \$278,059 and "H," to approve the purchase of one Hobart Conveyor Dishwasher with accessories for Plano Centre in the amount of \$51,610 from Pasco Brokerage, Inc. be removed for individual consideration due to possible conflicts of interest.

Council Member Dunlap requested that Consent Agenda Items “Y,” an ordinance to amend sections of Article XIII. Cultural Affairs Commission of the Code of Ordinances of the City of Plano to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Cultural Affairs Commission, to remove reference to a board secretary and to amend report requirements; “Z,” an ordinance to amend Section 16-108. of Article VI. Heritage Resource Preservation of Chapter 16 Planning and Development of the City of Plano Code of Ordinances to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Heritage Commission; and “AA,” an ordinance to amend Section 2-161 – Voting Privileges- conflict of interest of Article VII. Community Relations Commission of Chapter 2 Administration of the City of Plano Code of Ordinances to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Community Relations Commission be removed for individual consideration.

Citizens requested that Consent Agenda Item “dd,” an ordinance to amend Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limits for motor vehicles operating on certain sections of Park Boulevard within the corporate limits of the City of Plano be removed for individual consideration.

Council Member Duggan advised that he would be stepping down on a portion of Regular Agenda Item No. “5,” a resolution to adopt the 2012-2013 Action Plan, including the summary of Community Development Block Grant and HOME Partnership objectives and proposed use of funds for program year 2012- 2013 due to possible conflicts of interest.

Nothing further was discussed. Mayor Pro Tem Smith adjourned the Preliminary Meeting at 6:18 p.m.

Lissa Smith, MAYOR PRO TEM

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
June 25, 2012

COUNCIL MEMBERS PRESENT

Lissa Smith, Mayor Pro Tem
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COUNCIL MEMBERS ABSENT

Phil Dyer, Mayor
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STAFF PRESENT

Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Pro Tem Smith convened the Council into the Regular Session on Monday, June 25, 2012, at 7:00 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Dr. Jon Lineberger of Dallas Baptist University led the invocation and The Men of Note Chorus led the Pledge of Allegiance and performed several songs.

PROCLAMATIONS & SPECIAL RECOGNITION

Mayor Pro Tem Smith received a check for major thoroughfare rehabilitation and the Mapleshade project from the Collin County Commissioners Court and recognized the Plano Early Lions Club and Plano Star Courier for sponsoring the annual Independence Day Parade. She recognized the Plano Public Library System's receipt of the Achievement in Excellence in Libraries Award from the Texas Municipal Library Directors Association.

CERTIFICATES OF APPRECIATION

Mr. Greer was not in attendance to receive his certificate for service on the Cultural Affairs Commission.

COMMENTS OF PUBLIC INTEREST

Citizen Robert Miller spoke to a downtown Plano reception planned for June 28, 2012, hosted by the Assistance Center of Collin County.

CONSENT AGENDA

Upon the request of Council Member Dunlap Consent Agenda Items “C” and “H” were removed for individual consideration due to possible conflicts of interest. Upon the request of Council Member Dunlap, Consent Agenda Items “Y,” “Z,” and “AA” were removed for individual consideration. Council Member Duggan advised that he would be stepping down on a portion of Regular Agenda Item “5” due to a possible conflict of interest. Plano Citizens requested that Consent Agenda Item “DD” be removed for individual consideration.

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

Approval of Minutes (Consent Agenda Item “A”)
June 11, 2012

Approval of Expenditures

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

CSP No. 2012-162-C for a 1 year contract with 4 City optional renewals for Avaya Telecommunications Equipment and Services to Affiliated Telephone, Inc. in the estimated annual amount of \$500,000, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Bid No. 2012-206-B for Neighborhood Parks Backstop Removal and Replacement to Bass Site Solutions, LLC in the amount of \$80,315 and authorizing the City Manager or his authorized designee to execute all necessary documents. (Consent Agenda Item “D”)

Bid No. 2012-185-B for Fire Station No. 5 Roof and Wall Sealant Replacement - Project No. 6202 to Nations Roof Central, LLC in the amount of \$105,150 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “E”)

Bid No. 2012-186-B for Municipal Center Exterior Weatherproofing Repair - Project No. 6201 to Chamberlin Dallas, LLC in the amount of \$117,850 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “F”)

Purchase from an Existing Contract

To approve the purchase of Palo Alto firewalls to support the Police Mobile Data Video Recording (MDVR) project, in the amount of \$67,388 from Solid Border, Inc., through a Department of Information (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD- 1123) (Consent Agenda Item “G”)

To approve the purchase of Police Vehicle Make-Ready Accessories in the amount of \$74,958 from Fleet Safety Equipment, Inc. through Tarrant County Contract # 2008-124 and in the amount of \$13,607 from GT Distributors, Inc. through Buy Board Contract # 363-10 for a total of \$88,565 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “I”)

To approve the purchase of carpet replacement at the Maribelle Davis Library in the amount of \$140,478 from Gomez Floor Covering, Inc. through an existing contract/agreement with BuyBoard, and authorizing the City Manager to execute all necessary documents. (BuyBoard Contract #391-12) (Consent Agenda Item “J”)

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

To approve a Professional Services Agreement by and between the City of Plano and Freese and Nichols, Inc., in the amount of \$133,373, for the City Pond Water Quality Upgrades project; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “K”)

To approve a Professional Services Agreement by and between the City of Plano and Birkhoff, Hendricks & Carter, L.L.P., in the amount of \$62,540, for J Place Lift Station Replacement in the City of Plano and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “L”)

To approve an Architectural Services Agreement by and between the City of Plano and Wiginton Hooker Jeffry, PC, in the amount of \$408,900, for Fire Stations 2, 6 and 7 Renovations designs; and authorizing the City Manager or his authorized designee to execute all necessary documents. (Consent Agenda Item “M”)

Approval of a Landscape Architecture Services Agreement by and between the City of Plano and La Terra Studio, Inc. in the amount of \$105,750 for design services for the Plano-Richardson-Murphy Trail Connection, Phase 1 project and authorizing the City Manager or his authorized designee to execute all necessary documents. (Consent Agenda Item “N”)

Approval of Change Order

To AUI Contractors, LLC, increasing the contract by \$89,800 for the 2010- 11 Arterial Pavement Rehab, Coit Road – Spring Creek Parkway to SH 121, Project No. 6146, Change Order No. 1, Bid No. 2011-234-B, and authorizing the City Manager or his authorized designee to execute all necessary documents. (Consent Agenda Item “O”)

Approval of Expenditure

To approve the purchase of Wireless Voice and Data Services in an annual amount not to exceed \$525,000 from AT&T Mobility National Accounts LLC d/b/a AT&T Mobility, through an existing contract and authorizing the City Manager to execute all necessary documents. (DIR contract Number DIR-SDD- 1777) (Consent Agenda Item “P”)

Adoption of Resolutions

Resolution No. 2012-6-7(R): To approve and adopt an updated City of Plano Affirmative Action and Equal Employment Opportunity Program to reflect current practices; authorizing its execution by the City Manager or his designee; and providing an effective date. (Consent Agenda Item “Q”)

Resolution No. 2012-6-8(R): To authorize continued participation with the Steering Committee of Cities Served by Oncor; authorizing the payment of 10 cents per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company, LLC.; and providing an effective date. (Consent Agenda Item “R”)

Resolution No. 2012-6-9(R): To ratify the terms and conditions of an agreement by and between Texas Forest Service and the City of Plano for training purposes; authorizing its execution by the City Manager or his authorized designee; and providing an effective date. (Consent Agenda Item “S”)

Resolution No. 2012-6-10(R): To rescind the approval of the prior Amended and Restated Tax Abatement Agreement granted pursuant to Resolution No. 2012-2-13(R); and approving the terms and conditions of the herein Amended and Restated Tax Abatement Agreement by and between the City of Plano, Texas, the County of Collin, Texas, and Capital One, National Association; authorizing its execution by the City Manager or his authorized designee; and providing an effective date. (Consent Agenda Item “T”)

Resolution No. 2012-6-11(R): To terminate the Economic Development Agreement approved by Resolution No. 2009-9-11 as further amended by Resolution No. 2011-6-8(R) and replacing it with a revised Economic Development Agreement by and between the City of Plano, Texas, and MedAssets, Inc., a Delaware corporation; authorizing its execution by the City Manager or his designee; and providing an effective date. (Consent Agenda Item “U”)

Resolution No. 2012-6-12(R): To certify that the City is eligible to receive financial assistance under the Collin County Parks and Open Space Matching Grant Program as provided by the Collin County Commissioners Court; certifying that the City’s matching share is readily available; designating the Director of Parks and Recreation as being responsible for acting for and on behalf of the City of Plano in dealing with the Collin County Commissioners Court for the purpose of participating in the Collin County Parks and Open Space Matching Grant Program; certifying that the Plano-Richardson-Murphy Trail Connection has been dedicated for public park and recreational uses; and providing an effective date. (Consent Agenda Item “V”)

Resolution No. 2012-6-13(R): To approve the terms and conditions of a first modification of a corporate sponsorship agreement by and between the City of Plano, Texas, and Texas Health Presbyterian Hospital Plano; approving its execution by the City Manager or his designee; and providing an effective date. (Consent Agenda Item “W”)

Resolution No. 2012-6-14(R): To approve the terms and conditions of a Third Amendment to a Development Agreement by and between RH 15th Condos One, Ltd. and the City of Plano for the development of 15th Street Village; authorizing its execution by the City Manager or his authorized designee; and providing an effective date. (Consent Agenda Item “X”)

Adoption of Ordinances

Ordinance No. 2012-6-15: To amend Section 12-112.5(a) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to repeal the four hour duration time limit for curbside loading on certain streets in the Downtown area of the City of Plano and to enact a twenty (20) minute duration time limit for curbside loading on certain streets in the Downtown area of the City of Plano, to abandon the existing curbside loading zone on the north side of Vontress Drive and to establish a new curbside loading zone on the north side of Vontress Drive, declaring it unlawful and a misdemeanor to stand, stop, load or unload motor vehicles in the loading zone for a period different than that defined herein; 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 “BB”)

Ordinance No. 2012-6-16: To abandon all right, title and interest of the City, in and to that certain 85-foot wide Drainage Easement recorded in Volume 1857, Page 841, of the Deed Records of Collin County, Texas and being situated in the Martha McBride Survey, Abstract No. 553, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, John Paul II Building and Endowment Fund, to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date. (Consent Agenda Item “CC”)

Ordinance No. 2012-6-17: To amend specific provisions of the City of Plano Retirement Security Plan as Restated January 1, 2007 and January 1, 2011 to reflect current practices; authorizing its execution by the City Manager, or his designee; providing a repealer clause, a severability clause, a savings clause and an effective date. (Consent Agenda Item “EE”)

END OF CONSENT

Due to possible conflicts of interest, Council Member Dunlap stepped down on the following two items which were considered concurrently.

Bid No. 2012-213-B for Drainage Improvements – Briarwood, Liverpool & Stoney Point to Jim Bowman Construction Company, LP, in the amount of \$278,059, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

Purchase from an Existing Contract: To approve the purchase of one (1) Hobart Conveyor Dishwasher with accessories for Plano Centre in the amount of \$51,610 from Pasco Brokerage, Inc. through an existing contract/agreement with BuyBoard, and authorizing the City Manager to execute all necessary documents. (BuyBoard Contract #355-10) (Consent Agenda Item “H”)

Upon a motion made by Council Member Miner and seconded by Council Member Gallagher, the Council voted 5-0 approve Bid No. 2012-213-B for Drainage Improvements – Briarwood, Liverpool & Stoney Point to Jim Bowman Construction Company, LP, in the amount of \$278,059; and to approve the purchase of one (1) Hobart Conveyor Dishwasher with accessories for Plano Centre in the amount of \$51,610 from Pasco Brokerage, Inc. through an existing contract/agreement with BuyBoard.

Council Member Dunlap resumed his seat on the bench.

Ordinance No. 2012-6-18: To amend Sec. 2-251. – Created; purpose; Sec. 2-253. - Officers; and Sec. 2-257. - Reports of Article XIII. Cultural Affairs Commission of the Code of Ordinances of the City of Plano to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Cultural Affairs Commission, to remove reference to a board secretary and to amend report requirements; and providing a repealer clause, a severability clause, and an effective date. (Consent Agenda Item “Y”)

Council Member Dunlap stated concern regarding the proposed amendment.

A motion was made by Deputy Mayor Pro Tem Harris and seconded by Council Member Miner to amend Sec. 2-251. – Created; purpose; Sec. 2-253. - Officers; and Sec. 2-257. - Reports of Article XIII. Cultural Affairs Commission of the Code of Ordinances of the City of Plano to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Cultural Affairs Commission, to remove reference to a board secretary and to amend report requirements; and further to adopt Ordinance No. 2012-6-18. The Council voted 5-1 with Council Member Dunlap voting in opposition. The motion carried.

Ordinance No. 2012-6-19: To amend Section 16-108. Heritage Commission - Functions of Article VI. Heritage Resource Preservation of Chapter 16 Planning and Development of the City of Plano Code of Ordinances to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Heritage Commission; and providing a repealer clause, a severability clause, and an effective date. (Consent Agenda Item “Z”)

Council Member Dunlap stated concern regarding the proposed amendment.

A motion was made by Council Member Gallagher and seconded by Council Member Miner to amend Section 16-108. Heritage Commission - Functions of Article VI. Heritage Resource Preservation of Chapter 16 Planning and Development of the City of Plano Code of Ordinances to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Heritage Commission; and further to adopt Ordinance No. 2012-6-19. The Council voted 5-1 with Council Member Dunlap voting in opposition. The motion carried.

Ordinance No. 2012-6-19 (cont'd)

Ordinance No. 2012-6-20: To amend Section 2-161 – Voting Privileges; conflict of interest of Article VII. Community Relations Commission of Chapter 2 Administration of the City of Plano Code of Ordinances to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Community Relations Commission; and providing a repealer clause, a severability clause, and an effective date. (Consent Agenda Item “AA”)

Council Member Dunlap stated concern regarding the proposed amendment.

A motion was made by Deputy Pro Tem Harris and seconded by Council Member Miner to amend Section 2-161 – Voting Privileges; conflict of interest of Article VII. Community Relations Commission of Chapter 2 Administration of the City of Plano Code of Ordinances to require abstention from discussion and voting for funding if a commission member serves on a nonprofit board seeking funding before the Community Relations Commission; and further to adopt Ordinance No. 2012-6-20. The Council voted 5-1 with Council Member Dunlap voting in opposition. The motion carried.

To amend Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limits for motor vehicles operating on certain sections of Park Boulevard within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, a publication clause, and an effective date. (Consent Agenda Item “DD”)

Plano resident Marilyn Brooks spoke in opposition to the request citing the proximity of Park Boulevard to residences and concerns regarding safety of pedestrians/children and young drivers from Plano East Senior High School. She requested information regarding the request and Director of Public Works Cosgrove advised that a resident requested a speed study resulting in the recommendation. Resident Vicki Young spoke in opposition, citing residences along Park Boulevard, and safety of children and those exiting vehicles. She spoke to current speeding, the thoroughfare’s status as a residential neighborhood. Citizen Richard M. Phillips, Sr. spoke in opposition to the request and efforts over the years to increase the limit. He spoke to limited visibility, school zones, excessive speed, safety concerns and Park Boulevard being a residential area. Mr. Cosgrove advised that the study was initiated as a result of a speeding ticket and responded to the Council regarding the limit along the entire length of east Park Boulevard and similarities along Parker Road.

A motion was made by Council Member Miner and seconded by Council Member Dunlap to approve the request. The Council voted 3-3 with Mayor Pro Tem Smith, Deputy Mayor Pro Tem Harris and Council Member Dunlap voting in opposition. The motion failed. Council directed Staff to bring forward consideration of an increased speed limit on Park Boulevard from Shiloh Road east to the City limits.

Transmittal of FY2010-2011 Affirmative Action Plan (Regular Agenda Item “1”)

Human Resources Director Parrish reviewed the history of the Affirmative Action Program and spoke to making sure there is a diverse applicant pool. He reviewed the City’s labor force as it compares to Collin County and spoke to use of the 2000 Census information and analysis of underutilization/concentration reflecting employment traditions. Mr. Parrish reviewed information regarding new hires, promotions, applicants, civil service screening and testing and the City’s commitment to the spirit and objectives of true equal employment opportunity including those with disabilities.

Public Hearing and adoption of Ordinance No. 2012-6-21 of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 128 for tax abatement consisting of a 18.908 acre tract of land located in the Samuel Brown Survey, Abstract No. 108, and the Maria C. Vela Survey, Abstract No. 935, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date. (Regular Agenda Item “2”)

Director of Plano Economic Development Bane spoke to statutes requiring the establishment of reinvestment zones which include a Public Hearing and to this agreement based on a ten-year abatement of 50% for an estimated \$28 million in real property and \$1 million in business personal property commencing on January 1, 2014. Council Member Dunlap requested that in the future, Staff provide a graphic of the property being considered for the reinvestment zone.

Mayor Pro Tem Smith opened the Public Hearing. No one spoke for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Dunlap and seconded by Council Member Miner, the Council voted 6-0 to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 128 for tax abatement and further to adopt Ordinance No. 2012-6-21.

Resolution No. 2012-6-22(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas, Cole OF Plano TX, LLC and MedAssets, Inc. providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date. (Regular Agenda Item “3”)

Director of Plano Economic Development Bane advised that the agreement would be between the City of Plano, Cole OF Plano, TX, LLC and MedAssets, Inc. for the construction of a 225,000 square foot office building. She advised that the term of the abatement is for ten years at 50%.

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Dunlap, the Council voted 6-0 to approve the terms and conditions of an agreement by and between the City of Plano, Texas, Cole OF Plano TX, LLC and MedAssets, Inc. providing for real and business personal property tax abatement; and further to adopt Resolution No. 2012-6-22(R).

Public Hearing and adoption of Resolution No. 2012-6-23(R) of the City Council of the City of Plano, Texas, approving the terms and conditions of an interlocal agreement between the City of Plano, the City of McKinney and the Collin County Sheriff's Office for the disbursement of the 2012 Edward Byrne Justice Assistance Grant funds; authorizing its execution by the City Manager or his authorized designee; and providing an effective date. (Regular Agenda Item "4")

Chief Rushin spoke to monies shared among entities with the City of Plano receiving \$39,548 that can be spent in several law enforcement areas. He advised that the City will provide 33% to the county sheriff's department and stated that the recommended purpose is the funding of security cameras at the joint use facility.

Mayor Pro Tem Smith opened the Public Hearing. No one spoke for or against the item. The Public Hearing was closed.

Upon a motion made by Deputy Mayor Pro Tem Harris and Council Member Gallagher, the Council voted 6-0 to approve the terms and conditions of an interlocal agreement between the City of Plano, the City of McKinney and the Collin County Sheriff's Office for the disbursement of the 2012 Edward Byrne Justice Assistance Grant funds; and further to adopt Resolution No. 2012-6-23(R).

Public Hearing and adoption of Resolution No. 2012-6-24(R) of the City Council of the City of Plano, Texas, adopting the 2012-2013 Action Plan, including the summary of Community Development Block Grant and HOME Partnership objectives and proposed use of funds for program year 2012- 2013; and declaring an effective date. (Regular Agenda Item "5")

Community Services Manager Day advised that the plan includes proposed use of funds for 2012-13 and spoke to the application process, public hearings and decision-making of the Community Relations Commission. She advised that recommendations are tied to the goals established by the Council in the Consolidated Plan and that Staff and the Commission request approval as submitted. Ms. Day spoke to revised language: "WHEREAS, the City Council approves of the 2012-2013 Action Plan and the related summaries, objectives, and proposed uses of funds."

Mayor Pro Tem Smith opened the Public Hearing. No one spoke for or against the item. The Public Hearing was closed.

Upon a motion made by Council Member Dunlap and seconded by Council Member Miner the Council voted 6-0 to adopt the 2012-2013 Action Plan, including the summary of Community Development Block Grant and HOME Partnership objectives and proposed use of funds for program year 2012- 2013 with the exception of the Boys and Girls Clubs of Collin County.

Due to a possible conflict of interest, Council Member Duggan stepped down from the bench on consideration of funding for the Boys and Girls Clubs of Collin County.

Resolution No. 2012-6-24(R) (cont'd)

Upon a motion made by Council Member Dunlap and seconded by Council Member Miner, the Council voted 5-0 to approve funding for the Boys and Girls Club.

The Council further adopted Resolution No. 2012-6-24(R) with revision.

Council Member Duggan resumed his seat at the bench.

Resolution No. 2012-6-25(R): To authorize the filing of applications for Federal Funds in an amount not to exceed \$1,431,497 under the Housing and Community Development Act and the HOME Investment Partnership Act; designating Bruce D. Glasscock as Chief Executive Officer and authorized representative of the City for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date. (Regular Agenda Item "6")

Upon a motion made by Council Member Dunlap and seconded by Deputy Mayor Pro Tem Harris, the Council voted 6-0 to authorize the filing of applications for Federal Funds in an amount not to exceed \$1,431,497 under the Housing and Community Development Act and the HOME Investment Partnership Act; and further to adopt Resolution No. 2012-6-25(R).

Public Hearing and adoption of Ordinance No. 2012-6-26 as requested in Zoning Case 2012-16 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 627 so as to allow the additional use of Truck/Bus Leasing on 10.2± acres of land out of the Mary Ann Taylor Survey, Abstract No. 897, located on the south side of Park Boulevard, 700± feet west of Dallas North Tollway, in the City of Plano, Collin County, Texas, presently zoned Regional Commercial with Specific Use Permit No. 427 for Building Material Sales; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: HD Development Properties, LP (Regular Agenda Item "7")

Director of Planning Jarrell advised that the request is related to truck/bus leasing at a Home Depot store, spoke to other uses in the area, and stated that the Planning and Zoning Commission recommended approval subject to truck/bus leasing permitted as an accessory use only. She advised that no limitation is included on the number of vehicles based on the challenges of enforcement.

Mayor Pro Tem Smith opened the Public Hearing. No one spoke for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Duggan and seconded by Council Member Dunlap, the Council voted 6-0 to grant Specific Use Permit No. 627 so as to allow the additional use of Truck/Bus Leasing on 10.2± acres of land located on the south side of Park Boulevard, 700± feet west of Dallas North Tollway, in the City of Plano, Collin County, Texas; as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-16; and further to adopt Ordinance No. 2012-6-26.

Public Hearing and adoption of Ordinance No. 2012-6-27 as requested in Zoning Case 2012-17 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 628 so as to allow the additional use of Truck/Bus Leasing on 11.5± acres of land located on the south side of State Highway 121, 340± feet east of Ohio Drive, in the City of Plano, Collin County, Texas, presently zoned Regional Commercial with Specific Use Permit No. 424 for Building Material Sales; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: HD Development Properties, LP (Regular Agenda Item “8”)

Director of Planning Jarrell advised that the request is related to truck/bus leasing at a Home Depot store and stated that the Planning and Zoning Commission recommended approval subject to truck/bus leasing permitted as an accessory use only.

Mayor Pro Tem Smith opened the Public Hearing. No one spoke for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Miner and seconded by Council Member Dunlap, the Council voted 6-0 to grant Specific Use Permit No. 628 so as to allow the additional use of Truck/Bus Leasing on 11.5± acres of land located on the south side of State Highway 121, 340± feet east of Ohio Drive, in the City of Plano, Collin County, Texas; as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-17; and further to adopt Ordinance No. 2012-6-27.

Nothing further was discussed and Mayor Pro Tem Smith adjourned the meeting at 8:12 p.m.

Lissa Smith, MAYOR PRO TEM

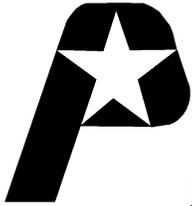
ATTEST:

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:		July 23, 2012			
Department:		Puchasing			
Department Head		Diane Palmer-Boeck			
Agenda Coordinator (include phone #): Nancy Corwin x7137					
CAPTION					
CSP No. 2012-194-C for one (1) year annual contract with three (3) City optional renewals for street sweeping services estimated in the amount of \$108,047 to Sweeping Services of Texas – Operating, LP, and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2011-12, 2012-13, 2013-14, 2014-15	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	90,000	320,701	410,701
Encumbered/Expended Amount		0	-62,953	0	-62,953
This Item		0	-17,734	-320,701	-338,435
BALANCE		0	9,313	0	9,313
FUND(s): MUNICIPAL DRAINAGE FUND					
<p>COMMENTS: This item approves price quotes. Expenditures will be made in the Municipal Drainage Operations cost center within the approved appropriations for each year of the contract. The estimated amount to be spent in FY 2011-12 is \$17,734. The estimated future amount is \$320,701, (\$108,047 in FY 2012-13, \$108,047 in FY 2013-14, and \$104,607 in FY 2014-15) and will be based on need within budget appropriations. Funding for the street sweeping agreement is included in the approved FY 2011-12 Operating Budget.</p> <p>STRATEGIC PLAN GOAL: Street Sweeping relates to the to the City's Goal of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
Staff recommends the Competitive Sealed Proposal of Sweeping Services of Texas – Operating, LP estimated in the amount of \$108,047, be accepted as the best value conditioned on the timely execution of necessary contract documents for street sweeping services.					
List of Supporting Documents: Recommendation Memo dated July 12, 2012, CSP Recap			Other Departments, Boards, Commissions or Agencies N/A		



*P.O. Box 860358
Plano, Texas 75086-0358
972-769-4140
Fax No. 972-769-4172*



MEMORANDUM

DATE: July 12, 2012

TO: Nancy Corwin, Sr. Buyer
Purchasing Division

FROM: Billy Clay, Public Works Superintendent
Streets/Drainage

**SUBJECT: Street Sweeping Services Recommendation
(CSP No. 2012-194-C)**

The Public Works Street Sweeping Services Committee consisted of Billy Clay and Josh Schultz. The process began in May 2012 with reviewing and revising specifications for the street sweeping services. The CSP went out in mid-June and was reviewed in June. The City received 3 responses. The estimated expenditure for this project is \$96,030.56.

The evaluation committee recommends the lowest best and final offer received from Sweeping Services of Texas in the amount of \$108,047.00. The contract will be awarded for a term of one (1) year with three (3) City optional renewals.

The funding for this project is coming from the Municipal Drainage Fund (47-471).

Should this contract not be awarded the citizens may complain about the buildup of street trash along curbs and general reduction of cleanliness of the streets and the City will be in violation as it is a requirement of the City's Storm Water Permit.

Please let me know if you have questions regarding our recommendation.

xc: David Falls, Public Works Operations Manager

CITY OF PLANO
CSP NO. 2012-194-C
FOR STREET SWEEPING SERVICES

CSP RECAP

CSP opening Date/Time: June 15, 2012 @ 3:00 PM

Number of Vendors Notified: 720

Vendors Submitting "No Bids": 0

Number of Proposals Considered: 3

Sweeping Services of Texas – Operating, LP	\$108,047.
Flagship Inc.	\$112,125.
Mister Sweeper	\$130,230.

Proposals Received - Not Considered: 0

Recommended Vendor(s):

Sweeping Services of Texas – Operating, LP

Nancy Corwin

July 13, 2012



**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:		7/23/12			
Department:		Purchasing			
Department Head		Diane Palmer-Boeck			
Agenda Coordinator (include phone #): Earl Whitaker x7074					
CAPTION					
Bid No. 2012-230-C for a one (1) year contract with three (3) city optional renewals to purchase Traffic Signal Controller Cabinets for Inventory Control & Asset Disposal (ICAD) from Paradigm Traffic Systems, Inc., in an estimated amount of \$110,278 and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2011-12, 2012-13, 2013-14 & 2014-15	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	1,410,445	330,834	1,741,279
Encumbered/Expended Amount		0	-905,505	0	-905,505
This Item		0	-110,278	-330,834	-441,112
BALANCE		0	394,662	0	394,662
FUND(S): WAREHOUSE					
<p>COMMENTS: This item approves price quotes. Expenditures will be made in the Inventory Stock department based on need within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2011-12 is \$110,278. The estimated future annual amount is \$330,834, which will be made within approved budget appropriations. Remaining balance will be used for other Inventory purchases.</p> <p>STRATEGIC PLAN GOAL: The contracted purchase for Traffic Signal Controller Cabinets for Warehouse Inventory relates to the City's Goal of a Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
Staff recommends approval of a one (1) year contract with three (3) city optional renewals to purchase Traffic Signal Controller Cabinets for Inventory Control & Asset Disposal (ICAD) from Paradigm Traffic Systems, Inc., in the estimated amount of \$110,278.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Award Memo, Bid Recap			NA		



Date: July 3, 2012
To: Earl Whitaker, Purchasing Buyer Supervisor
From: Josh Mathewes, ICAD Supervisor
Subject: Award of Bid 2012-230-C Traffic Signal Controller Cabinets

It is the recommendation from ICAD based on inventory requirements and Signals based on specifications to award to Paradigm Traffic Systems, Inc., for Contract 2012-230-C in the estimated amount of \$110,278.00.

Failure to award bid on the item above would result in traffic intersections to be dark or shut down in the result of a lighting strike at or near the intersection, a vehicular accident where the cabinet is run over or into, mechanical and or other types of failure that results in the inability of the cabinet to perform and or be structurally sound. This item houses all the major components to include the traffic signal controller to maintain proper operation of the traffic signals. This item can take several months to produce so the City of Plano keeps several on standby in the Warehouse at all times. This item is not available from other cities for our use due to the specifications that they are built to. Every city has their own unique specifications to ensure their traffic lights work according to their design and traffic plans.

Not awarding this bid could produce a catastrophic situation at major intersections(s) in the City of Plano that was designed and built to ensure Public Safety for vehicle and pedestrian traffic.

The specifics of this bid are on file with the Purchasing Division.

Feel free to contact me if you have any questions at extension 4283

Josh Mathewes
Inventory Control/ Asset Disposal Supervisor

CITY OF PLANO

BID NO. 2012-230-C
Traffic Signal Controller Cabinets
BID RECAP

Bid opening Date/Time: June 6, 2012 @ 2:00 pm

Number of Vendors Notified: 1,392

Vendors Submitting "No Bids": 0

Number of Bids Non-Responsive: 0

Number of Bids Submitted: 1

Paradigm Traffic Systems, Inc.

\$110,278.00

Recommended Vendor:

Paradigm Traffic Systems, Inc.

\$110,278.00

Earl S. Whitaker

Earl S. Whitaker
Buyer Supervisor

July 10, 2012

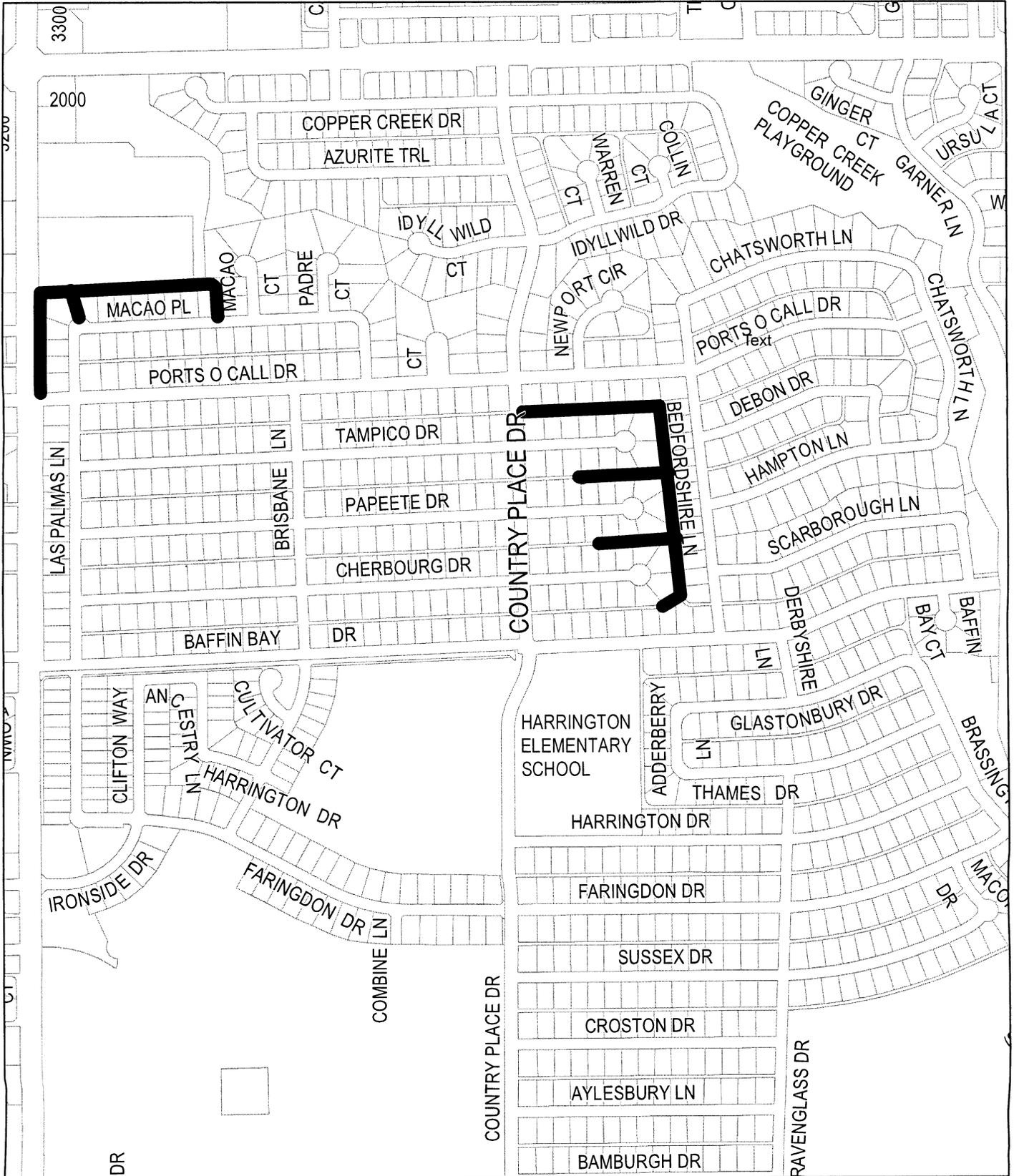
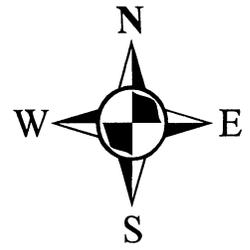
Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		07/23/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #):		Kathleen Schonke (7198)		Project No. 5985
CAPTION				
Bid No. 2012-201-B for Alley Reconstruction – Ports O'Call Area to Estrada Concrete Co., LLC, in the amount of \$407,633, and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	12,448	466,552	0	479,000
Encumbered/Expended Amount	-12,448	-18,284	0	-30,732
This Item	0	-407,633	0	-407,633
BALANCE	0	40,635	0	40,635
FUND(S): STREET IMPROVEMENT CIP				
<p>COMMENTS: Funds are included in the FY 2011-12 Street Improvement CIP. This item, in the amount of \$407,633, will leave a current year balance of \$40,635 for the Alley Reconstruction – Ports O'Call project.</p> <p>STRATEGIC PLAN GOAL: Alley reconstruction relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Staff recommends the Alternate bid of Estrada Concrete Co., LLC, in the amount of \$407,633.00, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents. The second vendor being recommended is Jim Bowman Construction Co., LP, in the amount of \$460,087.50. The Engineer's estimate was \$463,000.00.</p> <p>The project consists of alley reconstruction at the following locations: Alley "A" from Country Place Drive to west of Bedfordshire Lane, Alley "B", south of Tampico Drive, 417' east of Alley "A", Alley "C", south of Papeete Drive, 365 east of Alley "A", Alley "D". from Ports O'Call Drive to Macao Place, and Alley "E", from Alley "D" to Macao Place. Alternate bid is for lower emission cement.</p>				
List of Supporting Documents: Location Map, Bid Recap			Other Departments, Boards, Commissions or Agencies N/A	

PORTS O'CALL AREA ALLEY RECONSTRUCTION PROJECT 5985



CITY OF PLANO

BID NO. 2012-201-B Alley Reconstruction Ports O'Call Area – PROJECT NO. 5985 BID RECAP

Bid opening Date/Time: June 15, 2012 @ 1:00 PM

Number of Vendors Notified: 2070

Vendors Submitting "No Bids": 0

Bids Evaluated Non-Responsive to Specifications: 0

Number of Bids Submitted: 4

	Total Base Bid	Alt #1 Total Bid
Estrada Concrete Co. LLC	\$407,633.00	\$407,633.00
Jim Bowman Construction Co., LP	\$460,087.50	\$460,087.50
Camino Construction LP	\$550,691.50	\$550,691.50
PAEE Corporation	\$669,540.18	\$669,540.18

Recommended Vendor(s):

Estrada Concrete Co. LLC	\$407,633.00	\$407,633.00
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Michael Parrish

June 15, 2012

Michael Parrish, Buyer II

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

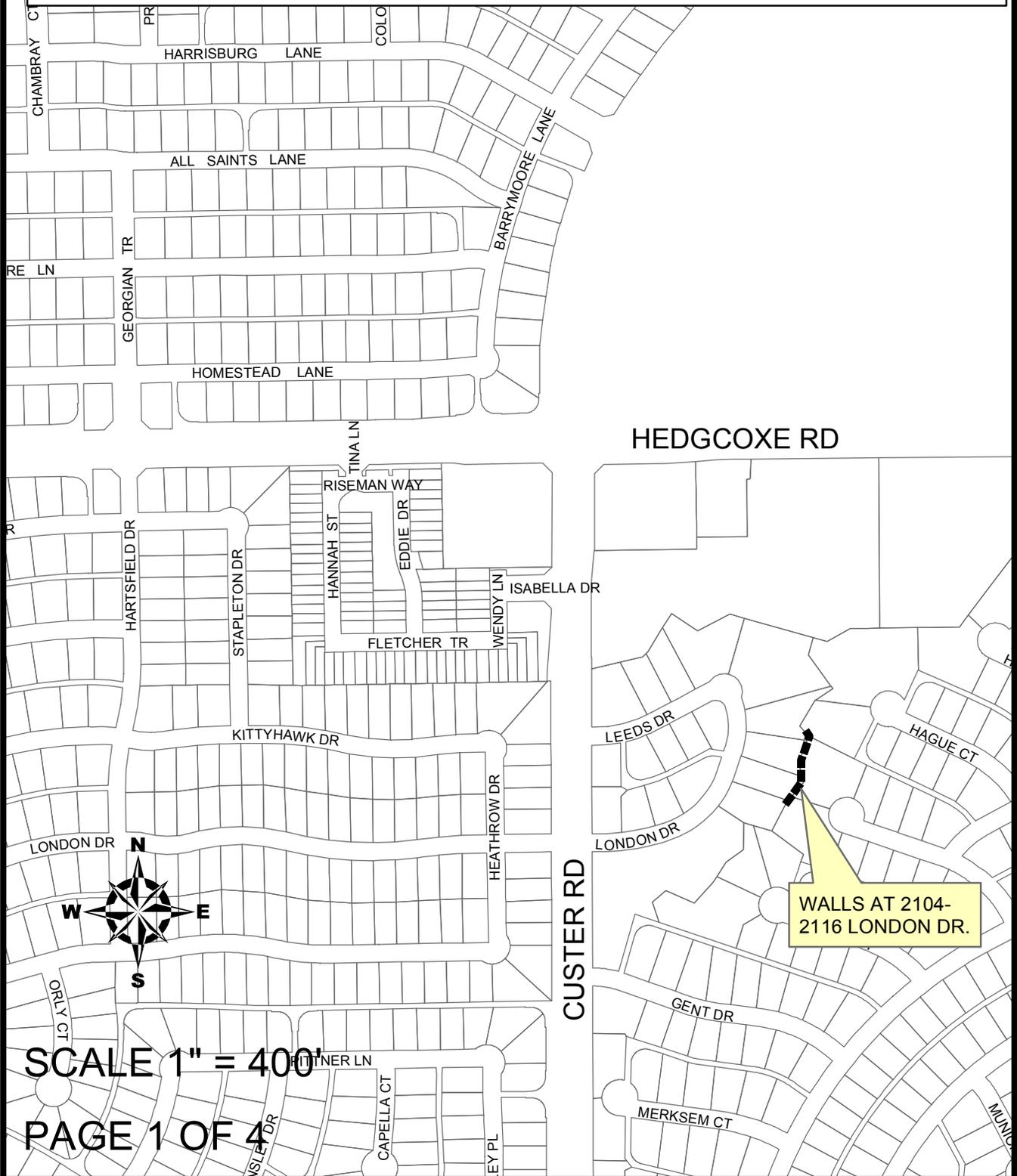
CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		07/23/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #):			Project No. 5848	
CAPTION				
Bid No. 2012-235-B for the Erosion Control Improvements - London, Creekside and 2 Sanitary Sewer Crossings project to ARK Contracting Services, L.L.C. in the amount of \$652,200 and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	56,791	852,000	417,000	1,325,791
Encumbered/Expended Amount	-56,791	-26,327	0	-83,118
This Item	0	-652,200	0	-652,200
BALANCE	0	173,473	417,000	590,473
FUND(S): MUNICIPAL DRAINAGE CIP & SEWER CIP				
COMMENTS: Funds are included in the FY 2011-12 Municipal Drainage and Sewer CIP. This item, in the amount of \$652,200, will leave a current year balance of \$173,473 for the London & Creekside Erosion Control project.				
STRATEGIC PLAN GOAL: Erosion control and replacement of sewer lines relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends bid of ARK Contracting Services, L.L.C., in the amount of \$652,200.00 be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents.				
The second vendor being recommended is Austin Filter Systems, Inc., in the amount of \$758,499.00.				
Engineer's estimate was \$728,000.00.				
The project consists of construction of gabion walls for erosion control at two locations and replacement of sanitary sewer lines for elevated creek crossings at two locations. The following locations are included in the project:				
<ol style="list-style-type: none"> 1. 2104 - 2116 London Drive - Gabion Walls 2. 6724 - 6804 Creekside Lane - Gabion Walls 3. Rowlett Creek - East Parker Road east of East Spring Creek Parkway - Elevated Sewer Crossing 4. Pittman Creek - Custer Road south of Park Boulevard - Elevated Sewer Crossing 				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Location Maps; Bid Recap	Other Departments, Boards, Commissions or Agencies N/A
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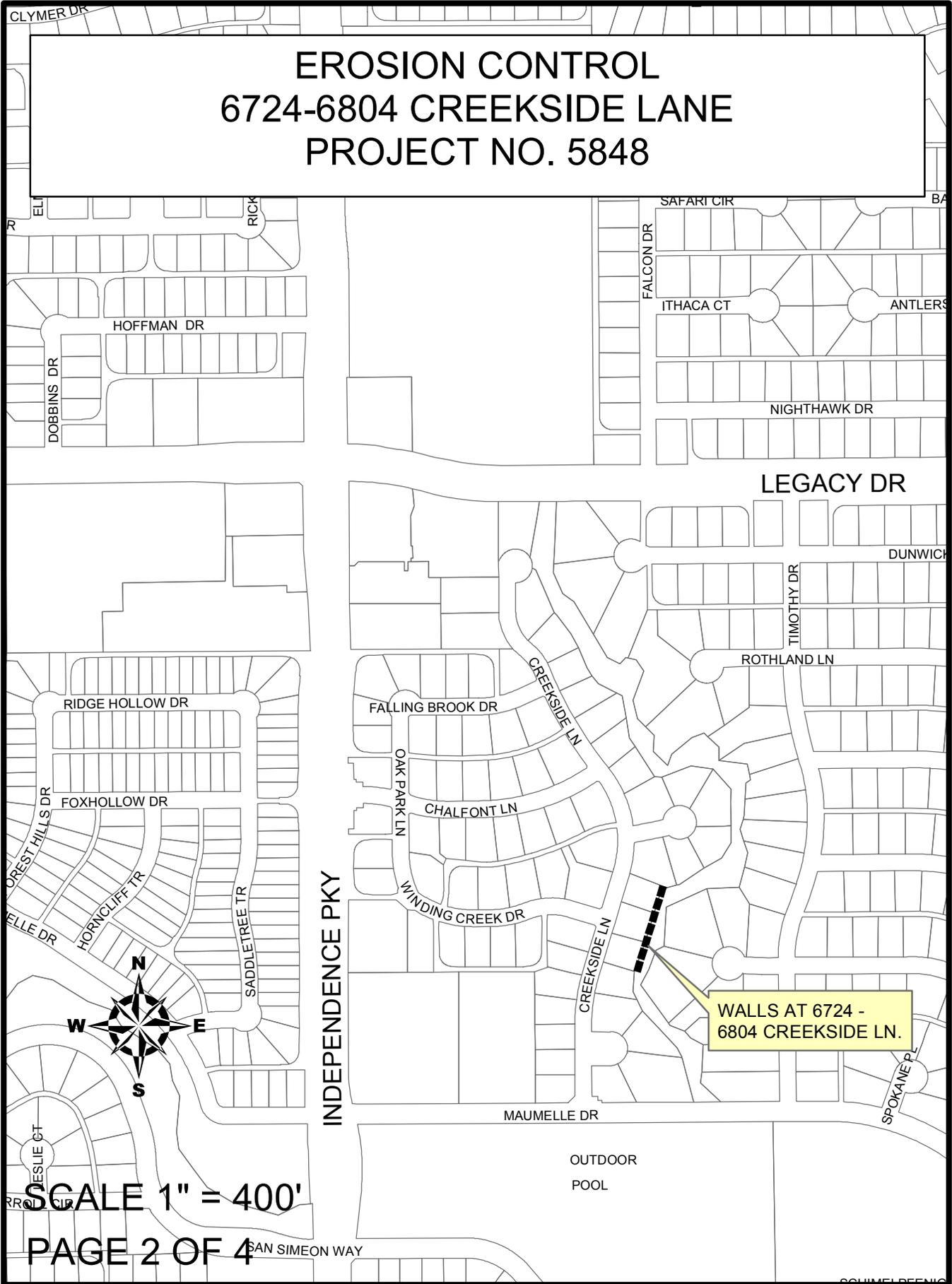
EROSION CONTROL 2104-2116 LONDON DRIVE PROJECT NO. 5848



SCALE 1" = 400'

PAGE 1 OF 4

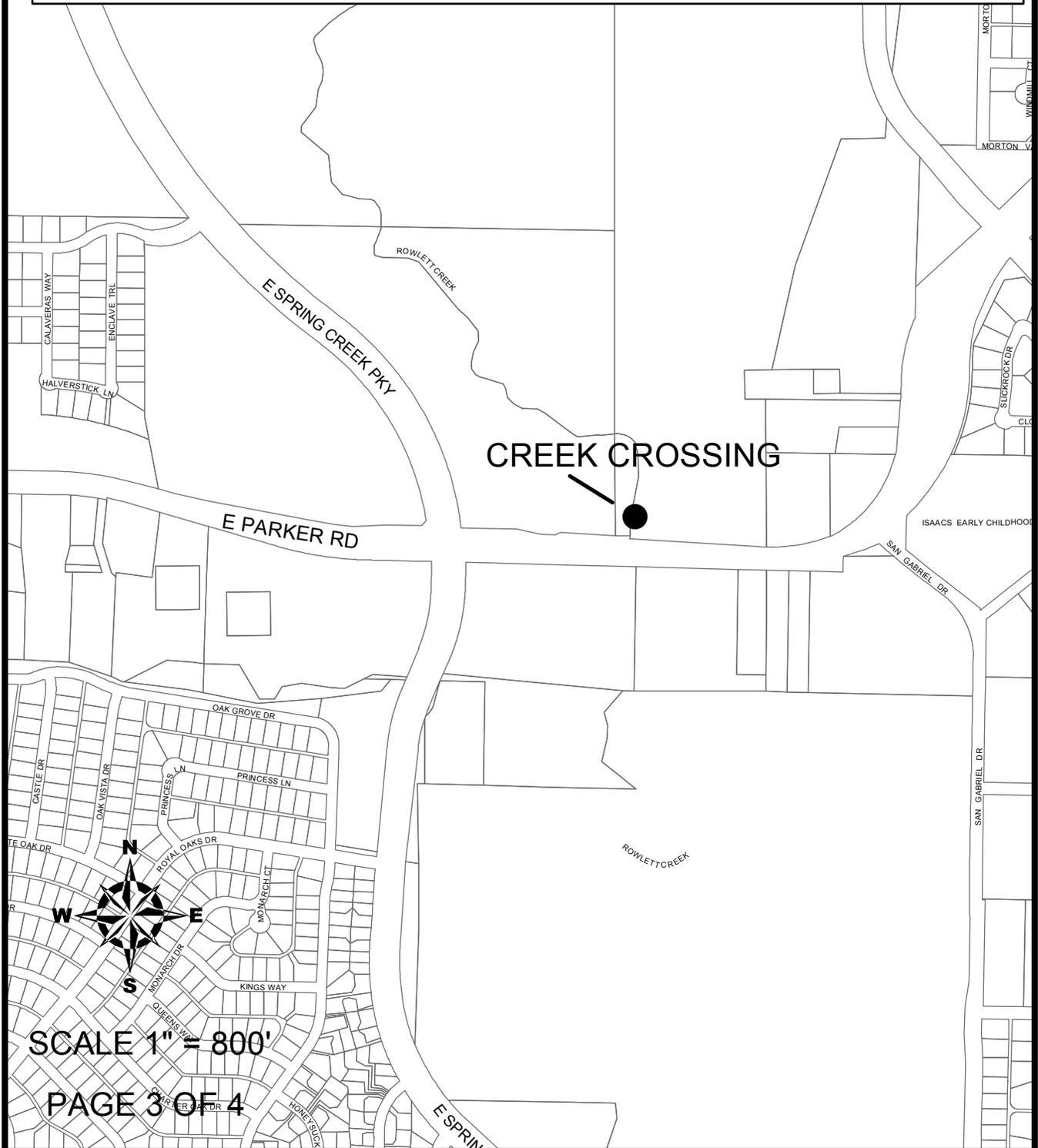
EROSION CONTROL
6724-6804 CREEKSIDE LANE
PROJECT NO. 5848



SCALE 1" = 400'

PAGE 2 OF 4

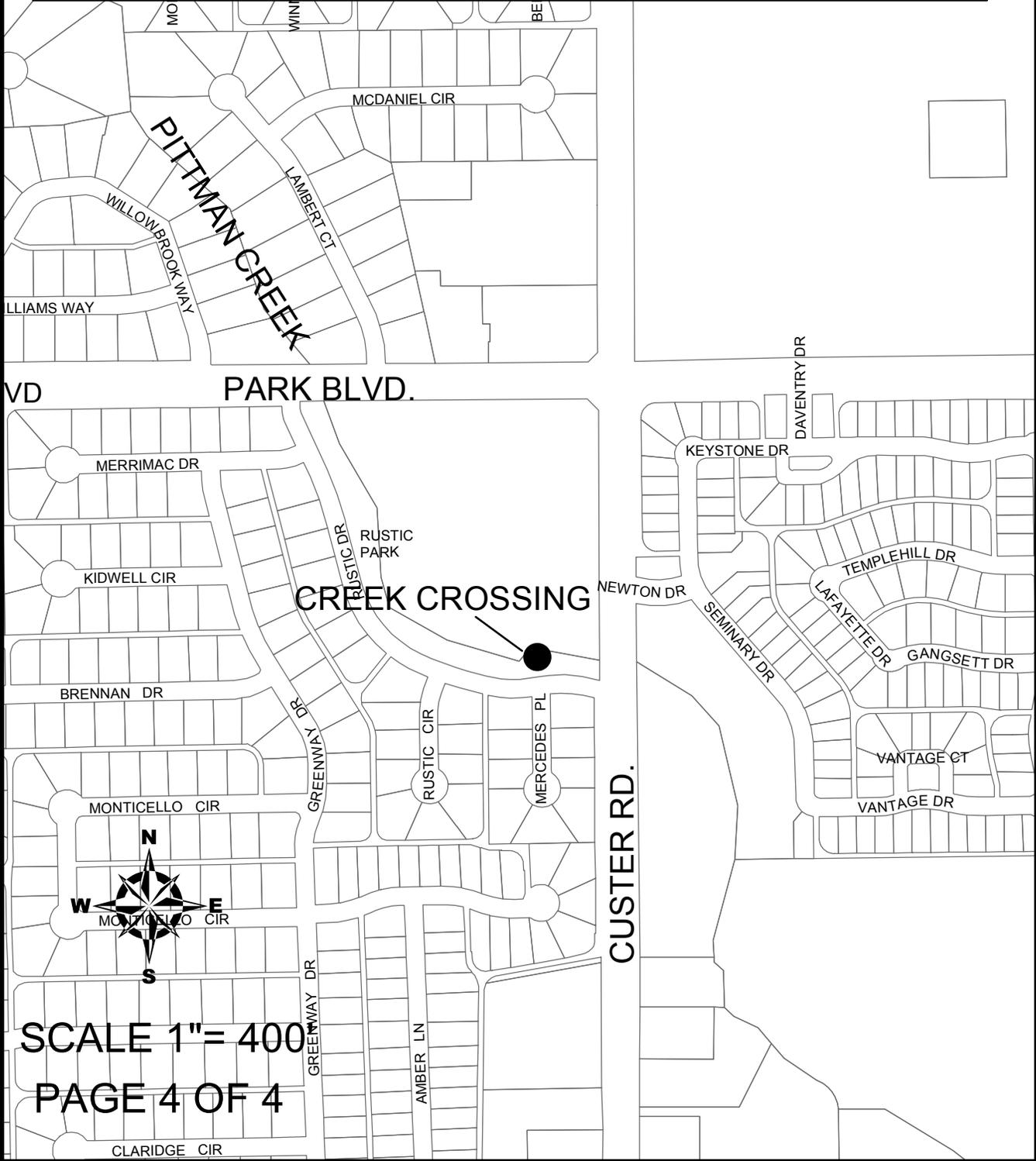
ROWLETT CREEK SEWER CROSSING
EAST PARKER ROAD
EAST OF EAST SPRING CREEK PARKWAY
PROJECT NO. 5848



SCALE 1" = 800'

PAGE 3 OF 4

**PITTMAN CREEK SEWER CROSSING
CUSTER ROAD
SOUTH OF PARK BOULEVARD
PROJECT NO. 5848**



**SCALE 1" = 400'
PAGE 4 OF 4**

CITY OF PLANO

**BID NO. 2012-235-B
EROSION CONTROL IMPROVEMENTS LONDON, CREEKSIDE AND 2
SANITARY SEWER CROSSINGS – PROJECT NO. 5848
BID RECAP**

Bid opening Date/Time: June 22, 2012 @ 3:00 PM

Number of Vendors Notified: 727

Vendors Submitting “No Bids”: 0

Bids Evaluated Non-Responsive to Specifications: 0

Number of Bids Submitted: 3

**ARK CONTRACTING SERVICES LLC
AUSTIN FILTER SYSTEMS INC
DCi CONTRACTING INC**

Total Base Bid
\$652,200.00
\$758,499.00
\$788,685.00

Recommended Vendor(s):

ARK CONTRACTING SERVICES LLC

\$652,200.00

Perry Neeley

June 26, 2012

Perry Neeley, Buyer

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:		07/23/2012		
Department:		Public Works / David Falls		
Department Head		Gerald Cosgrove		
Agenda Coordinator (include phone #): Kim McFarland (972-769-4109)				
CAPTION				
<i>Award of Bid No. 2012-237-P, for the Residential and Arterial Concrete Pavement Under Sealing and Raising Contract, Project No. 6243 to Nortex Concrete Lift and Stabilization, Inc. in the amount of \$1,640,000, and authorizing the City Manager or his authorized designee to execute all necessary documents.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	3,029,000	3,494,502	2,000,000	8,523,502
Encumbered/Expended Amount	-1,979,702	-1,452,002	0	-3,431,704
This Item	0	-1,640,000	0	-1,640,000
BALANCE	1,049,298	402,500	2,000,000	3,451,798
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the FY 2011-12 Capital Reserve Fund. This item, in the amount of \$1,640,000, will leave a current year balance of \$402,500 for the Undersealing Program.				
STRATEGIC PLAN GOAL: Arterial concrete pavement under sealing relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the bid for the Residential and Arterial Concrete Pavement Under Sealing and Raising Contract to Nortex Concrete Lift & Stabilization, Inc. in the amount of \$1,640,000.00. This will establish a fixed price requirements contract with two optional renewals.				
This contract will involve the injection of high density polyurethane foam to under-seal and raise street and alley pavement on residential and arterial thoroughfare locations identified by the City.				
The secondary vendor being recommended is Uretek USA, Inc. in the amount of \$2,475,000.00.				
Engineer's estimate for this project is \$1,500,000.00.				
List of Supporting Documents: Bid Recap			Other Departments, Boards, Commissions or Agencies	

CITY OF PLANO

Bid No. 2012-237-P

**Residential and Arterial Concrete Pavement Under Sealing and Raising
Contract Project 6243**

Bid Recap

Bid opening Date/Time: June 26, 2012 @ 3:00PM

Number of Vendors Notified: 359

Vendors Submitting "No Bids": 0

Number of Bids Submitted:

Vendor Name	Total Bid
Nortex Concrete Lift & Stabilization	\$1,640,000.00
Uretek USA, Inc.	\$2,475,000.00

Bids Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Nortex Concrete Lift & Stabilization

Nancy Corwin

Nancy Corwin, Sr. Buyer

June 26, 2012

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		7/23/12		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
To approve the purchase of replacement light pole structures to support the City's Motomesh Devices, in the amount of \$220,077 from CoServ Electric through an existing franchise agreement, and authorizing the City Manager to execute all necessary documents (Ordinance No. 2008-4-42).				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	222,000	0	222,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-220,077	0	-220,077
BALANCE	0	1,923	0	1,923
FUND(S): TECHNOLOGY SERVICES FUND				
COMMENTS: Funds are available in the 2011-12 Wireless Support Re-Estimate for replacement purchase of light pole structures to support the City's Mesh Devices. The remaining balance of funds will be used for other operating expenditures.				
STRATEGIC PLAN GOAL: Purchasing light pole structures to support the City's Mesh Devices relates to the City's Goal of Financially Strong City with Service Excellence and Safe Large City.				
SUMMARY OF ITEM				
Technology Services recommends Council approve the purchase of labor and materials to replace 32 decorative light pole structures, in the amount of \$220,077, from CoServ Electric through an existing franchise agreement. These new structures will accommodate our wireless access devices for the Motomesh project. CoServ will maintain ownership of the light poles. The replacement poles are taller than the existing poles and will enable the wireless access devices to be placed at the industry-standard height of 14 feet above ground level to ensure optimum performance. This will provide wireless services to Public Safety personnel and other city services. Without the ability to replace these poles and attach our wireless devices to these poles, we will not be able to provide wireless access to our Public Safety personnel in sections of our city.(Ordinance No. 2008-4-42).				
List of Supporting Documents: Staff Memo			Other Departments, Boards, Commissions or Agencies	

Memo

Date: 7/10/2012

To: Diane Palmer-Boeck, Chief Purchasing Officer

From: David Stephens, Director Technology Services

RE: Requesting CoServ Electric replace light poles for Motomesh project

We are requesting that CoServ Electric replace 32 decorative light poles with taller poles to accommodate our wireless access devices for the Motomesh project. CoServ Electric is the owner of these light poles and will maintain ownership of these poles but requires the City of Plano to pay for new taller decorative poles to replace existing poles. The purpose of this wireless network is to provide wireless services to Public Safety personnel and other city services.

The existing poles are 11 feet in height and the new poles will be 25 feet in height. Industry standards require wireless access devices, or any electronic devices attached to a pole, to be at least 14 feet above ground level. Therefore CoServ Electric has designed a pole that is consistent with the rest of their pole designs and provides the necessary clearance for the City of Plano's needs.

These poles are decorative and match the fluted design of the other poles in the service areas. The City has worked with the HOA's in the affected areas and they are in agreement with the proposed poles.

The cost to replace these 32 poles is \$220,076.55. CoServ Electric is the sole owner and maintenance provider for these poles. The City of Plano has an active pole attach agreement to allow us to put our devices on these poles.

Without the ability to replace these poles and attach our wireless devices to these poles, we will not be able to provide wireless access to Public Safety personnel in sections of our city.



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:		07/23/2012		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #): Kathleen Schonne (7198)				Project No. 6231.1
CAPTION				
To approve a Professional Services Agreement by and between the City of Plano and Walter P. Moore and Associates, in the amount of \$62,360 for BNSF Railroad Right-of-Way Drainage Improvements and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	75,000	0	75,000
Encumbered/Expended Amount	0	-9,500	0	-9,500
This Item	0	-62,360	0	-62,360
BALANCE	0	3,140	0	3,140
FUND(S): MUNICIPAL DRAINAGE CIP				
COMMENTS: Funds are included in the FY 2011-12 Municipal Drainage CIP. This item, in the amount of \$62,360, will leave a current year balance of \$3,140 for the BNSF / Kings Ridge Drainage project. STRATEGIC PLAN GOAL: Engineering design services for drainage improvements relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This agreement with Walter P. Moore and Associates is for engineering design and plan preparation of BNSF Railroad Right-of-Way drainage improvements. The site is currently experiencing issues related to poor drainage capacity on the east side of the railroad and erosion on the west side of railroad caused by drainage from the Kings Ridge Subdivision. The contract fee is for \$62,360.00 and is detailed as follows:				
BASIC SERVICES				
Topographic Surveying		\$5,200		
Geotechnical Study		\$4,200		
Preliminary Design		\$15,160		
Final Design		\$10,840		
Bid Phase Services		\$1,560		
Construction Project Management		\$1,300		
Construction Site Visits		\$4,200		
Final Walk Through		\$1,400		
Prepare As-Builts		\$1,060		
Basic Services Total Maximum Fee		\$44,920		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

SPECIAL SERVICES

Drainage Analysis	\$9,500
BNSF Coordination (survey, design, construction)	\$4,840
Drainage Easement Document Preparation	\$1,600

Special Services Total Maximum Fee \$15,940

Basic Services Total Maximum Fee	\$44,920
Special Services Total Maximum Fee	\$15,940
Reimbursables	\$1,500

TOTAL FEES \$62,360

List of Supporting Documents:

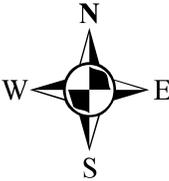
Location Map; Engineering Services Agreement

Other Departments, Boards, Commissions or Agencies

N/A

LOCATION MAP

BNSF RAILROAD ROW DRAINAGE IMPROVEMENT # 6231.1



1 inch = 800 feet



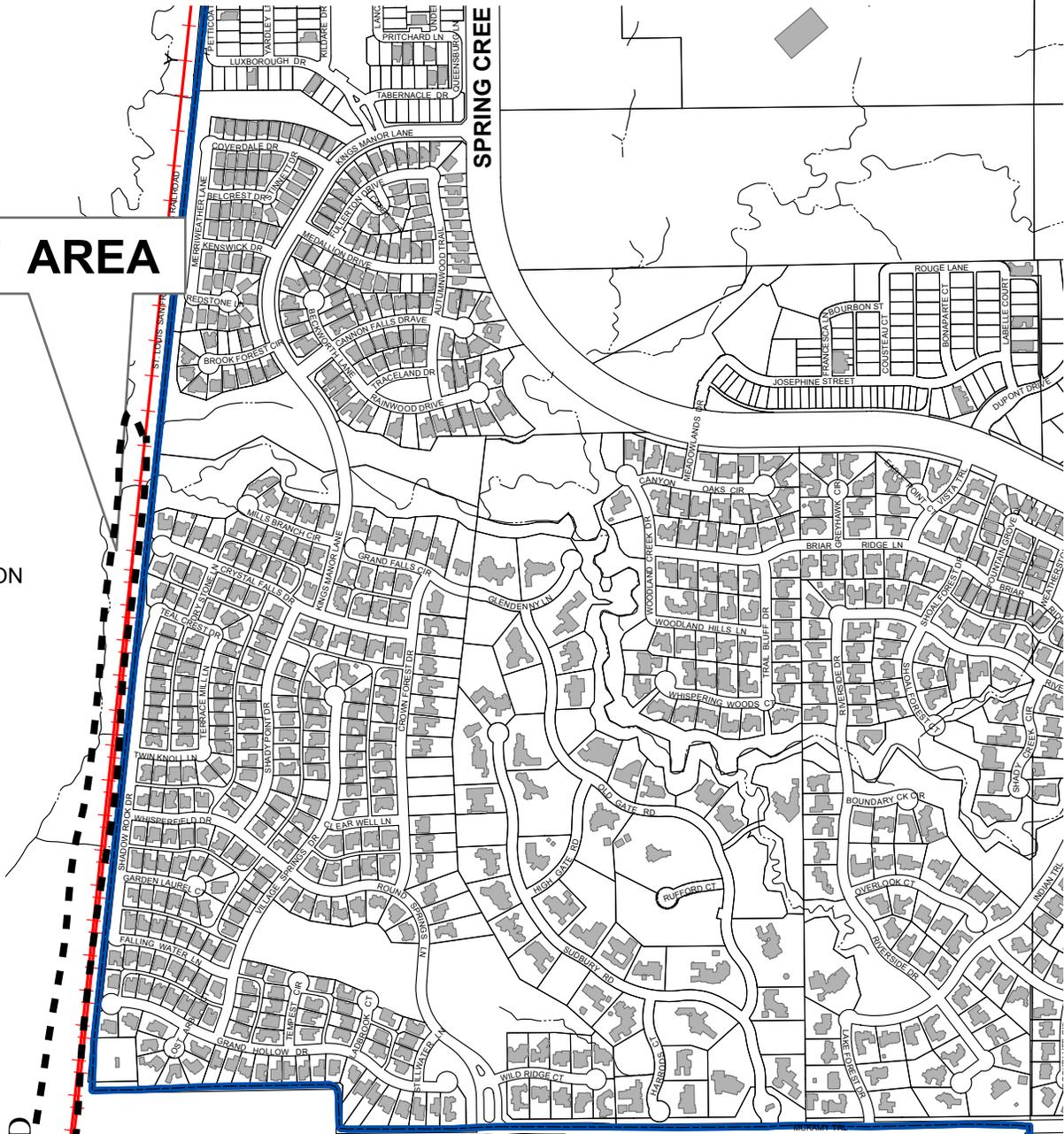
CITY OF THE COLONY

PROJECT AREA

HEBRON

BNSF -RAILROAD

CITY OF THE COLONY



BNSF RAILROAD RIGHT-OF-WAY DRAINAGE IMPROVEMENTS

PROJECT NO. 6231.1

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 **WALTER P. MOORE AND ASSOCIATES**, 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 **BNSF RAILROAD RIGHT-OF-WAY DRAINAGE IMPROVEMENTS** project located in the City of Plano, Denton County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

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

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY

NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

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

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

Walter P. Moore and Associates
1845 Woodall Rodgers Freeway, Suite 1650
Dallas, TX 75201
Attn: Earnest Fields, P.E.

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Denton 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:

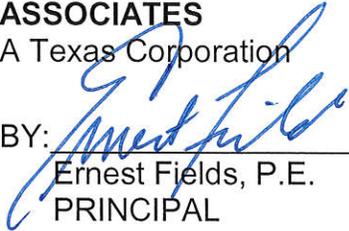
This Agreement shall be effective from and after execution by both parties hereto.

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: 7/12/2012

BY: 
Ernest Fields, P.E.
PRINCIPAL

WALTER P. MOORE AND ASSOCIATES

A Texas Corporation

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 12 day of July, 2012, by **ERNEST FIELDS, P.E., Principal, of Walter P. Moore and Associates**, a **Texas** corporation, on behalf of said corporation.



Amanda J. Morse

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BRUCE D. GLASSCOCK, City Manager, of the City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

**EXHIBIT A
SCOPE OF SERVICES**

**BNSF Railroad Right-of-Way Drainage Improvements
Project No. 6231.1
CIP Number**

PROJECT DESCRIPTION

The project includes design and plan preparation for repair of existing drainage along the BNSF Railroad Right-of-Way along the city limits between the City of Plano and The Colony. The site is currently experiencing issues related to poor drainage capacity on the east side of the railroad and erosion on the west side of the railroad. The railroad right-of-way is entirely within the City of The Colony.

BASIC SERVICES:

A. Design Standards

1. This project shall be designed in accordance with the following:
 - Geodetic Monumentation Manual
 - Storm Drainage Design Manual
 - Stream Bank Stabilization Manual
 - Erosion & Sediment Control Manual
 - Standard Construction Details
 - NCTCOG Standard Specifications for Public Works Construction
 - Special Provisions to Standard Specifications for Public Works Construction
 - Sample Plan Set
2. All plans submitted to the City shall be signed and sealed in accordance with state law.

B. Research and Data Collection –

1. Meet with City of Plano engineering staff and obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, any available City of Plano reports on the erosion problems, and other information available for the project area including the Wetland Report from Integrated Environmental Solutions.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.

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3. Meet with City of The Colony staff to coordinate project construction and other issues that may have an impact across municipal boundaries.

C. 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 and The Colony control network.
2. Establish horizontal and vertical project control monumentation (a minimum of two).
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 and referenced by utility name (i.e. T.U. Elec., GTE Telephone, Lone Star 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. Obtain topographic information including cross-sections of the existing ground features as needed for design.
7. Locate all pertinent creek features for design including top of bank, existing walls and slabs, existing buildings, fences, (within construction area) on the sites.
8. Contact utility companies to locate and uncover utilities which conflict with the proposed project. Tie uncovered utilities to the local control network.
9. Identify the street address of all adjacent properties to the proposed construction and show on drawings.
10. Provide a drawing of the project sites with 1' contours and all located features.

D. Geotechnical Report –

1. Perform geotechnical investigation for proposed design in the project area. The geotechnical engineer will take reasonable precautions to avoid damage to utilities and flatwork at the sites, but will only be responsible for damages at the sites caused by their negligent acts. Submit one copy of geotechnical report to the City with the preliminary design plans.
2. The geotechnical report shall include, but not be limited to the following:
 - A subsurface investigation consisting of hand boring at the erosion site to observe general site conditions, explore the subsurface materials, obtain samples for laboratory analysis and observe short-term groundwater levels as encountered during the drilling of the borings.

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- Laboratory testing on selected samples to classify soil and rock types and to determine the engineering properties of the subsurface materials.
 - Soil classification based on laboratory tests, estimation of subgrade support characteristics and recommended subgrade stabilization using lime for a rigid pavement.
3. Utilize existing geotechnical data available from the City of Plano for improvements.
 4. Show geotechnical boring locations on the plan view of the construction drawings and cross reference to the geotechnical report. Soil horizon and vertical bore information shall not be shown on the vertical profile view of the construction plans.

E. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets at the engineering scale indicated:
 - Cover sheet.
 - Project layout control sheet(s). Scale 1"= 100'.
 - Quantity sheet.
 - Cross-sections of proposed erosion protection and detail sheets. Establish design concepts for repair of areas of poor drainage and erosion.
 - Drainage area maps for improvements. Scale 1"= 100'.
 - Storm drain improvement plan & profile sheets. Scale 1"= 20'.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. Document and photograph current channel conditions and identify potential locations of construction access and staging.
4. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
5. Submit five sets of (22"x34") preliminary plans and preliminary statement of probable construction cost to the City for review.
 - x Public Works Operations
 - x Public Works Engineering
 - x Inspectors
 - Transportation
 - x Parks
 - x Front desk

6. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.
7. Provide an electronic PDF format half-size set of preliminary plans (11"x17" sheets to scale) to the City for distribution to the franchise utility companies. Utility coordination drawings shall include; cover sheet, survey, plan view of potential drainage improvements, typical sections, and utilities and cross-sections (if applicable).

F. Final Design –

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details into the construction plans and prepare additional details as required.
6. Meet with home and/or property owners at prospective construction access locations. Coordinate between owners and City regarding this access and the City's preparation of temporary access and construction easements, if required. Engineer will provide the Contractor and the City of Plano with site access information and agreement concepts.
7. Provide necessary Storm Water Pollution Prevention Concept Plans in accordance with the City of Plano requirements.
8. Take off final construction quantities and prepare final construction cost estimates.
9. Submit five sets of pre-final plans, one set of special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.
10. Incorporate City final comments into the plans and bid documents.
11. Submit five sets of final prints, three bound copies of the bid documents and one unbound original bid document set to the City of Plano.
12. Provide an electronic PDF format half-size of final plans (11"x17" sheets to scale) to the City for distribution to the franchise utility companies.

G. Bid Phase Services –

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. Furnish plans and bid documents for up to five plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
4. Assist City staff in conducting a pre-bid conference, if required.
5. Prepare and distribute addenda to bid documents as necessary.

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6. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
7. Submit a CD-ROM disk of the bid set plans in a PDF format.
8. Provide bid tabulation to the City of Plano within four working days of the bid letting.
9. 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.
10. Assist City staff in a pre-construction conference and neighborhood meeting (if required).
11. Furnish thirteen sets of final construction plans and three sets of the contract documents manual to the City for construction.

H. Construction Administration –

1. Provide (a maximum of six) periodic site visits, as needed, by the design engineer with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. Prepare and process change orders in accordance with City of Plano format.
4. Review concrete mix design, samples, catalog data, shop drawings, laboratory tests, shop mill test of material and test equipment and other submittal information to assure conformity with construction plans. Provide written responses to requests for information or clarification.
5. Assist the City staff in conducting the final inspection.
6. Recommend final acceptance of work when acceptable.
7. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and a CD-ROM disk containing scanned images of the 22" x 34" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

SPECIAL SERVICES:

A. Drainage Analysis –

1. Perform calculations to determine options for repairing areas of poor drainage. Analysis will consist of determining the current limiting elements at the site (inlet clogging, crossing size, ditch capacity, etc.).
2. Establish design concepts for repair of areas of poor drainage.

B. BNSF Coordination –

1. Topographic survey access to BNSF right-of-way shall be coordinated with railroad personnel to maintain railroad requirements for activities along the railroad.
2. Preliminary and final design drawings shall be submitted to BNSF for review.
3. Engineer shall respond in writing to BNSF comments received on drawings.
4. Engineer shall attend one (maximum) coordination meeting with BNSF plan reviewers.
5. Engineer shall assist the Contractor with obtaining access to BNSF right-of-way for construction activities.

C. Drainage Easement Document Preparation –

1. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for a drainage easement on a per easement basis. Deliver three (3) reviewed and approved originals to the City.
2. Set new iron pins at all new corners, PC's and PT's of new drainage easement.

ADDITIONAL SERVICES

Additional Services to be performed by Engineer, if authorized by the City of Plano, which are not included in the above-described basic services, are described as follows:

- A. Any property surveying services including preparation of right-of-way documentation;
- B. Assisting City of Plano with public meetings or hearings to inform residents (*other than that listed under G.10*);
- C. Performing title searches and examination of deed records;
- D. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications;

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- E. Providing full time site inspection during construction of the project;
- F. Performing designs for trench safety and retaining walls, etc. which are not included in the above Scope of Services;
- G. Revisions to plans as result of revisions after completion of original final design (unless to correct error on original plans);
- H. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including preparation of engineering data and reports for assistance to the City of Plano;
- I. Assisting the City of Plano in claims disputes with the Contractor(s);
- J. Assisting the City of Plano in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Engineer on a fee basis negotiated by the respective parties outside of and in addition to this Agreement;
- K. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance other than listed in the above Scope of Services, and other assistance required to address environmental issues;
- L. Any Corps of Engineers work including but not limited to wetlands delineation, meetings with the Corps of Engineers staff, wetlands mitigation, or any other work not listed in the Scope of Services;
- M. Attending homeowners and/or Council meetings including preparation of all displays, reports, or other data for use at such meetings;
- N. Preparation of plans and/or specifications related to the relocation of utilities;
- O. Fees for permits and advertising;
- P. Flood plain reclamation plans;
- Q. Consulting services by others not included in proposal;
- R. Inspection and testing services during construction;

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- S. Preparation and processing monthly or final construction pay estimates;
- T. Determination of a floodway;
- U. Preparation of a Request for Letter of Map Revision or Conditional Letter of Map Revision, or any work pertaining to it.

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**BNSF RAILROAD RIGHT-OF-WAY DRAINAGE IMPROVEMENTS
EXHIBIT B**

DESIGN SCHEDULE

Task	Anticipated Duration (weeks)	Projected Week Completed
1. Geotechnical Study	5	5
2. Topographic Surveying	5	6
3. Preliminary Design and Drafting (60%)	5	10
4. Submit to City	0	10
5. City Review	3	13
6. Meet with City	0	13
7. Incorporate City Comments	1	14
8. 95% Design, Drafting, & Specifications	3	17
9. Submit 95% Design and Estimate to City	0	17
10. City Review	3	20
11. Meet with City	0	20
12. Incorporate City Comments	1	21
13. Final Design (100%), Drafting, & Specifications	2	23
14. City Review 100%	1	24
15. Final Revisions - Bid Documents	1	25
16. Submit Final CD's to City	0	25

**BNSF RAILROAD RIGHT-OF-WAY DRAINAGE IMPROVEMENTS
EXHIBIT C**

PAYMENT SCHEDULE

We will bill you monthly a percentage of the following maximum fees for each of the tasks listed below in accordance with the completion percentage of each task.

	<u>TASK</u>	<u>FEE</u>
BASIC SERVICES		
	Topographic Surveying	\$ 5,200
	Geotechnical Study	\$ 4,200
	Preliminary Design	\$ 15,160
	Final Design	\$ 10,840
	Bid Phase Services	\$ 1,560
	Construction Project Management	\$ 1,300
	Construction Site Visits (\$700/visit, as needed)	\$ 4,200
	Final Walk Through	\$ 1,400
	Prepare As-Builts	\$ 1,060
	Basic Services Total Maximum Fee	\$ 44,920
 SPECIAL SERVICES		
	Drainage Analysis	\$ 9,500
	BNSF Coordination (survey, design, construction)	\$ 4,840
	Drainage Easement Document Preparation	\$ 1,600
	Special Services Total Maximum Fee	\$ 15,940
	 Basic Services Total Maximum Fee	 \$ 44,920
	Special Services Total Maximum Fee	\$ 15,940
	Reimbursables	\$ 1,500
	TOTAL FEES	\$ 62,360

EXHIBIT C

SCHEDULE OF HOURLY RATES

Hourly Invoicing Rates - 2012
Infrastructure Engineering Services

<u>Category</u>	<u>Rate</u>
Senior Principal	\$240
Principal	\$200
Chief Hydrologist	\$200
Chief Water Engineer	\$200
Managing Director	\$175
Team Director	\$160
Senior Project Manager	\$160
Project Manager	\$130
Senior Engineer	\$130
Engineer	\$110
Graduate Engineer	\$100
Senior Designer	\$125
Designer	\$90
CADD Manager	\$100
Senior CADD Technician	\$100
CADD Technician	\$80
Engineering Intern	\$70
Senior Administrative Assistant	\$85
Administrative Assistant	\$60

Notes:

1. These billing rates are effective January 1, 2012 through December 31, 2012.
2. Rates after December 31, 2012 may be adjusted 4% annually.

Engineering Services Agreement
BNSF Railroad Right-of-Way Drainage Improvements
Project No. 6231.1

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

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

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

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

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

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

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

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

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

Walter P. Moore and Associates
Name of Consultant

By: _____
Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	07/23/12
Department:	Public Works
Department Head:	Gerald P. Cosgrove, P.E.
Agenda Coordinator (include phone #):	Kathleen Schonne (7198) Project No. 6156

CAPTION

To approve a Professional Services Agreement by and between the City of Plano and R-Delta Engineers, Inc., in the amount of \$231,375, for Royal Oaks Drive Paving and Water Line Replacement; and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	235,000	0	235,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-231,375	0	-231,375
BALANCE	0	3,625	0	3,625

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the FY 2011-12 Street Improvement CIP. This item, in the amount of \$231,375, will leave a current year balance of \$3,625 for the Robin Road & Royal Oaks Drive project.

STRATEGIC PLAN GOAL: Engineering design services relate to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

This agreement is for engineering design services for Royal Oaks Drive Paving and Water Line Replacement to include replacement of approximately 4,379 feet of 36-foot wide paving and 8-inch water line on Royal Oaks Drive from Jupiter Road to Peachtree Lane. The contract fee is for \$231,375.00 and is detailed as follows:

BASIC SERVICES

Research and Data Collection	\$ 2,660
Design Survey	42,310
Drainage Study/Analysis/Sidewalk Condition	15,770
Preliminary Design	84,120
Final Design	65,665
Bid Phase	4,830
Construction Administration	10,530
Construction Control Survey	3,980
TOTAL BASIC FEE	229,865



**CITY OF PLANO
COUNCIL AGENDA ITEM**

SPECIAL SERVICES

Right of Way/Easement Preparation

1,510

TOTAL SPECIAL SERVICES

\$1,510

TOTAL FEE

\$231,375

Funding is available from the 2011-12 Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$1,994,000.

List of Supporting Documents:

Location Map; Engineering Services Agreement

Other Departments, Boards, Commissions or Agencies

N/A

ROYAL OAKS DRIVE PAVING AND WATER LINE REPLACEMENT

PROJECT NO. 6156

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 **R-DELTA 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 **ROYAL OAKS DRIVE PAVING AND WATER LINE REPLACEMENT** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

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

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY

NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

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

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

R-Delta Engineers, Inc.
618 Main Street
Garland, TX 75040
Attn: Frank A. Polma, P.E.

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

G. Authority to Sign:

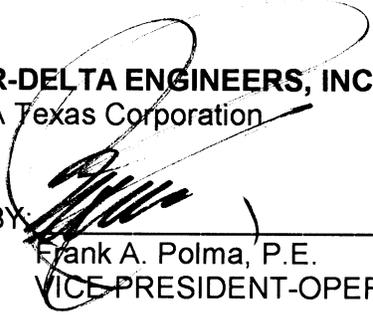
The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

DATE: 7/9/12

R-DELTA ENGINEERS, INC.

A Texas Corporation

BY: 
Frank A. Polma, P.E.
VICE PRESIDENT-OPERATIONS

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

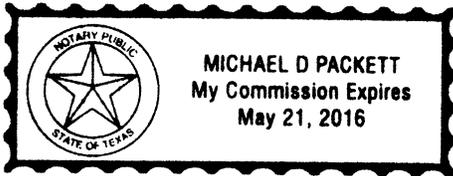
APPROVED AS TO FORM:

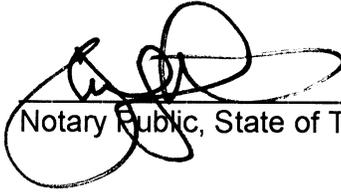
Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 9th day of July, 2012, by **FRANK A. POLMA, P.E., Vice President - Operations**, of **R-Delta Engineers, Inc.**, a Texas corporation, on behalf of said corporation.





Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BRUCE D. GLASSCOCK, City Manager**, of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

**EXHIBIT A
SCOPE OF SERVICES**

**ROYAL OAKS DRIVE
PAVING AND WATER LINE REPLACEMENT
PROJECT NO. 6156
C.I.P. NO. 31156**

PROJECT DESCRIPTION:

Design and preparation of construction plans for pavement reconstruction, drainage improvements (if required) and water line replacement on the following street:

1. Royal Oaks Drive – Jupiter Road to Peachtree Lane (L= 4,379')

Project design guide lines are as follows

1. Reconstruction of street paving at a 36' (f-f) width (existing width) with 6" thick reinforced concrete (3,000 p.s.i.) on 6" thick lime stabilized subgrade. The right-of-way should be 60' with 2-12' (f-f) parkways. Sidewalk and driveways shall also be replaced as necessary. The new street grade design shall match, as closely as possible, that of the existing street and shall include consideration for walk locations that are in good condition and could potentially be left in place. After proposed street grades are determined, a visual evaluation of existing walk condition shall be made by the consultant and areas of walk in good condition, if matching proposed street grades, shall be identified and may be recommended to remain in place. The specific areas of applicable good walk identified by the consultant shall be indicated on a preliminary review plan for City evaluation. Storm drainage needs will be identified by a drainage study/analysis of the related drainage areas and existing systems done in conjunction with the preliminary plans. The drainage study will be prepared and submitted to the City with recommendations regarding drainage system installation needs for inclusion into this project. Based upon these recommendations, the City will determine if the drainage systems should be included in the project. If so, the required design and plan preparation shall be added to this professional services contract by contract modification. If no new systems are required, the drainage areas, calculations and analysis will not be included in the plans.
2. Replacement of the existing 8" water line with a new 8" line in Royal Oaks Drive. Fire hydrants shall be replaced and existing spacing evaluated for adequacy. Water service lines shall be replaced from the existing water main to the existing meters.
3. Survey and cross-section work should extend for the limits of all proposed paving through and beyond the intersections at each end of the project street and beyond by 100'. The survey and cross section should extend up intersecting

streets and alleys a minimum of 100', a minimum of 25' beyond the ROW line in other non-fenced areas and to the face of the garage for driveways.

BASIC SERVICES:

A. Design Standards

1. This project shall be designed in accordance with the following:
 - Geodetic Monumentation Manual
 - Manual for Right-of-Way Management
 - Storm Drainage Design Manual
 - Stream Bank Stabilization Manual
 - Erosion & Sediment Control Manual
 - Thorough Fare Standards Rules & Regulations
 - Manual for the Design of Water & Sanitary Sewer Lines
 - Standard Construction Details
 - Barrier Free Ramp Details
 - NCTCOG Standard Specifications for Public Works Construction
 - Special Provisions to Standard Specifications for Public Works Construction
 - Sample Plan Set
2. All plans submitted to the City shall be signed and sealed in accordance with state law.

B. Research and Data Collection –

1. Meet with City of Plano engineering staff 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.

C. 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/monuments, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control

4. baseline. Existing utility structures shall be located and referenced by utility name (i.e. Oncor Elec., Verizon Telephone, Atmos Gas, Etc.).
5. Vertical topographic information tying pavement, drives, walls, storm drain and sanitary sewer manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
6. Provide roadway cross sections at a fifty-foot (50') interval relative to the project baseline and at all drives, alleys, street intersections, or other areas of significance. Cross sections are for project design review and quantity takeoffs and will be a part of the preliminary and final construction plan sets.
7. When underground utilities are exposed, tie to project control baseline.
8. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

D. Drainage Study and Sidewalk Condition Evaluation -

1. Perform a detailed drainage study for Royal Oaks Drive within the project limits. The study will delineate existing drainage areas and stormwater discharges into the roadway, quantify existing gutter and right-of-way stormwater conveyance capacities at key points along the street, determine capacities of existing storm sewer systems in and adjacent to the study area, and identify areas where the existing drainage systems do not satisfy the City's current drainage design requirements. The goal of the drainage study is to identify storm sewer improvements which correct or improve roadway drainage deficiencies with consideration of costs and benefits. The drainage study will involve coordination with City engineering personnel to determine the desired level of service for the drainage systems once the existing drainage conditions have been quantified. The Drainage Study will include consideration of previously prepared drainage studies by others as provided by the City. The drainage study reporting will include a narrative report, drainage area maps, inlet calculations, hydraulic calculations, schematic layout of recommended drainage improvement alternatives, and opinions of probable construction cost as applicable.
2. Perform a visual inspection of the existing sidewalks and barrier free ramps within the project limits and identify areas of visible or apparent distress. The field inspection will include field marking the observed distress areas with paint and these areas will be field surveyed by R-Delta personnel for inclusion in the project topographic mapping. The City will be asked to review the marked areas by either participating in the field inspection activities or reviewing the markings shortly after they are painted. The inspection and mapping will identify areas with significant visible cracking, spalling, surface delamination, and joint faulting, existing trip hazards and for conformance with current City and TAS standards. Survey mapping data or a Smartlevel will be utilized as necessary to verify that existing transverse and longitudinal slopes along accessible routes are in conformance with current geometric requirements. Sidewalks found to be in good condition, in

3. conformance with current City standards, and found to work with the proposed street reconstruction grades will be illustrated on a schematic exhibit for use in discussions with the City regarding determination of the limits of existing sidewalk to remain in place.

E. Right-of-way and Easement Requirements –

1. Prepare a preliminary list of right-of-way parcels and easements necessary to construct the project (if any). Submit to the City of Plano as soon as possible and prior to the preliminary plan submittal.
2. Meet with the City of Plano Staff to determine easement and right-of-way requirements for preparation of field notes and exhibits.

F. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets (22" x 34") at the engineering scale indicated:
 - Cover sheet.
 - Project layout control sheet(s). Scale 1"= 100'.
 - Quantity sheet (sheet by sheet breakdown of all quantities).
 - Typical sections and detail sheets.
 - Construction phasing (scale 1"=30') and temporary traffic control sheets (scale 1"= 100').
 - Paving plan & profile sheets for street improvements. The consultant will need to evaluate the existing street lights on all streets to see that adequate lighting exists. The City will provide the criteria. If additional lights are needed, new conduit and street light foundations will be included in the project with the information shown on the paving plans. Scale 1"= 20'H;1"=5'V.
 - Water Utility Replacement Plans, Scale 1"=20'. Water line profiles are not required for lines 8" and smaller. Water lines must be shown in profile on other sheets where conflicts exist (for example storm drain or sanitary sewer)
 - Drainage area maps (with drainage calculations on separate sheets as necessary) for street/drainage improvements. Scale 1"= 100'. This information will be prepared with the drainage study/analysis mentioned above but will only be included in the plans if proposed drainage systems are determined to be included in the contract. If required, inclusion of these items in the plans will be included by a contract modification.
 - Storm drain improvement plan & profile sheets. Scale 1"= 20'H; 1"=5'V. These improvements will be included if determined to be required as a result of the drainage study/analysis mentioned above. If required, the design/plan preparation shall be done under a contract modification.
 - SWPPP sheets meeting EPA and City of Plano requirements. Scale 1"= 40'. Include the City WORD file form, "City of Plano CIP Projects –

- SWPPP Operator Requirements” as a sheet in the plans as part of the SWPPP.
- Final buttoning and signage plan sheets. Scale 1”= 40’.
- Cross –Sections. Scale 1”=20’H;1”=2’V.

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. Prepare outline of any special technical specifications needed for the project (if any).
4. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
5. Submit five (5) sets of preliminary plans, and one (1) set of outline of special technical specifications and preliminary statement of probable construction cost to the City for review.

- Engineering
- Public Works
- Inspectors
- Transportation
- File Set

6. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.
7. Provide an electronic PDF format half size set of preliminary utility coordination drawings (11” x 17” sheets to scale) to the City for distribution to the franchise utility companies affected by the construction. Utility coordination drawings shall include the cover sheet, typical sections, paving sheets, utilities and cross sections.

G. Final Design –

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details (those not included in the City of Plano Standard Details) into the construction plans and prepare additional details as required.
6. Take off final construction quantities and prepare final construction cost estimates.
7. Submit five (5) sets of pre-final plans and one (1) set of special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.
8. Incorporate City final comments into the plans and bid documents.

9. Provide an electronic PDF format half size set of final utility coordination drawings (11" x 17" sheets to scale) to the City for distribution to the franchise utility companies affected by the construction. Utility coordination drawings shall include the cover sheet, typical sections, paving sheets, utility sheets and cross sections.
10. Submit three (3) sets of final black line prints, three (3) bound copies of the bid documents and one (1) unbound original bid document set to the City of Plano and one MSWORD electronic copy of the final Bid Schedule.
11. Submit one (1) set of final black line prints and one (1) bound copy of the bid documents to the designated Material Testing Laboratory.

H. Bid Phase Services –

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. Furnish plans and bid documents for up to five (5) plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
4. Assist City staff in conducting a pre-bid conference, if required.
5. Prepare and distribute addenda to bid documents as necessary.
6. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
7. Submit a CD-ROM disk of the bid set plans in a PDF format.
8. Provide bid tabulation to the City of Plano within four working days of the bid letting.
9. 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.
10. Assist City staff in a pre-construction conference.
11. Furnish eleven (11) full size and four (4) half size sets of final construction plans and seven (7) sets of the contract documents manual to the City for construction.

I. Construction Administration –

1. When requested, provide periodic site visits (estimate 1 per month if requested) by the design engineer in response to questions during construction with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. Prepare plan and quantity revisions as required for change orders. The City of Plano will prepare the actual change order and get it executed by the contractor.
4. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and two (2) CD-ROM disks containing scanned images of the 22" x 34" final "as constructed" blackline drawings (with "record drawing

stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

J. Construction Control Survey –

1. Set vertical and horizontal control stakes for construction at 500' intervals, and a minimum of one at each end of the project.

SPECIAL SERVICES:

A. Right-of-Way and Easement Surveying –

1. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for one (1) right-of-way parcel on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
2. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for one (1) temporary construction easement on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
3. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for one (1) permanent easement on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
4. Prepare exhibits with the field notes first and drawings second. Both the field notes and the drawing shall be labeled as Exhibit "A". Each parcel shall be assigned its own separate number.
5. Set new iron pins at all new corners, PC's and PT's of new right-of-way.

**EXHIBIT B
COMPLETION SCHEDULE**

**ROYAL OAKS DRIVE
PAVING AND WATER LINE REPLACEMENT
PROJECT No. 6156
CIP NO. 31156**

Activity	Completion Time (Calendar Days)
1. Notice to Proceed	1
2. Research and Data Collection	14
3. Design Survey	40
4. Drainage Study/Analysis/Sidewalk Condition	20
5. City Review	30
6. Preliminary Design	80
7. City Review	30
8. Final Design (Pre-Final Submittal) / ROW & Easement Documents	60
9. City Review	30
10. Final Design/ Documents for Bidding	30
11. City Review	30
12. Advertise for Bids/Receive Bids	30
13. Recommendation	7
14. Prepare Council Agenda	21
15. Council Award	0
16. Prepare/Execute Contract	45
17. Schedule Preconstruction	14
18. Notice to Proceed	14
19. Construction	

**EXHIBIT C
PAYMENT SCHEDULE**

**ROYAL OAKS DRIVE
PAVING AND WATER LINE REPLACEMENT
PROJECT No. 6156
CIP NO. 31156**

WORK STAGE SUBMITTAL OR COMPLETION	TOTAL
1. Research and Data Collection	\$2,660.
2. Design Survey	42,310.
3. Drainage Study/Analysis/Sidewalk Condition	15,770.
4. Preliminary Design	84,120.
5. Final Design	65,665.
6. Bid Phase	4,830.
7. Construction Administration	10,530.
8. Construction Control Survey	3,980.
Total Basic Fee	\$ <u>229,865</u>
9. Special Services –	
a. Right-of-way Document (1 @ \$830.00_/ea.)	830.
b. Temporary Easement Documents (1 @\$ 340.00/ ea.)	340.
c. Permanent Easement Documents (1@\$ 340.00/ea.)	340.
Total Special Services	\$ <u>1,510.</u>
Total Fee	\$ <u>231,375.</u>

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."
- 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 occurrence
\$1,000,000 general aggregate |
| <input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL) | |
| <input checked="" type="checkbox"/> 6. Premises/Operations | (Items No. 3-10 & 12 require) |
| <input checked="" type="checkbox"/> 7. Independent Contractors | <u>\$500,000</u> combined single limit for bodily injury and property damage |
| <input type="checkbox"/> 8. Products | damage each occurrence with |
| <input type="checkbox"/> 9. Completed Operations | \$1,000,000 general aggregate that applies to project under contract |
| <input checked="" type="checkbox"/> 10. Contractual Liability | |
| <input checked="" type="checkbox"/> 11. Personal Injury Liability | \$500,000 each offense & aggregate |
| <input type="checkbox"/> 12. XCU Coverages | |
| <input checked="" type="checkbox"/> 13. Automobile Liability | \$500,000 Bodily Injury & Property |
| <input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned | Damage each accident |
| <input type="checkbox"/> 15. Motor Carrier Act Endorsement | |
| <input checked="" type="checkbox"/> 16. Professional Liability | \$1,000,000 each claim
\$2,000,000 aggregate |
| <input type="checkbox"/> 17. Garage Liability | \$_____ BI & PD each occurrence |



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/9/2012

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

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

PRODUCER McLaughlin Brunson Insurance Agency, LLP 6600 LBJ Freeway, Suite 220 Dallas TX 75240	CONTACT NAME: Melissa Pratt PHONE (A/C, No, Ext): (214) 503-1212 FAX (A/C, No): (214) 503-8899 E-MAIL ADDRESS: <table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Travelers Indemnity Co of CT</td> <td>25682</td> </tr> <tr> <td>INSURER B: Trav. Casualty & Surety Co of Am</td> <td>31194</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Indemnity Co of CT	25682	INSURER B: Trav. Casualty & Surety Co of Am	31194	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Travelers Indemnity Co of CT	25682														
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
INSURED R-Delta Engineers, Inc. 618 Main St. Garland TX 75040															

COVERAGES **CERTIFICATE NUMBER:** Cert ID 15522 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	CLAIMS-MADE OCCUR						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	POLICY PROJECT LOC						PRODUCTS - COM/PIOP AGG \$
							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO						BODILY INJURY (Per person) \$
	ALL OWNED AUTOS SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	HIRED AUTOS NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB OCCUR CLAIMS-MADE						AGGREGATE \$
	DED RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		Y	UB5979Y319	5/1/2012	5/1/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		N/A				
	If yes, describe under DESCRIPTION OF OPERATIONS below						
B	Professional Liability		Y	105734312	1/30/2012	1/30/2013	Per Claim/Annual Aggregate \$ 2,000,000
							\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
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. A Waiver of Subrogation is shown in favor of the the City of Plano on the Workers Compensation coverage. RE: Royal Oaks Drive Paving and Water Line Replacement, Project No. 6156

CERTIFICATE HOLDER City of Plano Attn: Engineerin PO Box 860358 Plano TX 75086	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Melissa Pratt</i>
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ACORD - CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 7/9/2012
PRODUCER GENE POOL INSURANCE 615 MAIN STREET GARLAND, TX 75040 972-494-1200		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.
INSURERS AFFORDING COVERAGE INSURER A: FARMERS INSURANCE INSURER B: INSURER C: INSURER D: INSURER E:		
INSURED R-DELTA ENGINEERS, INC. 618 Main Street Garland, TX 75040 972-454-5031		NAIC #

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.

NAIC CODE LTR	NAIC DESC	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contract liab <input checked="" type="checkbox"/> Ind contractors GENL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO <input type="checkbox"/> SUCT <input type="checkbox"/> LOC	605027104	08/20/11	08/20/12	EACH OCCURRENCE \$ 2,000,000 PREMISES (EA OCCURRENCE) \$ 100,000 MED EXP (EA OCCURRENCE) \$ 10,000 PERSONAL & ADVISORY \$ 1,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALLOWED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	06941-33-59	05/15/12	05/15/13	COMBINED SINGLE LIMIT (EA OCCURRENCE) \$ 2,000,000 BODILY INJURY (PERSONAL) \$ BODILY INJURY (PERSONAL) \$ PROPERTY DAMAGE (PERSONAL) \$ AUTO PHYSICAL ACCIDENT \$ OTHER THAN AUTO PHYSICAL ACCIDENT \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		DAMAGE LIABILITY <input type="checkbox"/> ANY AUTO EXCESS UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				AUTO PHYSICAL ACCIDENT \$ OTHER THAN AUTO PHYSICAL ACCIDENT \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY INDIAN TERRITORY OR RESERVE OFFICER MEMBER EXCLUDED See General Policy SPECIAL PROVISIONS below				WORKERS COMPENSATION AND EMPLOYERS LIABILITY LIMITS E.F. EACH ACCIDENT \$ E.F. DISEASE (EA EMPLOYEE) \$ E.F. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS (LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS:
 Certificate holder (if additional insured) coverage is provided to all under coverage the City of Plano. A copy of subrogation is show in favor of the city of Plano on General.
 Project: Royal Oaks Drive Paving and Water Line Replacement Project No. 6156

CERTIFICATE HOLDER	CANCELLATION
City of Plano Attn: Engineering PO Box 860358 Plano, TX 75086 <i>7-10-12 ✓</i>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE IMPOSES NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: <i>Gene Pool</i>

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

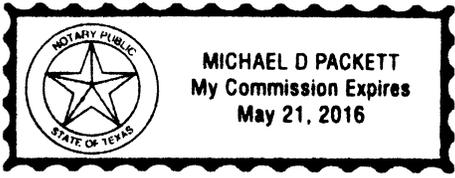
"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision 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.

By: R-Delta Engineers, Inc.
Name of Consultant
[Signature]
Signature
FRANK A. POLINA, PE
Print Name
VP OPERATIONS
Title
7/9/12
Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 9th day of July, 2012.



[Signature]
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:	July 23, 2012
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Department:	Puchasing
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Department Head	Diane Palmer-Boeck
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Agenda Coordinator (include phone #):	Teresa Shelstad x7539
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CAPTION

Approval of the purchase and installation of eight (8) "Car Detector" ALPR Systems (Automated License Plate Recognition System), including the necessary software licensing and conversion of one existing Platescan system, at a total of \$108,290.00 from Vigilant Video Inc., through an approved Houston Galveston Area Council (HGAC) cooperative purchasing agreement and authorizing the City Manager to execute all necessary documents. (HGAC Contract Number EF04-11)

FINANCIAL SUMMARY

<input type="checkbox"/> NOT APPLICABLE	<input checked="" type="checkbox"/> OPERATING EXPENSE	<input type="checkbox"/> REVENUE	<input type="checkbox"/> CIP
---	---	----------------------------------	------------------------------

FISCAL YEAR: FY 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	489,300	0	489,300
Encumbered/Expended Amount	0	-186,348	0	-186,348
This Item	0	-108,290	0	-108,290
BALANCE	0	194,662	0	194,662

FUND(S): COPS-2010 CSPP GRANT FUND

COMMENTS: Funds are available in the 2010 COPS CSPP Grant Fund for the purchase and installation of eight (8) "Car Detector" ALPR (Automated License Plate Recognition) Systems, including the necessary software, licensing and conversion of one existing Platescan system, using federal grant funds. The remaining balance of the funds will be used for other expenditures as allowed within grant guidelines.

STRATEGIC PLAN GOAL: Purchasing equipment for the Police Department with federal grant funds relates to the City's Goals of Financially Strong City with Service Excellence and Safe Large City.

SUMMARY OF ITEM

Approval of the purchase and installation of eight (8) "Car Detector" ALPR Systems (Automated License Plate Recognition System), including the necessary software licensing and conversion of one existing Platescan system, at a total of \$108,290.00 from Vigilant Video Inc., through an approved Houston Galveston Area Council (HGAC) cooperative purchasing agreement. The City is authorized to purchase from a cooperative purchasing program with another local government or a local cooperative organization pursuant to Section 271 Subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.

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



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

MEMORANDUM

DATE: July 11, 2012
TO: Diane Palmer-Boeck, Purchasing Department
FROM: *Gregory W. Rushin* Gregory W. Rushin, Chief of Police
SUBJECT: Award Recommendation: Vigilant Video License Plate Recognition Systems

Automated License Plate Recognition (ALPR) technology was first introduced in England in 1976 and has been used by both private and public sector entities throughout the world for many years. Current applications of ALPR technology outside of law enforcement include, but are not limited to, electronic toll collection on turnpikes; traffic management and congestion control systems; parking lot vehicle identification systems; border security; travel route analysis projects; fuel drive-away theft prevention and suspect apprehension; and automobile repossession efforts. Modern day ALPR systems rely upon optical character recognition (OCR) software to automatically extract the characters from images of vehicle license plates taken by roof or trunk-mounted cameras, compare them against a known "hot list", and alert the operator or remote user to any match that occurs. This data, along with the vehicle's location information as derived using GPS coordinates, is then stored for future reference on either a local or cloud-based server. Officers on routine patrol have traditionally "checked" vehicle registrations through visual verification and entry of the characters into a mobile computer, which can be difficult, inefficient, and unsafe to perform while driving. In contrast, the ALPR system installed on a patrol vehicle can vastly improve the efficiency of this process and free the Officer to perform other tasks, such as observing traffic behaviors and remaining alert to possible criminal activity in the area. Officer safety is also enhanced, as situational awareness can be better maintained and identification of a dangerous offender is much more likely using ALPR than through random, manual registration verifications. A typical vehicle-mounted ALPR system is capable of silently reading and comparing more than 1000 registration numbers per minute; only alerting the Officer when a match has occurred. Upon receiving notification of a possible match; the Officer must then manually confirm the information before it can be relied on for purposes of legal detention or arrest.



Since 2008, the Plano Police Department has utilized ALPR technology to assist Patrol Officers in the rapid detection of vehicles on our roadways that have been reported as stolen, involved in felony crimes, or otherwise related to a national, statewide, or regional law enforcement

broadcast (Amber Alert, Missing Person, Silver Alert, etc.). In addition to the benefits of real-time registration comparison against existing lists; information acquired through the use of this technology has also proven essential to the successful identification and/or apprehension of criminal suspects, sex offenders in prohibited areas, and persons with local warrants for unpaid fines. In 2011, the Police Department was awarded a federal child sexual predator grant for purchase of criminal investigative equipment, to include additional ALPR equipment. Since then, our current vendor, PlateScan, became insolvent, at which time we engaged in a joint effort with Frisco PD, Richardson PD, Collin County S.O., and various other area law enforcement agencies to procure a suitable replacement for this equipment. Five companies originally hosted regional product demonstrations (L3 Communications, PIPS, Vigilant Video, IRSA Video, and Eltag NA), and it was agreed that Vigilant Video offered the most cost effective and functionally robust ALPR system available. Frisco PD recently received approval for purchase of this product, and other area Cities are in the process of making similar recommendations to their governing bodies. Using only the grant funds already awarded to our Department, it is anticipated that we will be able to purchase five new mobile systems and two car-portable systems (for use on unmarked Cisd and Patrol vehicles). Vigilant Video has also offered to convert some of the existing PlateScan equipment in one vehicle to a Vigilant Video system, resulting in reduced cost for a total of six mobile and two car-portable units. Since the Vigilant Video solution is fully-hosted, no local servers or network infrastructure are required, meaning the only demand for support by our Technology Services Department will be to maintain a functional mobile computer with internet connectivity in each vehicle equipped with this ALPR equipment. Images and other data captured by ALPR systems will be stored for two years on secure National Crime Information Center (NCIC)-compliant servers, which are housed in the Washington, D.C. area data centers and carefully managed by Vigilant Video staff. Access to this data will be restricted, much like all other sensitive law enforcement data, to use only by authorized Police Department employees and those of agencies with data sharing agreements in place, for bona fide criminal justice purposes. Primary technical support will be provided solely by the vendor per the terms of an agreed-upon three year warranty.

The Police Department has received a quote from Vigilant Video for the purchase of eight (8) "Car Detector" ALPR systems, including the necessary software licensing, conversion of one existing PlateScan system, and warranty for three years, at a total initial cost of \$108,290 and annual subscription renewal rate of \$10,400, pursuant to an approved cooperative purchasing agreement (Houston Galveston Area Council Contract #EF04-11). This represents a highly competitive price and is believed to be the best value available for such a comprehensive ALPR solution. The Police Department strongly recommends this purchase. Failure to approve this request will result in a loss of available grant funds for this specific purpose. It will also result in a missed opportunity for enhanced effectiveness by the Police Department in its efforts to solve crimes, apprehend offenders, serve outstanding warrants, and recover stolen vehicles.



**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:		7/23/12			
Department:		Purchasing			
Department Head		Diane Palmer-Boeck			
Agenda Coordinator (include phone #): Sharron Mason - Ext. 7247					
CAPTION					
Award of RFQ No. 2012-24-B for Next Generation 9-1-1 Project Management Consultant Services for Public Safety Communications to Mission Critical Partners, Inc., in the not to exceed amount of \$200,000 and authorizing the City Manager or his designee to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2011-12, 2012-13, & 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	215,500	150,000	365,500	
Encumbered/Expended Amount	0	-4,060	0	-4,060	
This Item	0	-50,000	-150,000	-200,000	
BALANCE	0	161,440	0	161,440	
FUND(S): WIRELINE FEES					
<p>COMMENTS: Expenditures will be made from the 911 Wireline Fees Fund based on need within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2011-12 is \$50,000. The estimated future annual amount is \$150,000, which will be made within approved budget appropriations. Remaining balance will be used for other Wireline Fees Services.</p> <p>STRATEGIC PLAN GOAL: Providing Consulting Services for 911 Wireline Fees Next Generation Project relates to the City's goal of a Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
Staff recommends the Request for Qualifications to Mission Critical Partners, Inc., in the not to exceed amount of \$200,000 be accepted as the most qualified for the Next Generation 9-1-1 Project Management Consultant Services, and conditioned upon timely execution of any necessary contract documents.					
List of Supporting Documents: Recommendation Memo and Recap			Other Departments, Boards, Commissions or Agencies		



Date: July 11, 2012

To: Sharron Mason, Purchasing

From: Melissa Tutton, PSC

Ref: PSC NG9-1-1 Consultant Recommendation Memo
RFQ No. 2012-24-B
RFQ – Next Generation 9-1-1 Project Management Consultant Services

Public Safety Communications has established a NG9-1-1 project to provide enhanced communications applications for citizens requesting police, fire, or medical assistance through a variety of traditional and nontraditional means. A Public Safety Communications team has reviewed the responses for Request for Qualifications 2012-24-B, Next Generation 9-1-1 Project Management and Consultant Services. Based on the evaluation team's recommendation, Mission Critical Partners, Inc. was selected to provide project management consulting services for the Next Generation 9-1-1 project. The total cost for the consultation services will not exceed \$200,000. Additional cost for the implementation of infrastructure and call processing equipment solutions will be brought forward to Council in a separate agenda item in a future budget year.

Consulting services are required to ensure industry expertise is utilized to facilitate all mission critical components of the system meet federal, state, and local compliance, as well as best value and industry standards.

REQUEST FOR QUALIFICATIONS RECAP

CITY OF PLANO

RFQ No. 2012-24-B

RFQ FOR NEXT GENERATION 9-1-1 PROJECT MANAGEMENT CONSULTANT SERVICES

RFQ RECAP

RFQ Opening Date/Time: Tuesday, January 24, 2012 at 4:30 pm (CST)

Number of Vendors Notified: 1698

Vendors Submitting "No Bids": None

Qualification Statements Evaluated Non-Responsive to Specifications: 0

Number of Qualification Statements Submitted: 4

Galena Group, Inc.
L.R. Kimball
Mission Critical Partners, Inc.
RCC Consultants, Inc.

Recommended Vendor:

Mission Critical Partners, Inc. \$200,000

Sharron Mason

Sharron Mason, Sr. Buyer

July 12, 2012

Date



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		07/23/12			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Linda Thomason x8301					
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 Tollway 121 Hotel, LP and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2011-12 through 2024- 25	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	19,128,520	0	19,128,520
Encumbered/Expended Amount		0	-4,745,675	-4,076,518	-8,822,193
This Item		0	-4,000,000	0	-4,000,000
BALANCE		0	10,382,845	-4,076,518	6,306,327
FUND(S): ECONOMIC DEVELOPMENT INCENTIVE 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 Tollway 121 Hotel, LP to develop a full-service business class hotel with conference space, thereby generating additional local hotel/motel occupancy tax and sales tax revenues and increasing ad valorem tax values to the City. Tollway 121 Hotel agrees to occupy not less than 250,000 sq. ft. of hotel and conference space on Granite Parkway which shall include at least 285 hotel guest rooms and 30,000 sq. ft. of meeting/conference space (including pre-function space) for the Term of this Agreement.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution Economic Development Incentive Agreement					

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Tollway 121 Hotel, LP and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between Tollway 121 Hotel, LP and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

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 Tollway 121 Hotel, LP, a Texas limited partnership, (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is developing and will thereafter own a full-service business class hotel with conference space on the Real Property (the “Hotel”) and in connection therewith plans to add Forty Five Million Dollars (\$45,000,000.00) of real property improvements and Eight Million Dollars (\$8,000,000.00) of business personalty property on the Real Property; and

WHEREAS, Company agrees that the Hotel will contain at least 250,000 gross square feet of hotel and conference space which shall include at least 285 hotel guest rooms and 30,000 gross square feet of meeting/conference space (including pre-function space) for the Term of this Agreement; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to develop the Hotel 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 at least 250,000 gross square feet of hotel and conference center space 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 Tollway 121 Hotel, LP, a Texas limited partnership.

“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 downturn shall not constitute an event of force majeure.

“Grant” is defined in Section 4.01.

“Hotel” is defined in the recitals on page 1.

“Obligations of the Company” shall mean all of the obligations set forth in Article III.

“Real Property” or “Property” shall mean Lot 1R, Block “B” located on Granite Parkway in Granite Park, Plano, TX 75024 as more fully described in Exhibit “A” attached hereto.

“Term” is defined in Article II.

Article II Term

The term of this Agreement (the “Term”) shall begin on the Effective Date and continue until December 31, 2024, 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: On or before December 31, 2014 and throughout the remainder of the Term, occupy, operate and have open to the public the Hotel on the Real

Property that is a minimum of 250,000 gross square feet of building improvements and is operated as a full-service business class hotel with conference space. There shall be a minimum of 285 hotel guest rooms and a minimum of 30,000 gross square feet of meeting/conference space (including pre-function space) on the Real Property.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to pay the Company a cash grant (the “Grant”) of up to Four Million Dollars (\$4,000,000.00) as long as Company meets 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 in accordance with the following requirements and schedule:

(a) On January 31, 2015, Company shall be eligible for an initial Grant payment of One Million Dollars (\$1,000,000.00). The payment will not be pro-rated. **In order to receive the Grant payment, Company must file the Initial Certification form attached hereto as Exhibit “B” certifying compliance with the obligations set forth in Article III not later than April 30, 2015. A failure to provide this form on or before April 30, 2015 is an event of default and, if not cured, results in a complete forfeiture of the Grant.**

On January 31, 2016, Company shall be eligible to receive a second grant payment of One Million Dollars (\$1,000,000.00) upon certifying continued compliance with the obligations set forth in Article III as required in Section 4.02(b). **A failure to provide this form on or before April 30, 2016 is an event of default and, if not cured, results in the City’s right to a full refund, including damages, as set out in 4.03 and an immediate and complete forfeiture of the remaining grant.**

On January 31, 2017, Company shall be eligible to receive a third grant payment of One Million Dollars (\$1,000,000.00) upon certifying continued compliance with the obligations set forth in Article III as required in Section 4.02(b). **A failure to provide this form on or before April 30, 2017 is an event of default and, if not cured, results in the City’s right to a full refund, including damages, as set out in 4.03 and an immediate and complete forfeiture of the remaining grant.**

On January 31, 2018, Company shall be eligible to receive a fourth grant payment of One Million Dollars (\$1,000,000.00) upon certifying continued compliance with the obligations set forth in Article III as required in Section 4.02(b). **A failure to provide this form on or before April 30, 2018 is an event of default and, if not cured, results in the City’s right to a full refund, including damages, as set out in 4.03 and an immediate and complete forfeiture of the remaining grant.**

City will make the payment within thirty (30) days of receipt of a certification unless the City reasonably objects to the certification but payment shall not be made earlier than an eligibility date as stated above. The total amount of all grants paid pursuant to this Agreement shall not exceed Four Million Dollars (\$4,000,000.00).

(b) Beginning January 31, 2016, Company must submit an annual certification on the form attached hereto as Exhibit "C" not later than January 31 of each year for the duration of this Agreement certifying compliance with all of the obligations set out in Article III above. A failure to file the annual certification by April 30 of the year it is due shall be an event of default during the remaining years of the Agreement and, if not cured, results in the City's right to a full refund, including damages, as set out in 4.03.

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

4.03 **Refund/Default.**

(a) If the Company fails to occupy, operate and have the Hotel open as required by Article III during the term of this Agreement and the failure to occupy, operate, and have the Hotel open is not the result of an Event of Force Majeure, the City, at its sole option, may require a full or partial refund of the entire Grant paid by the City to the Company. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest and expenses, including reasonable attorney fees and costs, incurred by City. This obligation shall survive termination of this Agreement.

For the purposes of determining whether the City is entitled to seek a refund under this section, the Company shall certify to the City as set out in Sections 4.02(b) above that they are in compliance with Article III on the form attached as Exhibit "C".

(b) If the Company fails to timely provide any certification as required by Section 4.02(b), the full amount of the entire 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) If 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 **Events of Termination.** This Agreement terminates upon any one or more of the following:

- (a) By expiration of the Term and where no defaults have occurred; or
- (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: (a) Five (5) years from the end of the Agreement period; or (b) 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 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. 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 inquiries and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII 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) in the preceding paragraph, 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 (30) 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 to act on behalf of the other party under any circumstances by virtue of this Agreement.

8.02 **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.

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

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

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

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

If intended for the Company:
Tollway 121 Hotel, LP
c/o Granite Properties
Attention: Mr. David R. Cunningham
5601 Granite Parkway, Suite 800
Plano, Texas 75024

With a copy to:
Munsch Hardt Kopf & Harr, P.C.
Attention: Mr. Robert H. Voelker
3800 Lincoln Plaza
500 N. Akard
Dallas, TX 75201

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

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

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

8.08 **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.

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

8.10 **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.

8.11 **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.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

TOLLWAY 121 HOTEL, LP,
a Texas limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

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

EXHIBIT "A"

**Legal Description of Property
LOT 1R, BLOCK "B"
GRANITE PARK PHASE III**

FIELD NOTES DESCRIPTION

BEING A TRACT OF LAND LOCATED IN THE SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108 AND THE JABEZ DEGMAN SURVEY, ABSTRACT NO. 279, COLLIN COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO TOLLWAY/121 PARTNERS, LTD. AS RECORDED IN COUNTY CLERK NO. 98-0037186, OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (D.R.C.C.T.), SAID TRACT ALSO BEING LOT 1R, BLOCK B OF GRANITE PARK PHASE III, RECORDED IN INSTRUMENT NO. 20060814010003470, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS (O.P.R.C.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" IN THE NORTH RIGHT-OF-WAY LINE OF GRANITE PARKWAY (A 92 FOOT RIGHT-OF-WAY), BEING THE SOUTHWEST CORNER OF LOT 4R OF SAID BLOCK "B" AND BEING THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID GRANITE PARKWAY AS FOLLOWS:

NORTHWESTERLY, AN ARC LENGTH OF 164.19 FEET ALONG A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 404.00 FEET, A DELTA ANGLE OF 23°17'08", AND A CHORD BEARING N 76°08'36"W, 163.06 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 104.17 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 486.50 FEET, A DELTA ANGLE OF 12°16'07", AND A CHORD BEARING N 70°38'06"W, 103.97 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 197.50 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 776.00 FEET, A DELTA ANGLE OF 14°34'55", AND A CHORD BEARING N 84°03'37"W, 196.96 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE MOST EASTERLY SOUTH CORNER OF LOT 2, BLOCK "B", GRANITE PARK AS SHOWN BY THE PLAT RECORDED IN DOCUMENT NO. 2002-0191594 OF THE PLAT RECORDS OF COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE ALONG THE EAST BOUNDARY LINE OF SAID LOT 2, AS FOLLOWS:

N 00°15'30"E, 42.87 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 21°45'28"W, 111.61 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 00°15'30"E, 227.84 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, SAID IRON ROD BEING IN A WESTERLY LINE OF SAID LOT 4R;

THENCE ALONG THE COMMON LINE OF SAID LOT 4R AND LOT 1R, AS FOLLOWS:

NORTHEASTERLY, AN ARC LENGTH OF 161.46 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 355.00 FEET, A DELTA ANGLE OF 26°03'31", AND A CHORD BEARING OF N 63°07'57" E, 160.07 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", THE BEGINNING OF A CURVE TO THE LEFT;

NORTHEASTERLY, AN ARC LENGTH OF 114.56 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 864.42 FEET, A DELTA ANGLE OF 7°35'35", AND A CHORD BEARING OF N 46°18'23" E, 114.47 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 47°25'16" E, 44.35 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 18°26'12" E, 138.29 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 54°01'25" E, 113.80 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 23°10'57" E, 13.31 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 19.58 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, A DELTA ANGLE OF 18°42'00", AND A CHORD BEARING OF S 13°49'57" E, 19.50 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 29.29 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 72.25 FEET, A DELTA ANGLE OF 23°13'32", AND A CHORD BEARING OF S 16°05'43" E, 29.09 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 125.46 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 187.50 FEET, A DELTA ANGLE OF 38°20'21", AND A

CHORD BEARING OF S 46°52'39" E, 123.14 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 66°02'50" E, 83.22 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

SOUTHWESTERLY, AN ARC LENGTH OF 55.68 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 525.00 FEET, A DELTA ANGLE OF 6°04'35", AND A CHORD BEARING OF S 59°17'52" W, 55.65 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHWESTERLY, AN ARC LENGTH OF 100.62 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET, A DELTA ANGLE OF 72°03'53", AND A CHORD BEARING OF S 26°18'13" W, 94.12 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 77.12 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 370.00 FEET, A DELTA ANGLE OF 11°56'34", AND A CHORD BEARING OF S 3°45'26" E, 76.98 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 02°12'51" W, 24.99 FEET TO THE PLACE OF BEGINNING AND CONTAINING 4.624 ACRES (201,432 SQUARE FEET) OF LAND, MORE OR LESS.

EXHIBIT "B"

INITIAL CERTIFICATE OF COMPLIANCE

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

- _____ a. I hereby certify that Tollway 121 Hotel, LP has completed construction and opened to the public at least 250,000 gross square feet of hotel and meeting/conference space which includes at least 285 hotel guest rooms and 30,000 gross square feet of meeting/conference space (including pre-function space) on 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) of that Agreement.

- _____ b. I hereby certify that Tollway 121 Hotel, LP has failed to completed construction and open to the public at least 250,000 gross square feet of hotel and meeting/conference space (including pre-function space) which shall include at least 285 hotel guest rooms and 30,000 gross square feet of meeting/conference space (including pre-function space) on the Real Property by December 31, 2014, and is not in compliance with the Agreement and is not entitled to receive payment in accordance with Section 4.02 (a) of that Agreement.

ATTEST:

TOLLWAY 121 HOTEL, LP,
a Texas limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

By: _____
Name: _____
Title: _____
[NOTE: MUST BE CFO OR CEO]

Date

This Certification is due by April 30, 2015.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "C"

ANNUAL CERTIFICATE OF COMPLIANCE

Select any of the applicable options below before signing and returning the certification:

_____ a. I hereby certify that Tollway 121 Hotel, LP has continued to have open to the public at least 250,000 gross square feet of hotel and meeting/conference space (including pre-function space) which includes at least 285 hotel guest rooms and 30,000 gross square feet of meeting/conference space (including pre-function space) on the Real Property since December 31, 2014.

_____ b. I hereby certify that Tollway 121 Hotel, LP has not continued to have open to the public at least 250,000 gross square feet of hotel and meeting/conference space (including pre-function space) which includes at least 285 hotel guest rooms and 30,000 gross square feet of meeting/conference space (including pre-function space) on the Real Property since December 31, 2014.

_____ c. I hereby certify that Tollway 121 Hotel, LP is entitled to receive an additional grant payment in accordance with Section 4.02 (b)-(d) of that Agreement for the year 20__.

_____ d. I hereby certify that Tollway 121 Hotel, LP is not entitled to receive payment in accordance with Section 4.02 (b)-(d) of that Agreement at this time.

ATTEST:

TOLLWAY 121 HOTEL, LP,
a Texas limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

By: _____
Name: _____
[NOTE: MUST BE CFO OR CEO]

Date

NOTE:

This form is due by April 30 of each year beginning on April 30, 2016, and as long as this Agreement is in effect.

This Certificate of Compliance should be mailed to:

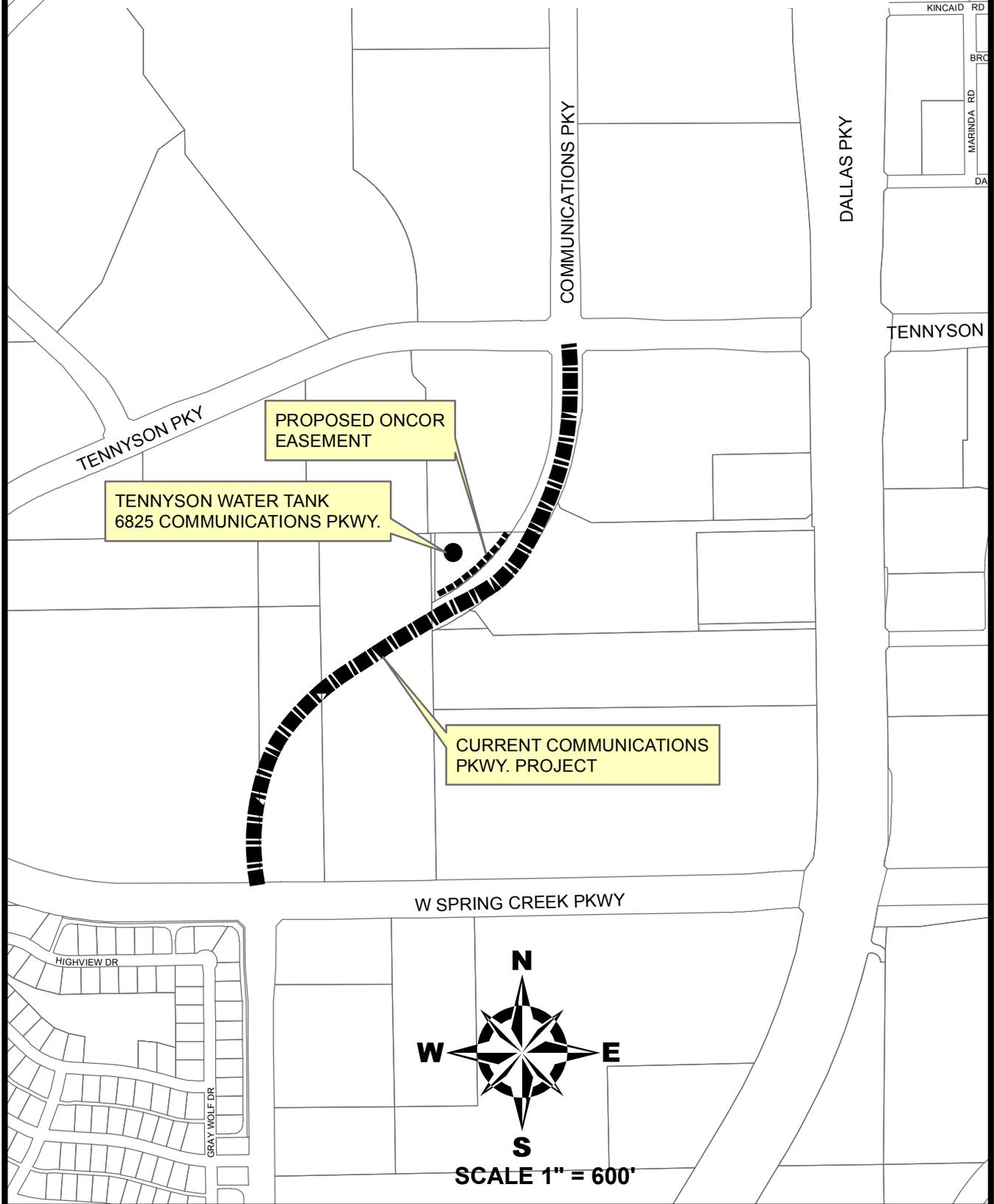
City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



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:		7/23/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #): Kathleen Schonne (7198)				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving and granting an electric easement to Oncor Electric Delivery Company, L.L.C. on City property, Tennyson elevated water tank site, located at 6825 Communications Parkway; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Granting an electric easement to Oncor Electric Delivery Company relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Oncor Electric Delivery Company, L.L.C. proposes to install an underground duct system along and adjacent to the west right of way line of Communications Parkway from Spring Creek Parkway to Tennyson Parkway to provide for electric service needs in this area of the City of Plano. Installation of these facilities requires easement acquisition from several properties along the project length. One of these properties is the City of Plano Tennyson elevated water tank site, from which the subject easement is requested. The proposed easement will allow for installation of these electric facilities on this City property.				
List of Supporting Documents: Location Map; Resolution; Easement		Other Departments, Boards, Commissions or Agencies N/A		

PROPOSED ONCOR EASEMENT
TENNYSON TANK SITE
6825 COMMUNICATIONS PARKWAY



A Resolution of the City Council of the City of Plano, Texas, approving and granting an electric easement to Oncor Electric Delivery Company, L.L.C. on City property, Tennyson Tank Site, located at 6825 Communications Parkway; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the proposed electric easement is to allow for the installation of an underground duct system to provide for electric service in the related area of the City of Plano, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereafter the "Easement"); and

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

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

Section I. The City Council hereby authorizes the granting of the Easement and determines that the Easement is acceptable and is hereby in all things approved.

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

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

DULY PASSED AND APPROVED this 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

District:
WR#:
ER#: _____

EASEMENT AND RIGHT OF WAY

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF COLLIN §

That, the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter called "Grantor," whether one or more, for and in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration to Grantor in hand paid by **ONCOR ELECTRIC DELIVERY COMPANY LLC**, a Delaware limited liability company, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, hereinafter referred to as "Grantee", has granted, sold and conveyed and by these presents does grant, sell and convey unto said Grantee, their successors and assigns, an easement and right-of-way for overhead and/or underground electric supply and communications facilities, consisting of a variable number of wires and cables, supporting structures, surface mounted equipment, conduits, and all necessary or desirable appurtenances over, under, through, across, and upon Grantor's land described as follows:

SEE EXHIBIT "A" ATTACHED

Together with the right of ingress and egress along and upon said easement and right-of-way and over and across Grantor's adjoining properties for the purpose of and with the right to construct, maintain, operate, repair, remove, replace, reconstruct, abandon in place, and to change the size and capacity of said facilities; the right to relocate said facilities in the same relative direction of said facilities; the right to relocate said facilities in the same relative position to any adjacent road if and as such road is widened in the future; the right to lease, to the extent required by law, wire space for the purpose of permitting others to string or lay wire or cable along said facilities; and the right to trim or remove trees or shrubbery within, but not limited to, said easement area, including by use of herbicides or other similar chemicals approved by the U. S. Environmental Protection Agency as may be necessary to prevent possible interference with the operation of said facilities or to remove possible hazard thereto. Grantor shall not allow excavation or construction, within the easement area, of any buildings, structures or other obstructions which may endanger or interfere with the efficiency, safety, and/or convenient operation of Grantee's facilities and their appurtenances. Grantor shall not make changes in grade, elevation or contour of the land or impound water within the easement area as described above without prior written consent of Grantee which shall not be unreasonably withheld.

Grantor reserves the right to use the land within the above described easement area for purposes not inconsistent with Grantee's use of such property, provided such use shall not interfere with the exercise by the Grantee of the rights hereby granted.

GRANTEE AGREES TO DEFEND, INDEMNIFY AND HOLD THE GRANTOR 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 GRANTEE'S VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONALLY WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF THE GRANTEE, 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 GRANTEE IS LEGALLY RESPONSIBLE ARISING OUT OF THIS EASEMENT OR USE OF THE EASEMENT PROPERTY. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE GRANTOR, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE GRANTOR 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.

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

Grantee shall procure and maintain for the duration of the Easement insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. Grantee shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage as a condition of this Easement. The insurance required herein is not in addition to any other insurance requirements required by Grantor of Grantee under other agreements between the parties and may be satisfied by any valid annual certificate of insurance provided by Grantee to Grantor subject to compliance with the minimum coverage requirements in **Exhibit "B"**.

TO HAVE AND TO HOLD the above described easement and right-of-way unto the said Grantee, its successors and assigns, until all of said electric lines and facilities shall be abandoned, and in that event said easement and right-of-way shall cease and all rights herein granted shall terminate and revert to Grantor or Grantor's heirs, successors or assigns; and Grantor hereby binds Grantor and Grantor's heirs, successors, assigns, and legal representatives, to warrant and forever defend the above described easement and right-of-way unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

SIGNED on the date indicated below.

**ONCOR ELECTRIC DELIVERY
COMPANY, LLC, a Delaware Limited
Liability Company**

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

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

Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____, _____ of **ONCOR ELECTRIC DELIVERY COMPANY, LLC**, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by Bruce D. Glasscock of the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
City Attorney's Office
City of Plano, Texas
P. O. Box 860358
Plano, TX 75086-0358

Exhibit "A"
The Easement Property

Lying and situated in the Henry B. Miller survey, Abstract No. 614, Collin County, Texas and being a part of those tracts of land conveyed to the City of Plano by deeds recorded in Collin County Clerk Documents No. 96-0092889 (called 1.2394 acres) and 96-0092892 (called 0.1176 acres) Records of Collin County, Texas (D.R.C.C.T.) and being more particularly described as follows:

BEGINNING at an "X" cut in concrete found for the most easterly corner of the above described 1.2394 acre tract and on the curving northwest right of way line of Communications Parkway (110 feet wide);

THENCE southwesterly along said right of way line with a curve to the left having a radius of 995.00 feet, a central angle of $26^{\circ} 48' 17''$, and a chord that bears $S 48^{\circ} 56' 30'' W$, 461.26 feet, an arc distance of 465.49 feet to a 5/8-inch iron rod with an orange "Cheatham & Assoc." cap found;

THENCE $N 00^{\circ} 40' 28'' E$ along the east line of a tract of land called 18.8098 acres in a Warranty Deed to Baccus Partnership recorded in Collin County Clerk Document No. 20100128000090190, D.R.C.C.T.;

THENCE northeasterly along a curve to the left having a radius of 980.00 feet, a central angle of $25^{\circ} 41' 15''$ and a chord that bears $N 49^{\circ} 01' 35'' E$, 435.69 feet, an arc distance of 439.37 feet to a point on the north line of said 1.2394 acre tract;

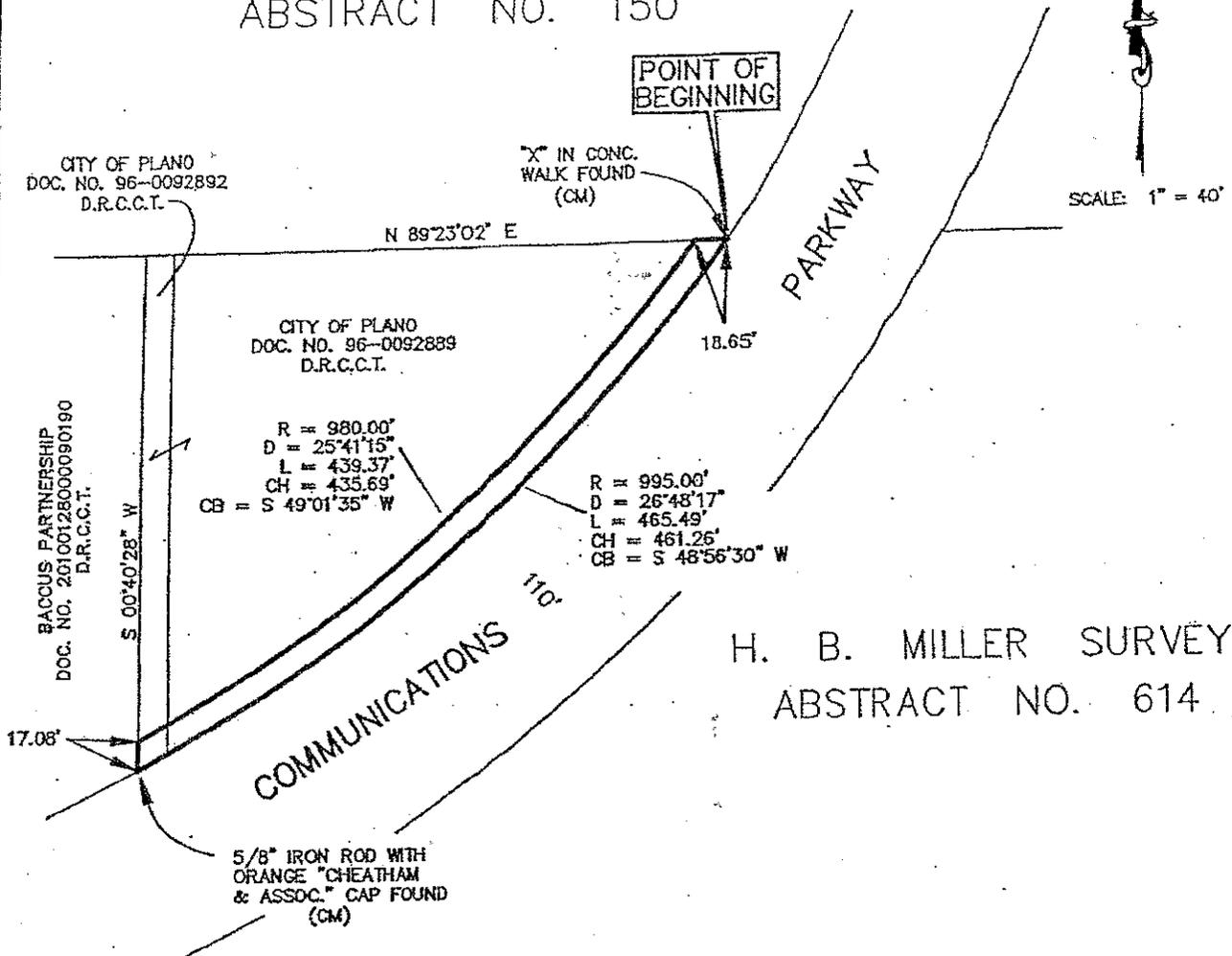
THENCE $N 89^{\circ} 23' 02'' E$ along said north line, a distance of 18.65 feet to the Point of Beginning and containing 6,786.60 square feet of land, more or less.

EXHIBIT "A"
The Easement Property

COLLIN COUNTY SCHOOL LAND SURVEY
ABSTRACT NO. 150



SCALE: 1" = 40'

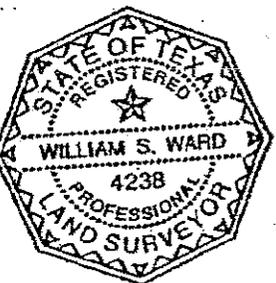


CITY OF PLANO
DOC. NO. 96-0092892
D.R.C.C.T.

CITY OF PLANO
DOC. NO. 96-0092889
D.R.C.C.T.

BACCUS PARTNERSHIP
DOC. NO. 20100128000090190
D.R.C.C.T.

H. B. MILLER SURVEY
ABSTRACT NO. 614



BEARING BASIS: THE NORTH LINE OF THE TRACT OF LAND DESCRIBED IN A DEED TO THE CITY OF PLANO RECORDED IN DOCUMENT NO. 96-0092889, D.R.C.C.T.

KNOW ALL MEN BY THESE PRESENTS:
THAT I WILLIAM S. WARD, REGISTERED PROFESSIONAL LAND SURVEYOR DO HEREBY DECLARE THAT THIS PLAT IS THE RESULT OF A SURVEY MADE ON THE GROUND UNDER MY PERSONAL SUPERVISION ON FEBRUARY 14, 2011 AND ALL DIMENSIONS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

William S. Ward
WILLIAM S. WARD, R.P.L.S. NO. 4238

EXHIBIT "A"
ONCOR ELECTRIC DELIVERY CO.
EASEMENT
PAGE 2 OF 2

Exhibit "B"

**City of Plano
Insurance Requirements**

Requirements

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

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

Listed below are the types and amounts of insurance required. By requiring such coverage, the City shall not be deemed or construed to have assessed the risk that may be applicable to Contractors under this agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligations assumed or pursuant to this agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: a) Premises /Operations b) Products/Completed Operations c) Independent Contractors d) Personal Injury/Advertising Injury e) Liability assumed under an insured contract (including tort liability of another in a business contract	\$1,000,000 each occurrence, \$2,000,000 general aggregate; \$2,000,000 products/completed operations aggregate	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. A copy of the endorsement to policy must be submitted with the required certificate of insurance. City requires insurers to be rated B+VI or higher by A.M. Best or A or higher by Standard & Poors
Business Auto Liability	\$1,000,000 each accident	
Workers' Compensation & Employers' Liability	Statutory Limits \$100,000 each accident \$500,000 policy limit by disease, \$100,000 each employee by disease	City to be provided a waiver of subrogation. A copy of the endorsement to policy must be submitted with the required certificate of insurance.

Additional Requirements:

- All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City of Plano.
- All insurance coverage required by this section must be evidenced by a certificate of insurance submitted by the contractor's insurer or broker. Certificates of insurance received from any other source will be rejected.
- The certificate of insurance must state: (1) the City of Plano is named as an Additional Insured with respect to General Liability Coverage and (2) a Waiver of Subrogation in favor of the City of Plano on the Workers' Compensation Policy

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



**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:		7/23/12		
Department:	Public Works			
Department Head:	Gerald P. Cosgrove			
Agenda Coordinator (include phone #): Kathleen Schonke (7198)				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the assignment agreement with the North Texas Municipal Water District for 12 easements located along Cottonwood Creek from the Rowlett Creek Regional Wastewater Treatment Plant to the Upper Cottonwood Creek Lift Station; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget				
Encumbered/Expended Amount				
This Item				
BALANCE				
FUND(s): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Granting an easement to the North Texas Municipal Water District (NTMWD) relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
<p>In 1967 the City of Plano acquired 12 easements required to construct a sewer line along Cottonwood Creek from Rowlett Creek Regional Wastewater Treatment Plant to the Upper Cottonwood Creek Lift Station located along Chaparral Drive. This line was originally called the Plano to Allen Trunk Sewer. This line was constructed by the City of Allen. A number of years ago the North Texas Municipal Water District (NTMWD) assumed responsibility for the operations and maintenance of this line. NTMWD is now requesting that the City assign to them the rights to the easements that the sewer line is located in (see June 14, 2012, letter from NTMWD). NTMWD is proposing to make improvements to this line. NTMWD does not want to make these improvements unless the easements are assigned to them. The improvements to the line will be a benefit to the City of Plano. It will increase capacity in the line which serves Plano citizens and will reduce inflow and infiltration in the line which will reduce our wastewater bill and help eliminate overflows in the system. Staff recommends Council authorize the assignment of the easements to NTMWD.</p>				
List of Supporting Documents: June 14, 2012, letter from NTMWD; Location Map			Other Departments, Boards, Commissions or Agencies N/A	



RECEIVED

JUN 15 2012

ENGINEERING DEPT

**NORTH TEXAS MUNICIPAL
WATER DISTRICT**

Regional Service Through Unity

June 14, 2012

Mr. Gerald Cosgrove
Director of Public Works
City of Plano
1520 Avenue K
P.O. Box 860358
Plano, Texas 75076

Re: Lower Cottonwood Creek Outfall Sewer Easement Assignment

Dear Mr. Cosgrove:

As discussed in previous meetings with you and your staff the North Texas Municipal Water District is currently in the design stages for the Lower Cottonwood Creek Outfall Sewer Improvements Project. This project involves the rehabilitation of the Lower Cottonwood Creek Outfall Sewer pipeline (previously referred to as the Plano to Allen Trunk Sewer) from the Upper Cottonwood Creek Lift Station to the Rowlett Creek Regional Wastewater Treatment Plant. During design research it has come to our attention that twelve sections of the pipeline's easements are still in the City of Plano's name. The referenced easements were issued to the City of Plano in 1967 as part of the Plano to Allen Trunk Sewer Project. A list of the referenced easements along with a brief description of each easement has been provided below and copies of the easement documents and the Warranty Deed to the General Portland Land Development Company have been attached for reference.

1. The referenced easement was issued to the City of Plano February 7, 1967 from Paul Wyche and was recorded in Volume 1400, Page 838 of the Collin County Land Records and is for the 12" force main pipeline from the Lower Cottonwood Creek Lift Station to the wastewater treatment plant head works.
2. The referenced easement was not located but is listed in exhibit B as item t). ***Unrecorded Plano-Allen sanitary sewer easement as shown on survey of Donald C. Morean dated 10/23/72***, of the General Warranty Deed to General Portland Land Development Company dated July 31 1978 and was recorded as Volume 1124 Page 232 Collin County Land Records. This easement is for the section of pipe across the Los Rios Golf Course.
3. The referenced easement was issued to the City of Plano June 19, 1967 from G.R. Merriman and was recorded in Volume 784, Page 151 of the Collin County Land Records.

[Subject from Page 1]

[date]

Page 2

4. The referenced easement was also issued to the City of Plano June 19, 1967 from G.R. Merriman and was recorded in Volume 1400, Page 833 of the Collin County Land Records.
5. The referenced easement was issued to the City of Plano June 14, 1967 from Minnie Joe Turner and was recorded in Volume 784, Page 163 of the Collin County Land Records.
6. The referenced easement was issued to the City of Plano February 21, 1967 from A.W. Howe and was recorded in Volume 784, Page 139 of the Collin County Land Records.
7. The referenced easement was issued to the City of Plano February 28, 1967 from L.G. Estes and was recorded in Volume 784, Page 131 of the Collin County Land Records.
8. The referenced easement was issued to the City of Plano June 19, 1967 from Dorothy P. Lewandos and was recorded in Volume 784, Page 147 of the Collin County Land Records.
9. The referenced easement was issued to the City of Plano March 15, 1967 from Richard L. Congdon and was recorded in Volume 784, Page 127 of the Collin County Land Records.
10. The referenced easement was also issued to the City of Plano June 19, 1967 from Dorothy P. Lewandos and was recorded in Volume 784, Page 143 of the Collin County Land Records.
11. The referenced easement was issued to the City of Plano March 16, 1967 from W. Lee Moore Jr. and was recorded in Volume 1400, Page 829 of the Collin County Land Records.
12. The referenced easement was also issued to the City of Plano March 16, 1967 from W. Lee Moore Jr. and was recorded in Volume 784, Page 155 of the Collin County Land Records.

In preparation for bidding and construction phases of the project the NTMWD is requesting that the City of Plano assign ownership of the referenced easements to the NTMWD. Three copies of Easement Assignment documents have also been included with this letter. If you agree with the assignment request we are asking that you execute all three copies of the assignment documents keeping one copy for your records and returning the other two for our records.

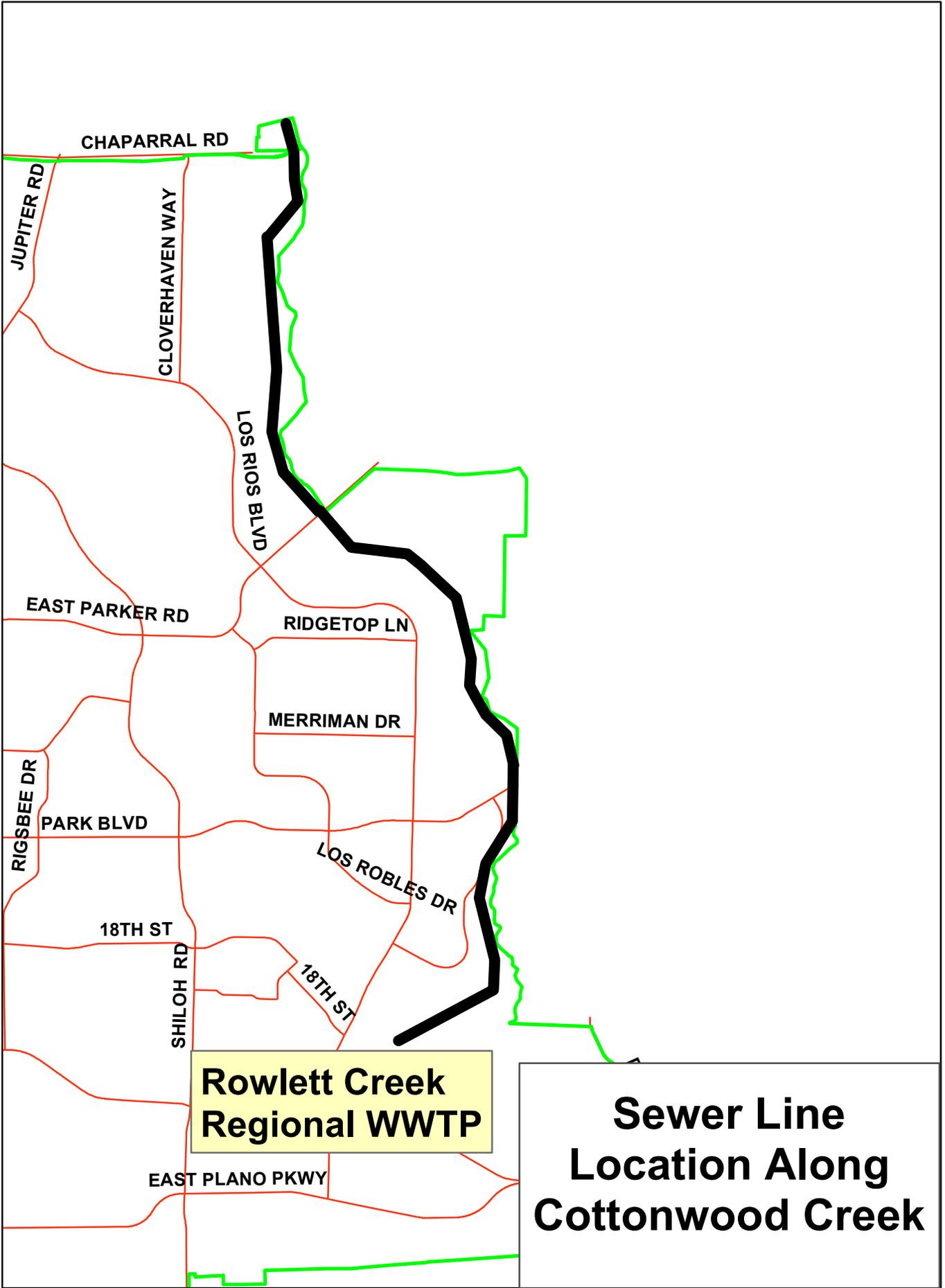
As always, it is a pleasure to have the opportunity to work with the City of Plano in the pursuit of solutions in regional wastewater services. If you need any additional information or have any questions, please contact Jeff Ray at (972) 442-5405 or my office directly.

Sincerely,



BRUCE COLE
Engineering Manager

BC/MB/kr
Attachments
xc: James M. Parks



**Rowlett Creek
Regional WWTP**

**Sewer Line
Location Along
Cottonwood Creek**

A Resolution of the City Council of the City of Plano, Texas, approving the assignment agreement with the North Texas Municipal Water District for 12 easements located along Cottonwood Creek from the Rowlett Creek Regional Wastewater Treatment Plant to the Upper Cottonwood Creek Lift Station; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City of Plano acquired 12 easements along Cottonwood Creek for the Plano to Allen Trunk Sewer in 1967; and

WHEREAS, the City of Allen constructed this sewer line; and

WHEREAS, the North Texas Municipal Water District (NTMWD) has taken over operations and maintenance responsibilities for this sewer line; and

WHEREAS, NTMWD has requested assignment of the 12 easements so that they may make improvements to the sewer line; and

WHEREAS, the improvements will be beneficial to the City of Plano by providing additional capacity for Plano citizens, reducing inflow and infiltration which will lower Plano's wastewater bill and helping to reduce the occurrence of sewer overflows; and

WHEREAS, the City Council has been presented an Agreement which assigns ownership of the 12 easements to NTMWD, a substantial copy of the "Assignment" is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ASSIGNMENT

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

WHEREAS, the City of Plano, Texas, a Texas home-rule municipal corporation ("City"), wishes to donate by this Assignment certain interests in real property to the North Texas Municipal Water District ("District") pursuant to TEXAS LOCAL GOVERNMENT CODE § 272.001(l):

The City, in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by means of this instrument, grants and conveys to the District, all of the City's right, title and interest in the following described instruments:

Easements, together with all sanitary sewer facilities located within said Easements, for the Cottonwood Relief Sewer Line, more fully described as follows:

1. An unrecorded easement to the City of Plano as shown on the survey of Donald C. Morean, dated 10/23/72, of the General Warranty Deed to General Portland Land Development Company, dated July 31, 1978, and was recorded as Volume 1124, Page 232, Collin County Land Records.
2. Easement to the City of Plano, Texas, from Paul Wyche, dated February 7, 1967, and recorded in Volume 1400, Page 838, of the Collin County Land Records.
3. Easement to the City of Plano, Texas, from G.R. Merriman, dated June 19, 1967, and recorded in Volume 784, Page 151, of the Collin County Land Records.
4. Easement to the City of Plano, Texas, from Minnie Joe Turner, dated June 14, 1967, and recorded in Volume 784, Page 163, of the Collin County Land Records.
5. Easement to the City of Plano, Texas, from G.R. Merriman, dated June 19, 1967, and recorded in Volume 1400, Page 833, of the Collin County Land Records.
6. Easement to the City of Plano, Texas, from A.W. Howe, dated February 21, 1967, and recorded in Volume 784, Page 139, of the Collin County Land Records.

7. Easement to the City of Plano, Texas, from L.G. Estes, dated February 28, 1967, and recorded in Volume 784, Page 131, of the Collin County Land Records.
8. Easement to the City of Plano, Texas, from Dorothy F. Lewandos, dated June 19, 1967, and recorded in Volume 784, Page 147, of the Collin County Land Records.
9. Easement to the City of Plano, Texas, from Richard L. Congdon and wife Martha C. Congdon, dated March 15, 1967, and recorded in Volume 784, Page 127, of the Collin County Land Records.
10. Easement to the City of Plano, Texas, from Dorothy F. Lewandos, dated June 19, 1967, and recorded in Volume 784, Page 143, of the Collin County Land Records.
11. Easement to the City of Plano, Texas, from W. Lee Moore, dated March 16, 1967, and recorded in Volume 1400, Page 829, of the Collin County Land Records.
12. Easement to the City of Plano, Texas, from W. Lee Moore, dated March 16, 1967, and recorded in Volume 784, Page 155, of the Collin County Land Records.

This Assignment is made subject to the following terms:

I. PURPOSE

The interest assigned shall be used by the District in carrying out a purpose that benefits the public interest of the City; to-wit, the provision of sewer improvements or services for the Lower Cottonwood Creek Outfall Sewer Improvements Project.

II. NO WARRANTY

The City makes this Assignment without any warranty of title, express, implied or statutory.

III. BINDING EFFECT

This Assignment and all of its terms and conditions are binding on the City and its successors and assigns and on the District and its successors and assigns.

IV. REVERTER

Pursuant to TEXAS LOCAL GOVERNMENT CODE § 272.001(l), the title and right to possession of the interest shall revert to the City if the District ceases to use the interest in carrying out the public purpose stated in Article I, *supra*.

SIGNED and delivered this _____ day of _____, 2012.

CITY OF PLANO, a Home-Rule Municipal Corporation

By: _____

Name: Bruce D. Glasscock

Title: City Manager

Address: City of Plano, 1520 K Avenue, Plano,
Texas 75074

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____

Name: _____

Title: _____

Address: _____

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this _____ day of _____, 2012, by _____, _____ of the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, a municipal corporation, on behalf of said corporation.

Notary Public in and for the 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:	7/23/12
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs Pursuant to Texas Tax Code Chapter 351 by and between Tollway 121 Hotel, LP and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2015-16 thru 2024-25	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	1,500,000	1,500,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	-1,500,000	-1,500,000
BALANCE	0	0	0	0

FUND(S): CONVENTION & TOURISM FUND

COMMENTS: Approval of this item will result in the City of Plano providing the Hotel Owner an annual grant payment in the amount of \$150,000 beginning January 1, 2015 for a total of 10 years. The amount to be paid out over the 10-year period is not to exceed \$1,500,000 and will be paid from Hotel/Motel Tax revenues.

STRATEGIC PLAN GOAL: Providing annual grant payments for hotel marketing and transportation costs relate to the City's Goals of Financially Strong City with Service Excellence and Strong Local Economy.

SUMMARY OF ITEM

This Resolution approves and authorizes the City of Plano to enter into a Hotel Occupancy Tax Agreement via an Occupancy Tax Grant between Tollway 121 Hotel, LP and the City of Plano. An annual grant in the amount of \$150,000 beginning January 1, 2015 will be paid for 10 years and not to exceed \$1,500,000. Funds will come from the Hotel/Motel Tax revenues.

The hotel owner, Tollway 121 Hotel, LP will develop a full-service business hotel with 285 guest rooms and 30,000 square feet of meeting/conference space. Additionally, the owner shall offer marketing services and/or guest transportation for the hotel, including promoting travel to Plano and assisting the City in promotional activities and endeavors.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

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

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs Pursuant to Texas Tax Code Chapter 351 by and between Tollway 121 Hotel, LP and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs Pursuant to Texas Tax Code Chapter 351 by and between Tollway 121 Hotel, LP and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**HOTEL OCCUPANCY TAX
GRANT AGREEMENT
FOR HOTEL MARKETING AND TRANSPORTATION COSTS
PURSUANT TO TEXAS TAX CODE CHAPTER 351**

This Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs pursuant to Texas Local Government Code Section 380.001 and Texas Tax Code Chapter 351 (the "Agreement") is entered into this ___ day of _____, 2012, by and between Tollway 121 Hotel, LP, a Texas limited partnership, duly acting by and through its authorized representative, hereinafter referred to as "Hotel Owner", and the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City".

RECITALS

WHEREAS, the Hotel Owner is developing a full-service business class hotel with conference space located at Lot 1R, Block "B" located on Granite Parkway in Granite Park, Plano, TX 75024 as more fully described in Exhibit "A" attached hereto (the "Hotel Site"); and

WHEREAS, City currently levies a local hotel occupancy tax pursuant to Chapter 351, Texas Tax Code (the "Hotel Occupancy Tax" or "HOT"); and

WHEREAS, the Hotel Owner shall develop and occupy at least 250,000 gross square feet of hotel and meeting/conference space at the Hotel Site which shall include at least 285 guest rooms and 30,000 square feet of meeting/conference space (including pre-function space), including various related meeting rooms, recreational facilities, and other ancillary facilities (collectively, the "Hotel"), which Hotel will, when operating, be subject to the Hotel Occupancy Tax; and

WHEREAS, the Hotel Owner shall offer marketing services and/or guest transportation for the Hotel in the City of Plano, Texas ("Plano"), and the surrounding area (collectively, the "Plano Area"), including promoting travel to Plano by residents outside of Plano for leisure, business, conventions and similar events. In addition to assisting the City in such promotional endeavors, the Hotel Owner shall also provide promotional activities for the Hotel. The Hotel Owner may also transport guests of the Hotel in and around the Plano Area; and

WHEREAS, the Hotel Owner's activities are compatible with the interests of the City, and the City desires to provide an incentive for such promotional and transportation activities; 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 is authorized to use Hotel Occupancy Tax funds for advertising to promote tourism and the convention and hotel industry pursuant to Section 351.101(a)(3) of the Texas Tax Code and for transportation of hotel tourists pursuant to Section 351.110 of the Texas Tax Code; and

WHEREAS, the City Council of Plano finds that it is in best interest of the City to grant Hotel Occupancy Tax funds to the Hotel Owner as an economic development incentive to use for promotional and transportation activities as set out herein.

NOW, THEREFORE, in consideration of the premises noted herein, and for good and valuable consideration provided, the sufficiency of which all Parties hereby acknowledge, the City and the Hotel Owner do hereby agree as follows:

AGREEMENT

ARTICLE I TERM

Term. The term of this Agreement shall commence on the last date on which all of the parties hereto have executed this Agreement (“Effective Date”) and shall continue until December 31, 2024, unless sooner terminated as provided herein (the “Term”).

ARTICLE II GRANT

2.01 **Grant.** The City agrees to provide the Hotel Owner an annual grant of One Hundred and Fifty Thousand Dollars (\$150,000.00) to be paid from Hotel Occupancy Tax revenue in the City’s Convention and Tourism fund (the “HOT Grant Funds”) beginning on January 1, 2015 and payable on January 1 of each year thereafter during the Term subject to the Hotel Owner complying with the obligations set out in Article III below and filing of the annual certification as set out in Section 2.03 below. The grant amount paid by the City to the Hotel Owner shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) total during the Term. A grant year shall be from January 1 until December 31 of each year beginning on January 1, 2015 and for each year thereafter that this Agreement is in effect (the “Grant Year”).

2.02 **Separate Account.** All HOT Grant Funds provided to the Hotel Owner by the City pursuant to this Agreement shall be maintained by the Hotel Owner in a separate bank account and shall be used solely for purposes of this Agreement. HOT Grant Funds shall not be commingled with any other funds by the Hotel Owner.

2.03 **Annual Certification.** Beginning December 1, 2015, the Hotel Owner must submit an annual certification on the form attached hereto as Exhibit “B” and must submit the form not later than December 1 of each year for the duration of this Agreement certifying compliance with all of the obligations set out in Article III below.

A FAILURE TO FILE THE ANNUAL CERTIFICATION BY THE DECEMBER 1 DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID HOT GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN SECTION 6.01 BELOW.

**ARTICLE III
OBLIGATIONS OF HOTEL OWNER**

In consideration for the City's payment of HOT Grant Funds as set forth in Section 2.01 above, the Hotel Owner agrees to perform the following:

- (a) **Occupancy and Operation.** On or before December 31, 2014 and throughout the remainder of the Term, occupy, operate and be open to the public a hotel with meeting/conference space that is a facility that is a minimum of 250,000 gross square feet of building improvements and is operated as a full-service business class hotel. The Hotel shall have a minimum of 285 guest rooms and a minimum of 30,000 gross square feet of meeting/conference space (including pre-function space) on the Hotel Site.

- (b) **Use of Funds.** The Hotel Owner's use of the HOT Grant Funds shall be limited to the following:
 - 1. Expenditure of the HOT Grant Funds shall be in conformance with (i) Section 351.101(a)(3) of the Texas Tax Code and as further amended by the legislature during the term of this Agreement, including advertising, solicitation, and marketing programs to promote tourism and the convention and hotel industry to attract tourists and convention delegates or registrants to Plano and/or the Hotel; and/or (ii) Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement, for a transportation system to transport tourists from hotels in the Plano Area to the commercial center in Plano, a convention center in Plano; other hotels in or near the Plano Area; and tourist attractions in or near the Plano Area; and

 - 2. Expenditure of the HOT Grant Funds shall be in conformance with the Annual Budget submitted by the Hotel Owner to the City pursuant to Article IV herein.

- (c) **Hotel Tax Payment.**
 - 1. The Hotel Owner must generate and remit at least Seventy Five Thousand Dollars (\$75,000.00) annually to the City for the City portion of

the HOT payment in its first full year of operation of the Hotel and annually thereafter. **FAILURE BY HOTEL OWNER TO REMIT THE MINIMUM HOT PAYMENT TO THE CITY REQUIRED BY THIS ARTICLE III (c)(1) SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN 6.01 BELOW.**

2. The Hotel Owner shall timely remit all money owed to the City pursuant to the Hotel Owner's responsibility to collect and make HOT payments as required by Section 20-74 of the City of Plano Code of Ordinances and as further amended by the City during the Term. The Hotel Owner shall not become delinquent in its HOT payments to the City. **FAILURE BY HOTEL OWNER TO TIMELY MAKE HOT PAYMENTS TO THE CITY AS REQUIRED BY THIS ARTICLE III (c)(2) SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN 6.01 BELOW.**

ARTICLE IV ANNUAL PLAN AND BUDGET

4.01 **Preparation of Proposed Annual Plan and Budget.** On an annual basis, the Hotel Owner shall prepare and submit to the City a proposed Annual Plan and Budget itemizing the use of HOT Grant Funds for the forthcoming Grant Year prior to HOT Grant Funds being distributed. The proposed Annual Plan and Budget shall be submitted to the City no later than December 1 immediately prior to commencement of each Grant Year beginning on or before December 1, 2014 and on December 1 of each year thereafter during the Term. The proposed Annual Plan and Budget shall include, at a minimum, a line item budget detailing the use of the HOT Grant Funds for the upcoming Grant Year, the amount of expenditure for each item and a description of the item indicating how it complies with the requirements in Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement. **FAILURE TO SUBMIT THE PROPOSED ANNUAL PLAN AND BUDGET BY THE DECEMBER 1 DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN 6.01 BELOW.**

4.02 **Approval of Annual Plan and Budget.** The City Manager or his designee shall approve or disapprove the Annual Plan and Budget submitted by the Hotel Owner prior to disbursement of HOT Grant Funds for the upcoming Grant Year. The City shall have the right to request modifications to the Annual Plan and Budget. The City's approval shall not be unreasonably withheld or delayed.

4.03 **Alternatives.** The Hotel Owner may request that the City approve one or more alternative programs in the overall Annual Plan and Budget for a particular Grant Year, so long as all applicable alternatives are in conformance with the authorized uses pursuant to Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement.

4.04 **Effect of Approval.** Approval by the City of the Annual Plan and Budget does not alleviate the Hotel Owner's responsibility to spend the HOT Grant Funds within the limitations of Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement. The Hotel Owner acknowledges that, pursuant to the terms of this Agreement and Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement, the Hotel Owner has a fiduciary duty to the City with respect to its handling and use of the HOT Grant Funds provided to the Hotel Owner under this Agreement.

4.05 **Permitted Limited Reallocations.** The City recognizes that the tourism and hotel industry is a dynamic one, and that prudence dictates that the Hotel Owner retain the ability to make certain minimal adjustments from time to time within the confines of the Annual Plan and Budget. Accordingly, the City agrees that the Hotel Owner may, in its professional judgment and mindful of its fiduciary responsibility to the City: (i) reduce expenditures below the level approved in the Annual Plan and Budget for all or any particular categories as the Hotel Owner deems appropriate subject to 4.07 below, (ii) reallocate up to ten (10%) of the amount in any category in the Annual Plan and Budget to another category, so as to allow a reasonable shift in emphasis as the Year develops, and (iii) allocate any amount included in an "alternative" category in the Annual Plan and Budget to any other approved category. However, the Hotel Owner acknowledges and agrees that no HOT Grant Funds may be allocated or used for any activity or program that was not approved by the City for the Annual Plan and Budget for the Grant Year. The Hotel Owner shall notify the City in writing of any changes made to the Annual Plan and Budget pursuant to this Section 4.05 within thirty (30) days of making a change.

4.06 **Annual Plan and Budget Amendments.** Should the provisions of Section 4.05 above be determined by the Hotel Owner to provide insufficient flexibility to address applicable facts and circumstances as they develop during a Grant Year, the Hotel Owner may, at any time, propose and request the City's written approval of an amendment to the approved Annual Plan and Budget for the Grant Year in question. No

such amendment shall be effective until approved in writing by the City Manager, which approval by the City Manager shall not be unreasonably withheld.

4.07 **Unexpended and Unencumbered Funds.** Unexpended and unencumbered HOT Grant Funds that remain with the Hotel Owner after December 31 of each Grant Year will revert to the City and the Hotel Owner must return said HOT Grant Funds to the City on or before January 31 of the immediately following year. Encumbered HOT Grant Funds are those funds which the Hotel Owner has received and obligated for payment by written agreement or contract to expend on approved projects listed in the Annual Plan and Budget. Requests to encumber HOT Grant Funds for projects, as approved in the Annual Plan and Budget completed after December 31 of a Grant Year, shall be submitted to the City for review and approval by December 1 of that same Grant Year. If approved by the City, the encumbered HOT Grant Fund expenditure for specific projects must be completed by December 31 of the year of the request and authorization for encumbrance. An additional annual compliance certification, in accordance with the form set forth in Section 2.03 herein, must be submitted to the City no later than April 30 in the year immediately following the year of the authorized encumbrance. HOT Grant Funds may only be encumbered for projects that have commenced prior to December 1 of the Grant Year for which the HOT Grant Funds were issued.

ARTICLE V LIABILITY AND FIDELITY BOND

5.01 **Immunity.** The Hotel Owner agrees that no provision of this Agreement is intended to or shall be interpreted to negate or diminish any statutory or common law rights the City may have to immunity under the laws of the State of Texas or any other applicable law.

5.02 **INDEMNIFICATION.** THE HOTEL OWNER AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES, OF AND FROM ANY AND ALL PRESENT OR FUTURE CLAIMS, DEMANDS OR CAUSES OF ACTION THAT MAY ACCRUE ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF, THE HOTEL OWNER'S WRONGFUL ACTS AND/OR OMISSIONS UNDER THIS AGREEMENT AND/OR THE HOTEL OWNER'S MISUSE OF HOT GRANT FUNDS AND/OR THE MISMANAGEMENT OF SUCH HOT GRANT FUNDS, AS PER THIS AGREEMENT.

5.03 **Fidelity Bond.** Throughout the term of this Agreement, the Hotel Owner shall maintain a fidelity bond in customary commercial form in an amount at least equal to the annual amount of HOT Grant Funds, covering any employees, agents, or officers of the Hotel Owner having access to the HOT Grant Funds or the separate account in which HOT Grant Funds are deposited. The Hotel Owner shall annually on or before December 1, with submission of the Annual Plan and Budget as required by Article IV of

this Agreement, and at any time upon the City's request, provide evidence to the City that such fidelity bond is in effect.

ARTICLE VI REFUND/DEFAULT

6.01 Refund/Default.

(a) If the Hotel Owner fails to comply with any of the provisions of this Agreement at any time during the term of this Agreement and the failure to comply is not the result of an Event of Force Majeure, and the default is not cured pursuant to Section 7.01 (b) below, the City, at its sole option, may require a full or partial refund of the entire amount of HOT Grant Funds paid by the City to the Hotel Owner. The City may use any efforts to collect such sums owed and the Hotel Owner agrees to pay any and all interest and expenses, including reasonable attorney fees and costs, incurred by the City. This obligation shall survive termination of this Agreement.

For the purposes of determining whether the City is entitled to seek a refund under this section, the Hotel Owner shall certify to the City as set out in Section 2.03 and, if necessary, Section 4.07 above that they are in compliance with Article III on the form attached as Exhibit "B". The term "Event of Force Majeure" means 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, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the operation of the Hotel as set out in Article III (a) above. The term shall not include a downturn in the economy.

(b) If the Hotel Owner fails to timely provide any certification as required by Section 2.03 or 4.07 and such failure is not cured as provided in Section 7.01(b) below, the full amount of HOT Grant Funds paid by the City to Hotel Owner shall be refunded by the Hotel Owner to the City. The City may use any efforts to collect such sums owed and the Hotel Owner agrees to pay any and all expenses, including reasonable attorney fees and costs, incurred by the City. This obligation shall survive termination of this Agreement.

(c) At any time during the term of this Agreement, if the Hotel Owner 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 the full amount of HOT Grant Funds paid by the City to the Hotel Owner 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 HOT Grant Funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Hotel Owner of the reimbursement requirement.

ARTICLE VII TERMINATION

7.01 **Events of Termination.** This Agreement terminates upon any one or more of the following:

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

(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.

7.02 **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 VIII RETENTION AND ACCESSIBILITY OF RECORDS

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

8.02 The Hotel Owner gives the 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 HOT Grant Funds Account belonging to or in use by the Hotel Owner pertaining to the deposit, use, and expenditure of HOT Grant Funds (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to the Hotel Owner's books and records will be limited to information needed to verify that the Hotel Owner 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 the City. The Hotel Owner shall not be required to disclose to the City any information that by law the Hotel Owner 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 the Hotel Owner to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of the Hotel Owner. 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 Article VII above, or any portion thereof, for reason of default. All Records shall be retained by the Hotel Owner 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 inquiries and open record requests are completed. The Hotel Owner agrees to maintain the Records in an accessible location.

ARTICLE IX ASSIGNMENT

This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Hotel Owner 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 Hotel Owner as long as the Hotel Owner 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) in the preceding paragraph, the Hotel Owner 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 (30) days prior to the effective assignment date. The 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 X MISCELLANEOUS

10.01 **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 to act on behalf of the other party under any circumstances by virtue of this Agreement.

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

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

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

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

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

If intended for the Hotel Owner:
Tollway 121 Hotel, LP
c/o Granite Properties
Attention: Mr. David R. Cunningham
5601 Granite Parkway, Suite 800
Plano, Texas 75024

With a copy to:
Munsch Hardt Kopf & Harr, P.C.
Attention: Mr. Robert H. Voelker
3800 Lincoln Plaza
500 N. Akard
Dallas, TX 75201

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

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

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

10.08 **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.

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

10.10 **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.

10.11 **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.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

TOLLWAY 121 HOTEL, LP, a Texas
limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

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

EXHIBIT "A"
Legal Description of Property
LOT 1R, BLOCK "B"
GRANITE PARK PHASE III

FIELD NOTES DESCRIPTION

BEING A TRACT OF LAND LOCATED IN THE SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108 AND THE JABEZ DEGMAN SURVEY, ABSTRACT NO. 279, COLLIN COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO TOLLWAY/121 PARTNERS, LTD. AS RECORDED IN COUNTY CLERK NO. 98-0037186, OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (D.R.C.C.T.), SAID TRACT ALSO BEING LOT 1R, BLOCK B OF GRANITE PARK PHASE III, RECORDED IN INSTRUMENT NO. 20060814010003470, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS (O.P.R.C.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" IN THE NORTH RIGHT-OF-WAY LINE OF GRANITE PARKWAY (A 92 FOOT RIGHT-OF-WAY), BEING THE SOUTHWEST CORNER OF LOT 4R OF SAID BLOCK "B" AND BEING THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID GRANITE PARKWAY AS FOLLOWS:

NORTHWESTERLY, AN ARC LENGTH OF 164.19 FEET ALONG A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 404.00 FEET, A DELTA ANGLE OF 23°17'08", AND A CHORD BEARING N 76°08'36"W, 163.06 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 104.17 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 486.50 FEET, A DELTA ANGLE OF 12°16'07", AND A CHORD BEARING N 70°38'06"W, 103.97 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 197.50 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 776.00 FEET, A DELTA ANGLE OF 14°34'55", AND A CHORD BEARING N 84°03'37"W, 196.96 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE MOST EASTERLY SOUTH CORNER OF LOT 2, BLOCK "B", GRANITE PARK AS SHOWN BY THE PLAT RECORDED IN DOCUMENT NO. 2002-0191594 OF THE PLAT RECORDS OF COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE ALONG THE EAST BOUNDARY LINE OF SAID LOT 2, AS FOLLOWS:

N 00°15'30"E, 42.87 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 21°45'28"W, 111.61 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 00°15'30"E, 227.84 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, SAID IRON ROD BEING IN A WESTERLY LINE OF SAID LOT 4R;

THENCE ALONG THE COMMON LINE OF SAID LOT 4R AND LOT 1R, AS FOLLOWS:

NORTHEASTERLY, AN ARC LENGTH OF 161.46 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 355.00 FEET, A DELTA ANGLE OF 26°03'31", AND A CHORD BEARING OF N 63°07'57" E, 160.07 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", THE BEGINNING OF A CURVE TO THE LEFT;

NORTHEASTERLY, AN ARC LENGTH OF 114.56 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 864.42 FEET, A DELTA ANGLE OF 7°35'35", AND A CHORD BEARING OF N 46°18'23" E, 114.47 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 47°25'16" E, 44.35 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 18°26'12" E, 138.29 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 54°01'25" E, 113.80 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 23°10'57" E, 13.31 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 19.58 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, A DELTA ANGLE OF 18°42'00", AND A CHORD BEARING OF S 13°49'57" E, 19.50 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 29.29 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 72.25 FEET, A DELTA ANGLE OF 23°13'32", AND A CHORD BEARING OF S 16°05'43" E, 29.09 FEET TO A 1/2" IRON ROD SET

WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 125.46 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 187.50 FEET, A DELTA ANGLE OF $38^{\circ}20'21''$, AND A CHORD BEARING OF $S\ 46^{\circ}52'39''\ E$, 123.14 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

$S\ 66^{\circ}02'50''\ E$, 83.22 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

SOUTHWESTERLY, AN ARC LENGTH OF 55.68 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 525.00 FEET, A DELTA ANGLE OF $6^{\circ}04'35''$, AND A CHORD BEARING OF $S\ 59^{\circ}17'52''\ W$, 55.65 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHWESTERLY, AN ARC LENGTH OF 100.62 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET, A DELTA ANGLE OF $72^{\circ}03'53''$, AND A CHORD BEARING OF $S\ 26^{\circ}18'13''\ W$, 94.12 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 77.12 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 370.00 FEET, A DELTA ANGLE OF $11^{\circ}56'34''$, AND A CHORD BEARING OF $S\ 3^{\circ}45'26''\ E$, 76.98 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

$S\ 02^{\circ}12'51''\ W$, 24.99 FEET TO THE PLACE OF BEGINNING AND CONTAINING 4.624 ACRES (201,432 SQUARE FEET) OF LAND, MORE OR LESS.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

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

_____ a. I hereby certify that Tollway 121 Hotel, LP, a Texas limited partnership, is in compliance with each applicable term as set forth in the Agreement including all the terms of Article III of the Agreement. The amount of Hotel Occupancy Tax paid by Tollway 121 Hotel, LP to the City for the previous year was _____. Attached is a fidelity bond for Tollway 121 Hotel, LP in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) and an Annual Plan and Budget for the upcoming Grant Year as required by Section 5.03 and Section 4.01 of the Agreement. I further certify that Tollway 121 Hotel, LP is entitled to receive a grant payment in accordance with the terms and conditions set out in Article II for the upcoming Grant Year.

_____ b. I hereby certify that Tollway 121 Hotel, LP, a Texas limited partnership, is not in compliance with each applicable term as set forth in the Agreement including all the terms of Article III of the Agreement. The amount of Hotel Occupancy Tax paid by Tollway 121 Hotel, LP to the City for the previous year was _____. I further certify that Tollway 121 Hotel, LP is not entitled to receive a grant payment in accordance with the terms and conditions set out in Article II for the upcoming Grant Year.

ATTEST:

Tollway 121 Hotel, LP,
a Texas limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[MUST BE CFO OR CEO]

NOTE:

This form is due by December 1 of each year beginning on December 1, 2015 and as long as this Agreement is in effect. Please note that an Annual Plan and Budget and Fidelity Bond are due on December 1, 2014 but a compliance statement is not due at that time.

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:		07/23/2012		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Sharron Mason - Ext. 7247				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Sachse, Texas to allow the employees of the City of Sachse to take classes offered by City of Plano Professional Development Center, authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12 thru 2015-16	Prior Year (CIP Only)	Current Year	Future Years
TOTALS				
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	1,000	4,000	5,000
BALANCE	0	1,000	4,000	5,000
FUND(S): GENERAL FUND				
<p>COMMENTS: Approval of this item will result in \$1,000 in annual revenue from the City of Sachse to the City of Plano for employee training. The estimated annual amount of revenue to earn in FY 2011-12 is \$1,000. The estimated future annual revenue amount is \$4,000, which will be earned if renewed annually.</p> <p>STRATEGIC PLAN GOAL: Providing employee training through an Interlocal Agreement with the City of Sachse relates to a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
Interlocal Agreement by and between the City of Plano and the City of Sachse, Texas allows the City of Sachse's employees to take classes offered by the City of Plano Professional Development Center. The initial term of this Contract shall be a period of twenty four (24) months commencing upon the effective date hereof. Sachse shall have the right and option to extend the term hereof by three (3) additional twelve (12) month periods by giving written notice to Plano.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution and Interlocal Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Sachse, Texas to allow the employees of the City of Sachse to take classes offered by City of Plano Professional Development Center, authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between City of Plano and City of Sachse for educational services, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF PLANO, TEXAS AND THE CITY OF SACHSE, TEXAS
FOR CITY OF SACHSE EMPLOYEES TO PARTICIPATE IN PLANO PROGRAM**

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "Plano", and the **CITY OF SACHSE, TEXAS**, a Home-Rule Municipal Corporation hereinafter referred to as "Sachse", as follows:

WITNESSETH:

WHEREAS, Plano and Sachse are political subdivisions within the meaning of Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act"); and

WHEREAS, the Act provides authority for entities such as Plano and Sachse to enter into interlocal agreements with each other to perform governmental functions and services as set forth in the Act; and

WHEREAS, the City of Plano Professional Development Center offers Business Productivity education courses ("Program") and desires to offer the Program to Sachse employees; and

WHEREAS, Sachse desires to offer its employees the opportunity to attend the Program taught by the City of Plano. The classes in the Program are as shown on the City of Plano Professional Development Center Class List, attached hereto and marked **Exhibit "A"**; and

WHEREAS, Sachse has current revenues available to satisfy the fees and/or expenses incurred pursuant to this Agreement; and

WHEREAS, the Program will provide Sachse employees with additional knowledge and skills to more effectively serve the citizens.

NOW, THEREFORE, Plano and Sachse, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

**I.
TERM**

The initial term of this Contract shall be a period of twenty four (24) months commencing upon the effective date hereof. Sachse shall have the right and option to extend the term hereof by three (3) additional twelve (12) month periods by giving written notice to Plano. Sachse and Plano herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Program, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**II.
THE PROGRAM**

The parties agree that Plano shall offer the courses as identified in **Exhibit "A"** attached hereto and incorporated herein by reference. The parties understand and agree that any deviations or modifications in the terms of the Agreement may be authorized from time to time, but said authorization must be made in writing.

**III.
ROLES AND GENERAL RESPONSIBILITIES OF THE PARTIES**

1. Sachse shall designate a program liaison who will manage program details and work with the Plano's program manager in content and logistics planning. Sachse shall provide Plano with required student-employee information for the purpose of registration and documentation.
2. Plano shall provide curriculum design, program delivery, assembly of program materials, development of materials for participants, and a program manager to work with Sachse.

**IV.
CONSIDERATION / FEES**

A. Sachse shall pay Plano according to the terms set out in **Exhibit "A"** attached hereto and made a part hereof. Payment shall be made within 30 days of receipt of invoice for services provided. Sachse will pay for the fees and/or expenses incurred pursuant to this Agreement from its current available revenues. Any renewal will be subject to Sachse having the revenues available for that contract term.

**V.
TERMINATION**

Either party may terminate this Agreement at any time without cause or penalty by giving thirty (30) days advance written notice. Sachse shall pay all fees and costs, if any, incurred by Plano pursuant to this Agreement through the effective date of termination.

**VI.
RELEASE AND HOLD HARMLESS**

Plano, to the extent authorized under the constitution and laws of the State of Texas, agrees to be responsible for its own acts of negligence and Sachse, to the extent allowed by law and without waiving any rights or protections provided therein, agrees to be responsible for its own acts of negligence which may arise in connection with any and all claims for damages, cost, and expenses to person or persons and property that may arise out of or be occasioned by this Agreement.

In the event of joint and concurrent negligence, Sachse and Plano agree that responsibility shall be apportioned comparatively. This obligation shall be construed for the benefit of the parties hereto, and not for the benefit of any third parties, nor to create liability for the benefit of any third parties, nor to deprive the parties hereto of any defenses each may have as against third parties under the laws and court decisions of the State of Texas.

**VII.
NOTICE**

Any notice provided under this Agreement shall be delivered by mail or personal service to the parties named below:

City of Sachse Representative

Mr. Elliott Harper
Human Resources Assistant
City of Sachse
3815 Sachse Road, Building B
Sachse, Texas 75048
469-429-4798

City of Plano Representative:

Ms. Daryll McCarthy
Training Administrator
City of Plano
1520 Avenue K, Suite 130
Plano, Texas 75074
(972) 941-7115

**VIII.
AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION**

The undersigned officer 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. Plano has executed this Agreement pursuant to duly authorized action of the Plano City Council. Sachse has executed this Agreement pursuant to the authority granted by its governing body. Each of the parties shall provide written documentation evidencing the grant of approval by its respective governing body.

**IX.
SEVERABILITY**

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

**X.
VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

**XI.
INTERPRETATION OF AGREEMENT**

Although this Agreement is drafted by Plano, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

**XII.
REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XIII.
SUCCESSORS AND ASSIGNS**

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both parties.

**XIV.
EFFECTIVE DATE**

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

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

CITY OF SACHSE, TEXAS

Date: _____

By: _____

Name: Billy George

Title: CITY MANAGER

APPROVED AS TO FORM:

_____, _____

CITY OF PLANO, TEXAS

Date: _____

By: _____

Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BILLY GEORGE**, City Manager, of **CITY OF SACHSE, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas

EXHIBIT "A"

Training classes to be available to City of Sachse employees include:

- Leadership**
- Management**
- Personal Development**
- Professional Development**
- Desktop Computing**

Class pricing, per employee, will be as follows:

Half day class - \$60.00	Full day class - \$100.00	2 hour class - \$30.00
--------------------------	---------------------------	------------------------

For classes requiring the purchase of materials, the actual cost of the materials will be billed.

Cancellation of enrollment:

Class enrollment may be cancelled, without billing, by providing 2 business days notification prior to the start of the class.



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:		7/23/12			
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, nominating Denbury Onshore , LLC, to the Office of the Governor, Economic Development and Tourism through the Texas Economic Development Bank for designation as an Enterprise Project under the Texas Enterprise Zone Program pursuant to the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303; 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:	2011-2012	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
	Budget	0	0	0	0
	Encumbered/Expended Amount	0	0	0	0
	This Item	0	0	0	0
	BALANCE	0	0	0	0
FUND(s):					
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Assisting companies with economic development incentives relates to the City's goal of strong local economy.					
SUMMARY OF ITEM					
Request for Enterprise Project Nomination for job retention benefits.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution					
Letter of request					



Certified Mail Receipt # 7011 1570 0000 1707 9613

June 13, 2012

RECEIVED

Mr. Bruce D. Glasscock
City Manager
City of Plano
1520 Avenue K
Plano, Texas 75074

JUN 19 2012

CITY MANAGER'S OFFICE

**RE: Request for Enterprise Project Nomination for Job Retention Benefits
Denbury Onshore, LLC – Plano, Texas Headquarters Expansion**

Dear Mr. Glasscock,

We are pleased to present the relevant information required by Chapter 2303 of the Texas Government Code ("Texas Enterprise Zone Act") for your consideration and nomination of Denbury Onshore, LLC's ("Denbury" or "Company" or "our" or "we" or "us") expansion of our headquarters facility in the City of Plano as a Designated Enterprise Project ("Project") for job retention benefits. Denbury Onshore, LLC is a Delaware limited liability company. Denbury Resources Inc. is the parent company of Denbury Onshore, LLC, and both entities share the same headquarters facility in Plano, Texas. Denbury Resources Inc. is a publicly traded company on the New York Stock Exchange under the symbol DNR. The single Project designation that we are seeking from the City of Plano will apply to Denbury Onshore, LLC, based on job retention.

Denbury is a growing independent oil and gas company. The Company is the largest oil and natural gas producer in both Mississippi and Montana, owns the largest reserves of carbon dioxide (CO₂) used for tertiary oil recovery east of the Mississippi River, and holds significant operating acreage in the Rocky Mountain and Gulf Coast regions. The Company's goal is to increase the value of acquired properties through a combination of exploitation, drilling and proven engineering extraction practices, with its most significant emphasis on CO₂ tertiary recovery operations. At December 31, 2011, we had 1,308 employees, 730 of whom were employed in field operations or at the field offices.

Denbury is currently headquartered at 5320 Legacy Drive in Plano, Texas, where we employ over 600 full-time employees. Denbury will soon expand into a second facility at the Legacy Campus, located at 5360 Legacy Drive in Plano, Texas, with an extended lease term that will run through September 2025. The expansion Project will provide Denbury with an additional 123,716 square feet of new office space by April 30, 2015. Consistent with our proposed Chapter 380 agreement with the City of Plano, Denbury will retain 600 full-time employees through the Project designation period. Additionally, we expect to meet or exceed a milestone of 750 full-time employees at the Project location by April 20, 2015, thus creating 150 new full-time positions. Pursuant to Texas Government Code §2303.401, the jobs for benefit will meet the definition of a "new permanent job" or "retained job" (1) because they will be created by a qualified business as required by Section 2303.402 or (2) because they currently exist, and they will provide and will continue to provide at least 1,820 hours of employment annually, and they will be employment positions for the longer of the duration of the Project's designation period or three years after the expiration date of the claim period for receipt of state benefit.

The Project will involve an estimated capital investment in the City of Plano of \$12,000,000.00. This investment will be subject to Plano's local sales and use tax at the rate of 1.0%, thus providing the City of Plano with \$120,000.00 of fiduciary funds that will be distributed by the Texas Comptroller of Public Accounts. This level of

Bruce Glasscock, City Manager
Request for Enterprise Project Nomination for Job Retention Benefits
June 13, 2012
Page 2 of 2

capital investment also allows Denbury to apply for a single Enterprise Project Designation from the State of Texas for the retention of full-time jobs in Plano. Our estimates are outlined below for your reference:

Remodeling & Architectural Fees	10,000,000.00
<u>A/V Equipment, Computer Equipment, Furniture</u>	<u>2,000,000.00</u>
Total:	12,000,000.00

In order to pursue an Enterprise Project designation from the State of Texas for job retention benefits, Denbury respectfully requests to be nominated by the City of Plano as a Designated Enterprise Project for the September 4, 2012 Texas Enterprise Zone application round. The benefit of the single Enterprise Project Designation to Denbury would be a refund of the state portion (6.25%) of sales and use taxes paid over the course of the five-year designation period, up to \$1,250,000.00.

Section 2303.406(a)(4)(D) of the Texas Government Code allows a project or activity of a qualified business to be designated as an Enterprise Project and receive job retention benefits if the business has clearly demonstrated that "the business is able to employ individuals in accordance with Section 2303.402." Section 2303.402 of the Texas Government Code states that an Enterprise Project located outside of an Enterprise Zone must hire 35.0% economically disadvantaged persons or Enterprise Zone residents for its new or replacement personnel over the course of its designation period to receive the benefits under this program. Denbury qualifies for job retention benefits under this statutory provision because Denbury will retain over 600 full time employees. Denbury is also an Equal Opportunity Employer, capable of hiring full-time employees that meet the requirements of Section 2303.402.

The expansion of our headquarters facility in Plano is qualified under Texas Government Code §2303.404 to receive the Enterprise Zone Designation, because (1) it involves "an expansion, renovation, or new construction"; (2) it will be completed within a predetermined period of time not to exceed 5 years; and (3) the company utilizes a cost center based accounting system that allows for separate payroll tracking, separate tax reporting, and separation of income and expenses related to the Project location.

Denbury supports the Plano community through various contributions and fund raising support for local activities such as Children's Medical Center Red Balloon Run & Ride, the North Texas Food Bank, the Salvation Army's Angel Tree Program, and the Assistance Center of Collin County. Denbury also supports surrounding communities through individual and Company-matched contributions to organizations such as the American Red Cross Disaster Relief, the National Multiple Sclerosis Society, and the Texas Wildfire Relief Fund. Denbury is proud to be a part of the Plano community and will continue to be an active participant, contributor, and corporate citizen.

Denbury is excited about our Plano expansion, and we appreciate your consideration for nomination as a Designated Enterprise Project. We look forward to working with the City of Plano and the Texas Enterprise Zone Program in the coming years.

Sincerely,



Mark C. Allen
Senior Vice President, Chief Financial Officer and Treasurer
Denbury Onshore, LLC

cc: Ms. Elaine Hamm, Plano Economic Development Board
Ms. Paige Mims, City of Plano
Mr. Tony Burgess, Denbury Onshore, LLC

A Resolution of the City Council of the City of Plano, Texas, nominating Denbury Onshore , LLC, to the Office of the Governor, Economic Development and Tourism through the Texas Economic Development Bank for designation as an Enterprise Project under the Texas Enterprise Zone Program pursuant to the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303; and providing an effective date.

WHEREAS, on October 27, 2008, the City of Plano ("City") previously passed Ordinance No. 2008-10-22 electing to participate in the Texas Enterprise Zone Program, and the local incentives offered under this resolution are the same on this date as were outlined in Ordinance No. 2008-10-22;

WHEREAS, the Office of the Governor, Economic Development and Tourism ("OOGEDT") through the Texas Economic Development Bank ("Bank") will consider **Denbury Onshore, LLC** as an Enterprise Project pursuant to a nomination and an application made by the City;

WHEREAS, the City desires to pursue the creation of the proper economic and social environment in order to induce the investment of private resources in productive business enterprises located in the City and to provide employment to residents of enterprise zones and to other economically disadvantaged individuals;

WHEREAS, pursuant to Chapter 2303, Subchapter F of the Texas Enterprise Zone Act, Texas Government Code (the "Act"), **Denbury Onshore, LLC** has applied to the City for designation as an Enterprise Project;

WHEREAS, the City finds that, based upon representations of **Denbury Onshore, LLC**, that **Denbury Onshore, LLC** is a "qualified business" under Section 2303.402 of the Act since it will be engaged in the active conduct of a trade or business at a qualified business site within the governing body's jurisdiction located outside of an enterprise zone and at least thirty-five percent (35.0%) of the business' new employees will be residents of an enterprise zone or economically disadvantaged individuals; and

WHEREAS, the City finds that **Denbury Onshore, LLC** further meets the criteria for designation as an Enterprise Project under Chapter 2303, Subchapter F of the Act on the following grounds:

- (1) There has been and will continue to be a high level of cooperation between public, private, and neighborhood entities within the area; and
- (2) The designation of **Denbury Onshore, LLC** as an Enterprise Project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area.

WHEREAS, the City finds that **Denbury Onshore, LLC** meets the criteria for tax relief and other incentives adopted by the City and nominates **Denbury Onshore, LLC** for enterprise project status on the grounds that it will be located at the qualified business site, will create a higher level of employment, economic activity and stability; and

WHEREAS, the City finds that it is in the best interest of the City to nominate **Denbury Onshore, LLC** as an Enterprise Project pursuant to the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS that the findings of the City and its actions approving this resolution taken at the council meeting are hereby approved and adopted.

Section I: The City finds that **Denbury Onshore, LLC** is a "qualified business", as defined in Section 2303.402 of the Act, and meets the criteria for designation as an Enterprise Project, as set forth in Section 2303, Subchapter F of the Act.

Section II: The City nominates **Denbury Onshore, LLC** as an Enterprise Project.

Section III: The Enterprise Project shall take effect on September 4, 2012 and terminate on September 4, 2017.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS this 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		07/23/2012			
Department:		Public Safety Communications			
Department Head		Ron Timmons			
Agenda Coordinator (include phone #): Jim Raney #7954					
CAPTION					
<p>A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and the City of Allen, Texas and the City of The Colony, Texas permitting specified use of the Plano and Allen Public Safety Radio System by the City of The Colony, Texas; authorizing its execution by the City Manager, or in his absence, his authorized designee, and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2012-13, 2013-14, 2014-15, 2015-16, 2016-17	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	72,250	72,250
BALANCE		0	0	72,250	72,250
FUND(s): INTERGOVERNMENTAL RADIO FUND (237)					
<p>COMMENTS: Approval of this item will result in total estimated revenues of \$72,250 over a five-year period to the Interlocal Radio System Access Fund. Plano's annual share is projected at \$9,633, or \$48,165 over the contract period. Allen is projected to receive \$4,817 annually, for a total of \$24,085.</p> <p>STRATEGIC PLAN GOAL: Interlocal agreements for the use of the Allen and Plano Radio Communications System relate to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>					
SUMMARY OF ITEM					
<p>Staff requests Council approval of a Five (5) year Interlocal cooperation agreement between the Cities of Allen and Plano and The Colony for the use of the Allen and Plano Radio Communications System.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution and Agreement					

A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and the City of Allen, Texas and the City of The Colony, Texas permitting specified use of the Plano and Allen Public Safety Radio System by the City of The Colony, Texas; authorizing its execution by the City Manager, or in his absence, his authorized designee, and providing an effective date.

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

WHEREAS, the cities of Allen and Plano jointly own, operate, and maintain a public safety radio communications system (the “System”) for the purpose of providing radio communications in support of governmental operations; and

WHEREAS, the City of The Colony wishes to become a user of the System for its governmental operations; and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, the City of Allen, and the City of The Colony containing terms and conditions for the use of the System by the City of The Colony, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); and

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

NOW, THEREFORE, BE IT ORDAINED 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 in his absence, his authorized designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**AGREEMENT BETWEEN THE CITIES OF ALLEN AND PLANO AND
THE CITY OF THE COLONY FOR THE USE OF THE ALLEN AND
PLANO RADIO COMMUNICATIONS SYSTEM**

The CITIES OF PLANO, TEXAS, AND ALLEN, TEXAS, both Texas home-rule municipalities (hereinafter referred to as "Cities"), and the CITY OF THE COLONY, TEXAS, a Texas home-rule municipality (hereinafter referred to as "The Colony"), agree as follows:

WHEREAS, the Cities and The Colony are political subdivisions within the State of Texas, each of which engages in the provision of governmental services for the benefit of their citizens; and

WHEREAS, the Interlocal Cooperation Act under Chapter 791 of the Texas Government Code (the "Act") provides authority for local governments of the State of Texas to enter into Interlocal agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, the cities of Allen and Plano jointly own, operate, and maintain the radio communications system exclusive of the radios owned individually by each city (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, The Colony wishes to use certain portions of the System for its governmental operations; and

WHEREAS, the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting parties; and

WHEREAS, The Colony and the Cities have current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, the Cities and The Colony, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of January 2013, and ending on the 30th day of September 2017, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by the Cities or The Colony, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September, 2020. The first year of the contract will be pro-rated.

II. OBLIGATIONS OF THE COLONY

2.01 The Colony shall use the System in accordance with this Agreement to provide integration of communications by The Colony between its users on the System for governmental operations.

2.02 When using the System, The Colony shall abide by all applicable federal and state laws and regulations, including any regulations of the Allen and Plano Radio System. When The Colony uses the System for interoperability with Talkgroups (hereinafter defined) other than those provided by this Agreement, The Colony will also abide by the user rules of those Talkgroups.

2.03 The Colony must provide a written request to the Plano System Manager to activate radios (hereinafter referred to as "Subscriber Units") on the System. Such request must include the model and serial number of the Subscriber Unit, the name of the user, and identifying Talkgroups required in the Subscriber Unit.

2.04 The Colony is responsible for furnishing its own Subscriber Units, which must be compatible with the APCO P-25 Digital system, and for maintenance of the Subscriber Units. The Colony is responsible for all software and hardware required to program these Subscriber Units should it choose a different manufacturer than the cities of Allen and Plano.

2.05 The Colony shall use reasonable efforts to acquire equipment necessary to utilize the System in accordance with all applicable local, state, and federal law. In the event The Colony is unable to obtain equipment necessary to utilize the System prior to January 1, 2013, The Colony shall provide written notice to the Cities prior to that date. In the event The Colony provides written notice to the Cities prior to January 1, 2013, in accordance with this Section 2.05, this Agreement shall terminate automatically without further obligation of the parties.

III. OBLIGATIONS OF CITIES

3.01 The Cities will lease to The Colony four (4) Talkgroups, which are a primary level of communication for users on the System (hereinafter referred to as "Talkgroup"), comparable to a channel on a conventional radio system, for the exclusive use of The Colony. Talkgroups will be established for The Colony by Plano.

3.02 The Plano System Manager will not activate radios on The Colony Talkgroups nor make changes to The Colony radios without first receiving authorization from the designated representative of The Colony, unless in the opinion of Plano, such action is necessary to eliminate harmful interference.

3.03 Plano is also responsible for:

- (1) Coordinating Talkgroups among system users;
- (2) Grouping of Talkgroups to allow transmitting and receiving on all associated Talkgroups as required by The Colony;
- (3) The operation, maintenance, and control of the System.

IV. FEES

The fees assessed against The Colony and due annually for services and use of the System are as follows:

(1)	Lease radio airtime (per radio, per month)	\$ 8.56
(2)	Lease Talkgroup (per Talkgroup, per month)	\$ 62.97
(3)	Administrative and Technical fee (per month)	\$96.30

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each fiscal year by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days' notice to The Colony before increasing the fees.

Total Fees for Annual Service

Based on the fees set out above, the Cities will calculate the annual fee due based upon the total number of radios and Talkgroups and submit an invoice to The Colony on or before October 1st of each year. This amount is subject to change when The Colony adds or deletes the number of radios and/or Talkgroups in service. The Colony must notify the Plano System Manager in writing of any addition or deletion of radios and/or Talkgroups. The amount owed for annual fees for additions of radio/Talkgroups will be prorated for the year added, invoiced immediately, and amounts will be due within 30 days of receipt of the invoice for the addition(s). The amount owed for annual fees will be adjusted for deletions the next contract year. No refunds will be given for payments made for radios/Talkgroups deleted after annual payment until the next contract year.

V. PAYMENT DUE

The Colony agrees to pay the Cities the annual fees specified under Article IV within thirty (30) days of the receipt of the invoice. Should The Colony add radios or Talkgroups to the service within a term, The Colony agrees to pay the additional fee(s) due within thirty (30) days of invoice. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party.

VI. TERMINATION

- 6.01 Termination of this Agreement may occur by any of the following:
- (1) Either party may terminate this Agreement at any time by giving one hundred and eighty (180) days advance written notice. The Colony shall pay for all fees incurred through the effective date of termination.
 - (2) If the Cities permanently discontinue the operation of its System, this Agreement shall terminate on the date of discontinuance without further notice, and no fees will be reimbursed by the Cities to The Colony.

VII. RELEASE AND HOLD HARMLESS

To the extent allowed by law, each party does hereby agree to waive all claims

against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party is responsible for its proportionate share of liability.

VIII. IMMUNITY

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived, its sovereign immunity or any legal or equitable defense to any form of liability. The parties by entering into this Agreement do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

IX. ASSIGNMENT

The Colony agrees to retain control and to give full attention to the fulfillment of this Agreement; The Colony cannot assign or sublet this Agreement without the prior written consent of the Cities. Further, The Colony cannot sublet any part or feature of the work to anyone objectionable to the Cities. The Colony also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve The Colony from its full obligations to the Cities as provided by this Agreement.

X. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and The Colony, and supersedes all prior negotiations, representations and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by The Colony and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of the Cities.

XI. NOTICES

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail to the other party at the following respective addresses:

The Colony Representative:

Police Chief
City of The Colony
5151 N Colony Blvd
The Colony, Texas 75056
972-625-8273

Plano Representative:

Director, Public Safety Communications
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358
972-941-7931

Allen Representative:

Police Chief
City of Allen
205 W. McDermott
Allen, Texas 75013
214-509-4200

XII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer 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. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 2012, and the City of Allen on _____, 2012. The Colony has this Agreement pursuant to duly authorized action of the City Council of The Colony on _____, 2012.

XIII. SEVERABILITY

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

XIV. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XV. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XVI. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

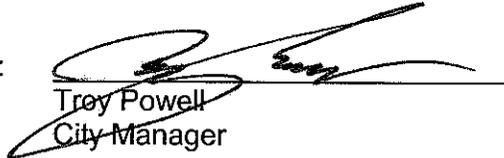
XVII. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

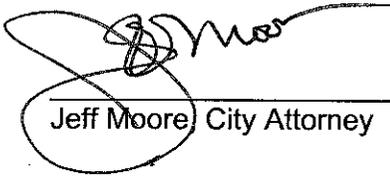
EXECUTED on the dates indicated below:

CITY OF THE COLONY, TEXAS

BY:


Troy Powell
City Manager

APPROVED AS TO FORM:


Jeff Moore, City Attorney

CITY OF PLANO, TEXAS

BY:

Bruce D. Glasscock
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY:

Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

ACKNOWLEDGEMENTS

STATE OF TEXAS

§

COUNTY OF DENTON

§

§

This instrument was acknowledged before me on the 21st day of June, 2012, by _____, **Troy Powell**, City Manager of the **CITY OF THE COLONY, TEXAS**, a home-rule municipality, on behalf of such municipality.



Lisa Cae Henderson
Notary Public, State of Texas

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

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

Notary Public, State of Texas

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

This instrument was acknowledged before me on the _____ day of _____, 2012, by **PETER H. VARGAS**, City Manager of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such Municipality.

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:	7-23-2012
Department:	Library Administration
Department Head	Cathy Ziegler
Agenda Coordinator (include phone #): Jeanne Argomaniz x4327	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas and GIS Information Systems, Inc., d/b/a Polaris Library Systems, a sole source provider, for one year maintenance and subscription for a total of Fifty Seven Thousand One Hundred Twelve and 56/100 Dollars (\$57,112.56) and five additional one year renewals not to exceed a Five Percent (5%) increase per year; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	126,051	0	126,051
Encumbered/Expended Amount	0	-75,449	0	-75,449
This Item	0	-57,113	0	-57,113
BALANCE	0	-6,511	0	-6,511

FUND(S): GENERAL FUND

COMMENTS: Funding for this Renewal Agreement is included in the FY 2011-12 Budget to provide a (5) year Renewal Software Maintenance and System Support for the Polaris Software System at the Plano Public Library System. The additional funds of (\$6,511) needed for this (5) year Renewal Contract will be funded through savings in other Library Administration Funds.

STRATEGIC PLAN GOAL: Renewal of this Software Maintenance Agreement relates to the City's Goal of a Financially Strong City with Service Excellence.

SUMMARY OF ITEM

Approval of this agreement is made for the purchase of one year maintenance and subscription in the amount of \$57,112.56 and five additional one year renewals not to exceed Five Percent (5%) increase per year as agreed to between The City of Plano and GIS Information Systems, Inc., d/b/a Polaris Library Systems, a sole source provider of software maintenance and support for the Plano Public Library System.

List of Supporting Documents: Polaris Library Systems Sole Source Letter, 6.15.12 Resolution and Exhibits	Other Departments, Boards, Commissions or Agencies
---	--

POLARIS

LIBRARY SYSTEMS

COUNT ON US.

June 15, 2012

City of Plano
Technology Services
Attn: Mike Shamel
1117 E. 15th Street
Plano, TX 75074

RE: Sole Source Letter

To whom it may concern:

Polaris Library Systems is the sole source provider of maintenance and support services for the Polaris Integrated Library Systems currently installed and in operation at the Plano Public Library, Plano, Texas.

In addition, GIS Information Systems, Inc. is the sole source provider for the WAM Manager Interface Software and all implementation services, maintenance and support for the software. Special discounts are also available to purchasers of WAM Manager Interface Software.

If you have any questions or concerns please do not hesitate to contact me

Sincerely,



Kevin M. Bryans,
CFO/Treasurer

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas and GIS Information Systems, Inc., d/b/a Polaris Library Systems, a sole source provider, for one year maintenance and subscription for a total of Fifty Seven Thousand One Hundred Twelve and 56/100 Dollars (\$57,112.56) and five additional one year renewals not to exceed a Five Percent (5%) increase per year; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the Plano Public Library of the City of Plano utilizes the Polaris Integrated Library System developed by GIS Information Systems, Inc., d/b/a Polaris Library Systems; and

WHEREAS, GIS Information Systems, Inc., d/b/a Polaris Library Systems is the sole source provider of Polaris Integrated Library System utilized by the Plano Public Library;

WHEREAS, the City Council has been presented a proposed Agreement between the City of Plano and GIS Information Systems, Inc., d/b/a Polaris Library Systems for one year maintenance and subscription with five additional one year renewals of the Polaris Integrated Library System, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement should be approved, and that the City Manager or his designee shall be authorized to execute 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 City Council hereby finds and determines that GIS Information Systems, Inc., d/b/a Polaris Library Systems is the sole source provider for the Polaris Integrated Library System and service for maintenance of the Polaris Integrated Library System and thus, the maintenance and subscription of such Polaris Integrated Library System 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 Council approved the Agreement to purchase from GIS Information Systems, Inc., d/b/a Polaris Library Systems the Polaris Integrated Library System for one year maintenance and subscription in the amount of Fifty Seven Thousand One Hundred Twelve and 56/100 Dollars (\$57,112.56) and five additional one year renewals not to exceed a Five Percent (5%) increase per year.

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

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

DULY PASSED AND APPROVED this 23rd of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS AND
GIS INFORMATION SYSTEMS, INC., D/B/A POLARIS LIBRARY SYSTEMS
2012-253-I**

THIS CONTRACT is made and entered into by and between **GIS INFORMATION SYSTEMS, INC., D/B/A POLARIS LIBRARY SYSTEMS**, a New York corporation, whose address is P.O. Box 4903, Syracuse, New York 13221-4903, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide all labor, supervision, materials, and equipment necessary for the maintenance of the Polaris Integrated Library System. These products and services shall be provided in accordance with the Contractor's Maintenance & Subscription Renewal Invoice, a copy of which is attached hereto and incorporated herein as **Exhibit "A"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Contractor's Maintenance & Subscription Renewal Invoice (**Exhibit "A"**);
- (b) Insurance Requirements (**Exhibit "B"**); and
- (c) Affidavit of No Prohibited Interest (**Exhibit "C"**).

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

**II.
TERM OF CONTRACT**

The initial term of this Contract shall be a period of twelve (12) months commencing upon the effective date hereof; provided however, that the City shall have the right and option to extend the term hereof by five (5) additional twelve (12) month periods by giving written notice to Contractor of City's election to extend the term hereof, such notice to be given not more than ninety (90) days prior to the expiration of the then current term.

**III.
WARRANTY**

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

**IV.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total annual compensation under this contract shall not exceed the sum of **FIFTY SEVEN THOUSAND ONE HUNDRED TWELVE AND 56/100 DOLLARS (\$57,112.56)**. Each renewal year shall not exceed five percent (5%) per year.

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

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

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

**VI.
LOSSES FROM NATURAL CAUSES**

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

**VII.
INDEMNIFICATION AND HOLD HARMLESS**

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

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

IN ADDITION TO CONTRACTOR'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS HEREIN, IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR 'S OPINION IS LIKELY TO OCCUR, CONTRACTOR SHALL, AT ITS EXPENSE: (A) PROCURE FOR THE CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT THE CITY A REIMBURSEMENT FOR THE PRODUCT. CONTRACTOR WILL PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.

THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION HEREIN APPLIES TO ALL PRODUCTS PROVIDED, SUPPLIED OR SOLD UNDER THIS AGREEMENT BY CONTRACTOR TO CITY WHETHER MANUFACTURED BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONTRACTOR TO CITY AS PART OF THIS AGREEMENT DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO USE SAID PRODUCTS. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

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

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and **SHALL INDEMNIFY AND SAVE HARMLESS CITY AGAINST ANY CLAIM RELATED TO OR ARISING FROM THE VIOLATION OF ANY SUCH LAWS, ORDINANCES AND REGULATIONS WHETHER BY CONTRACTOR, ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, OR REPRESENTATIVES.** If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
VENUE**

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

**X.
ASSIGNMENT AND SUBLETTING**

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

**XI.
INDEPENDENT CONTRACTOR**

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

**XII.
INSURANCE AND CERTIFICATES OF INSURANCE**

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

**XIII.
HINDRANCES AND DELAYS**

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

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
SEVERABILITY**

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

**XVI.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written

notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XVII.
NOTICES**

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

Library Administration
Attn: Mike Shamel
2501 Coit Rd.
Plano, TX 75075
(972) 769-4507

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

GIS Information Systems, Inc.
Attn: Alastair Cameron
P.O. Box 4903
Syracuse, NY 13221-4904
(800) 272-3414

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 if by mail or on such date as email has been successfully sent to the addressee.

**XVIII.
ENTIRE AGREEMENT**

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

**XIX.
CONTRACT INTERPRETATION**

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

**XX.
SUCCESSORS AND ASSIGNS**

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

**XXI.
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.

**XXII.
HEADINGS**

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

**XXIII.
EFFECTIVE DATE**

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

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

**GIS INFORMATION SYSTEMS, INC., D/B/A
POLARIS LIBRARY SYSTEMS**

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

Exhibit "A" to Contract



Invoice

Phone: 1-800-272-3414
 Fax: 315-457-5883

Please Mail Payment To:

GIS Information Systems, Inc.
 DBA Polaris Library Systems
 PO Box 4903
 Syracuse, NY 13221-4903

Invoice Date: 6/15/2012

Fed ID 16-1667474

Sold To:

City of Plano
 2501 Coit Rd.
 Plano TX 75075

Ship To:

City of Plano
 Technology Services
 Attn: Mike Shamel
 1117 E. 15th Street
 Plano, TX 75074

Invoice #	P.O. No.				Due Date	Terms
12-15141		FOB Shipping Point			7/15/2012	Net 30
Item	Description	Ordered	Invoiced	Rate	Amount	
S-PSWMAINT	Polaris Software Maintenance for the period of 8/22/12 - 8/21/13		1	46,301.89	46,301.89	
S-PSV3-SYND...	Syndetics Solutions Subscription Renewal for the period of 8/22/12 - 8/21/13		1	10,810.67	10,810.67	
				Sales Tax (0.0%)	\$0.00	
Thank you for your business!				Total	\$57,112.56	

Exhibit "B" to Contract

Client#: 70640

GISIN

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/31/2012

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

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

PRODUCER Bailey, Haskell & LaLonde 5232 Witz Drive N. Syracuse, NY 13212	CONTACT NAME: B Daly	
	PHONE (A/C, No, Ext): 315 457-1830 FAX (A/C, No): 315 457-7902 E-MAIL ADDRESS: bdaly@bhliinsurance.com	
INSURED GIS Information Systems, Inc. DBA Polaris Library Systems P.O. Box 4903 Syracuse, NY 13221-4903	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Travelers Property Cas. Co. of	TRV1
	INSURER B : St. Paul Fire & Marine	TIT1
	INSURER C : Travelers Indemnity Co. of Conn	TRV1
	INSURER D :	
	INSURER E :	
INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	Y	TT05803357	12/31/2011	12/31/2012	EACH OCCURRENCE \$1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$10,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$2,000,000	
						PRODUCTS - COMP/OP AGG \$2,000,000	
						\$	
C	AUTOMOBILE LIABILITY		BA3762P64811TEC	12/31/2011	12/31/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000	
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$	
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$	
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$	
						\$	
A	UMBRELLA LIAB		TT05803358	12/31/2011	12/31/2012	EACH OCCURRENCE \$5,000,000	
	<input checked="" type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> CLAIMS-MADE				AGGREGATE \$5,000,000	
	DED <input checked="" type="checkbox"/> RETENTION \$10000					\$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		HJUB3869P94911	12/31/2011	12/31/2012	WC STATU-TORY LIMITS	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N				OTH-ER	
	If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> N / A					E.L. EACH ACCIDENT \$1,000,000
							E.L. DISEASE - EA EMPLOYEE \$1,000,000
						E.L. DISEASE - POLICY LIMIT \$1,000,000	
B	Professional		TT05804665	05/06/2012	05/06/2013	1,000,000	

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

CERTIFICATE HOLDER

CANCELLATION

City of Plano 2501 Coit Road Plano, TX 75075	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

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COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

- | | |
|---|--|
| A. Reasonable Force Property Damage - Exception To Expected Or Intended Injury Exclusion | J. Blanket Additional Insured - Lessors Of Leased Equipment |
| B. Non-Owned Watercraft Less Than 75 Feet | K. Blanket Additional Insured - Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement |
| C. Aircraft Chartered With Pilot | L. Blanket Additional Insured - Broad Form Vendors |
| D. Damage To Premises Rented To You | M. Who Is An Insured - Unnamed Subsidiaries |
| E. Increased Supplementary Payments | N. Who Is An Insured - Liability For Conduct Of Unnamed Partnerships Or Joint Ventures |
| F. Who Is An Insured - Employees And Volunteer Workers - First Aid | O. Contractual Liability - Railroads |
| G. Who Is An Insured - Employees - Supervisory Positions | P. Knowledge And Notice Of Occurrence Or Offense |
| H. Who Is An Insured - Newly Acquired Or Formed Organizations | Q. Unintentional Omission |
| I. Blanket Additional Insured - Owners, Managers Or Lessors Of Premises | R. Blanket Waiver Of Subrogation |

PROVISIONS

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

The following replaces Exclusion a, Expected Or Intended Injury, in Paragraph 2., of SECTION 1 - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

- a. Expected Or Intended Injury Or Damage "Bodily injury" or "property damage"

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

B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g, Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION 1 - COVERAGES - COVERAGE A BODILY INJURY

AND PROPERTY DAMAGE LIABILITY:

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

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

C. AIRCRAFT CHARTERED WITH PILOT

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

This exclusion does not apply to an aircraft that is:

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

D. DAMAGE TO PREMISES RENTED TO YOU

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

2. The following replaces the last paragraph of Paragraph 2., Exclusions, of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

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

3. The following replaces Paragraph 6. of SECTION III - LIMITS OF INSURANCE:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$100,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph a. of the definition of "insured contract" in the DEFINITIONS Section:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the DEFINITIONS Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

(b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted.

E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGES:

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph

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* M. 021: 000 T. 001
* O C O O 2 TT05603957 12011

1.d. of SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGES:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

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

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

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

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

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

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

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

4. The following is added to the

DEFINITIONS Section:

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

G. WHO IS AN INSURED - EMPLOYEES - SUPERVISORY POSITIONS

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

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

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

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

4. Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

a. Coverage under this provision is afforded only:

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

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

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

c. Coverage B does not apply to

"personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

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

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

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

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED - LESSORS OF LEASED EQUIPMENT

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

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

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

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

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

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a

written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

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

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

L. BLANKET ADDITIONAL INSURED - BROAD FORM VENDORS

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

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

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

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

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing,



or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
- (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
- (6) "Your products" which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

M. WHO IS AN INSURED - UNNAMED SUBSIDIARIES

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

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

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

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

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or

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

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

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

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

O. CONTRACTUAL LIABILITY - RAILROADS

1. The following replaces Paragraph c. of the definition of "insured contract" in the DEFINITIONS Section:

- c. Any easement or license agreement;

2. Paragraph f.(1) of the definition of "insured contract" in the DEFINITIONS Section is deleted.

P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

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

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

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

joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

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

(a) Any individual who is:

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

that is your partner, joint venture member, manager or trustee; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

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

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

Q. UNINTENTIONAL OMISSION

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

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

R. BLANKET WAIVER OF SUBROGATION

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

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

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

subsequent to the execution of the contract or agreement.

CC. 000 D688
000 T 001
M. 02 1.
* 0 C 0 0 2 TTC5603387 12003

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
**OTHER INSURANCE - ADDITIONAL INSURED - PRIMARY AND
NON-CONTRIBUTORY WITH RESPECT TO CERTAIN OTHER
INSURANCE**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph 4. a, Primary Insurance, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

However, if you specifically agree in a written contract or agreement that the insurance afforded to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a

named insured, and we will not share with that other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought is caused by an "occurrence" that takes place; and
- (2) The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense that is committed; subsequent to the signing and execution of that contract or agreement by you.



POLARIS
LIBRARY SYSTEMS

Exhibit "C" to Contract

AFFIDAVIT OF NO PROHIBITED INTEREST

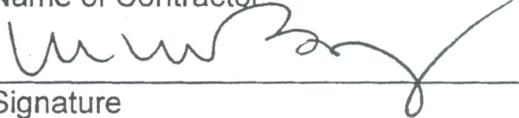
I, the undersigned declare and affirm that no person or officer of Polaris Library Systems (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

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

Polaris Library Systems

Name of Contractor

By:


Signature

Kevin Bryans

Print Name

CFO

Title

June 15, 2012

Date

STATE OF NEW YORK

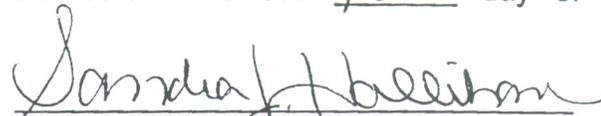
COUNTY OF Chenango

§
§
§

Sworn before me on 6/18/12
Sandra J. Hallihan

SANDRA J HALLIHAN
Lic. #4860180
Notary Public-State of New York
Qualified in Onondaga County
My Commission Expires MAY 27, 2014

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


Notary Public, State of New York

SANDRA J. HALLIHAN
Lic. #4860160
Notary Public-State of New York
Qualified in Onondaga County
My Commission Expires MAY 27, 2014



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:		7/23/12		
Department:		Planning		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): Tammy Stuckey - 7156				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a development agreement by and between the City of Plano, Texas and Green Extreme Homes for providing funding for project costs associated with development of workforce housing on 1.5 acres of land located at the southwest corner of G Avenue and 14th Street; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	10,874,547	0	10,874,5470
Encumbered/Expended Amount	0	-3,050,961	0	-3,050,961
This Item	0	-150,000	0	-150,000
BALANCE	0	7,673,586	0	7,673,586
FUND(S): TIF - EAST SIDE				
<p>COMMENTS: : Funds are included in the FY 2011-12 TIF East Side Fund Balance. This item, in the amount of \$150,000, will leave a FY 2011-12 ending fund balance of \$7,673,586 in the TIF East Side fund.</p> <p>STRATEGIC PLAN GOAL: Passage of the resolution relates to the City's Goal of Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
<p>At its June 25, 2012 meeting, the City Council directed that up to \$150,000 be provided from TIF #2 funds for demolition and remediation costs associated with redevelopment of the former Plano Housing Authority property at the southwest corner of G Avenue and 14th Street. The existing units are substandard and it is not feasible to rehabilitate and re-occupy them. Green Extreme Homes requests reimbursement of the cost of demolition and clearance of the structures to make the site economically feasible for the development of 40 or more units of workforce housing. This development agreement formalizes the terms and conditions of the reimbursement.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution Development Agreement Exhibits				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a development agreement by and between the City of Plano, Texas and Green Extreme Homes for providing funding for project costs associated with development of workforce housing on 1.5 acres of land located at the southwest corner of G Avenue and 14th Street; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City is authorized pursuant to the Tax Increment Financing Act, Texas Tax Code, Chapter 311, as amended, to enter into agreements with a developer of real property in a Tax Increment Finance District for the purposes of providing funding for project costs associated with the development including demolition of buildings and environmental remediation on the real property; and

WHEREAS, the City Council has been presented a proposed development agreement by and between the City of Plano, Texas and Green Extreme Homes, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; 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 the City Manager or his authorized designee, should be authorized to execute the Agreement on behalf of the City of Plano.

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

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

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

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

DULY PASSED AND APPROVED THIS THE 23RD DAY OF JULY, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

n/ord/res/Res-Park Blvd&15.doc

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS AND GREEN EXTREME HOMES

This Development Agreement (“Agreement”) is entered into by and between the City of Plano, a Texas home rule municipal corporation of Collin County, Texas (the “City”), acting by and through its duly authorized officers, and Green Extreme Homes, a Texas non-profit corporation (“Green Extreme”).

RECITALS:

WHEREAS, the City is authorized pursuant to the Tax Increment Financing Act, Texas Tax Code, Chapter 311, as amended, to enter into agreements with a developer of real property in a Tax Increment Financing District for the purposes of providing funding for project costs associated with the development including demolition of buildings and environmental remediation on the real property; and

WHEREAS, Green Extreme shall redevelop approximately 1.5 acres located at the southwest corner of G Avenue and 14th Street as shown in Exhibit “A” attached hereto (“the Property”) to provide workforce housing which will require demolition of existing buildings and environmental remediation on the Property; and

WHEREAS, Green Extreme’s redevelopment of the Property shall be in substantial compliance with a memorandum of understanding between the Texas State Affordable Housing Corporation and Green Extreme, attached hereto as Exhibit “B” and a draft site plan prepared by Green Extreme and attached hereto as Exhibit “C” (which memorandum of understanding and draft site plan, together with all additions, changes and amendments thereto approved by and between the parties, is referred to in this Agreement as the “Development”); and

WHEREAS, the proposed Development is located in Tax Increment Financing District No. 2 (TIF 2) and funding the demolition of existing buildings and environmental remediation at the Property through the revenue derived by TIF 2 in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311, as amended, will promote redevelopment in the area; and

WHEREAS, the Development is consistent with the goals and objectives as set forth in *Downtown Plano, A Vision and Strategy for Creating a Transit Village* which was adopted by the City Council by Resolution No. 99-5-14, dated May 10, 1999 and the *Consolidated Housing and Community Development Plan for 2010-2014* which was adopted by the City Council by Resolution No. 2010-3-6, dated March 8, 2010; and

WHEREAS, the Development will contribute important direct and indirect economic and social benefits to the City including, but not limited to, the creation of workforce housing in close proximity to the DART railway station; and

WHEREAS, the City has determined that reimbursing Green Extreme for the costs of demolition of existing buildings and environmental remediation at the Property will incentivize redevelopment of the Property for workforce housing in accordance with the terms and conditions set forth in this Agreement and will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and address a need for affordable housing in the City.

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

**SECTION 1.
GREEN EXTREME'S OBLIGATIONS**

A. Green Extreme shall perform the following obligations:

1. Maintain the memorandum of understanding with the Texas State Affordable Housing Corporation attached hereto as Exhibit "B" (the "memorandum of understanding") for the duration of this Agreement. Green Extreme shall notify the City immediately upon any termination of the memorandum of understanding during the Term of this Agreement.

2. Maintain the ground lease for the Property with the Texas State Affordable Housing Corporation for the purpose of construction and development of affordable housing (the "ground lease") for the duration of this Agreement. A copy of the ground lease has been provided to the City of Plano and is kept on record in the City's Planning Department. Green Extreme shall notify the City immediately upon any termination of the ground lease during the Term of this Agreement.

3. Apply and obtain approval for rezoning of the property pursuant to the City's Zoning Ordinance to allow residential zoning which will accommodate the Development.

4. Complete and obtain approval of a preliminary site plan as required by the City's Zoning Ordinance.

5. Obtain all necessary permits from the City, which shall not be unreasonably withheld, conditioned or delayed by the City to begin construction of the Development no later than August 31, 2012. Construction shall be deemed to have begun when Green Extreme actually commences site work (i.e., demolition, grading or clearing) on the Property.

6. On or before, December 31, 2012, complete the surface and subsurface demolition of the existing buildings and improvements on the Property, at its sole cost and expense, including but not limited to environmental remediation, grading, and clearing in preparation for construction of the Development at the Property.

7. On or before December 31, 2014, complete the design, construction and installation of all improvements for the new Development at the Property, at its sole cost and expense, and which when completed shall have at least forty (40) new units of housing (the "new

housing units”) for which eighty percent (80%) of the new housing units shall be offered for rent, lease or sale as housing according to the affordability threshold requirements pursuant to Section 7 of the memorandum of understanding between the Texas State Affordable Housing Corporation and Green Extreme, attached hereto as Exhibit “B”. The completion date shall be determined by the date of the Final Building Inspection, as delineated in the City’s Building Inspections Department records, for the building at the Property containing the 40th new housing unit (the “Completion Date”).

**SECTION 2.
CITY’S OBLIGATIONS AND REIMBURSEMENT**

A. Subject to Section 2(B) below, the City shall reimburse Green Extreme for “Project Costs” (as defined hereafter) in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) provided, however, that such reimbursement shall exclude “Overhead Costs” (as defined hereafter).

1. “Project Costs” means:
 - i. actual costs for surface and subsurface demolition of the existing buildings and improvements on the Property, including but not limited to environmental remediation and grading in preparation for construction of the project; and
 - ii. relocation of electrical and communication lines and facilities on the property or adjacent public rights of way, including without limitation, any payments made to entities affiliated with or related to Green Extreme, to the extent that such payments do not exceed what is reasonable and customary for such services.
2. “Overhead Costs” means:
 - i. overhead and management fees,
 - ii. financing charges,
 - iii. marketing costs,
 - iv. legal fees, and
 - v. payments made to entities affiliated with or related to Green Extreme to the extent such payments made to entities affiliated with or related to Green Extreme exceed what is reasonable and customary for such services.

B. Upon completion of the demolition and environmental remediation at the Property pursuant to Section 1(A)(6) herein, Green Extreme shall notify the City in writing of the completion and submit proof of payment, including receipts or invoices, for the Project Costs to the City Manager or his designee. If the City agrees that the demolition and

environmental remediation is complete and that the project costs are reasonable and customary for such services, payment shall be made to Green Extreme within thirty (30) days of the notice from Green Extreme to the City required herein. The City shall not make payment to any contractors or subcontractors of Green Extreme directly but shall only reimburse Green Extreme subsequent to their payment of the Project Costs and completion of the demolition and environmental remediation.

C. All payments for Project Cost reimbursement to Green Extreme under this subsection shall be payable solely from Tax Increment Financing District No. 2 funds as provided by law and shall not be obligated for payment from the City's general fund or any other City fund unrelated to the Tax Increment Financing District No. 2 fund.

SECTION 3. FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if the substantial completion of the construction of any the Development and Public Improvements contemplated hereunder is delayed by reason by war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, or acts of the other party, its affiliates/related entities and/or their contractors, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

SECTION 4. TERM

The term of this Agreement shall begin on the date of execution by the last signatory hereto as indicated on the signature page of this Agreement and end upon the complete performance of all obligations by parties to this Agreement unless sooner terminated herein (the "Term").

SECTION 5. EVENTS OF DEFAULT

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement. A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default. The defaulting party shall have thirty (30) days to cure after receiving written notice of default from a party.

**SECTION 6.
REMEDIES**

If a default shall continue, after thirty (30) days' notice to cure the default, the non-defaulting party may, at its option, terminate the Agreement and/or pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party.

The non-defaulting party may, at its option, provide written extension for additional time to cure if the defaulting party proceeds in good faith and with due diligence to remedy and correct the default, provided that the defaulting party has commenced to cure such default within 30 days following notice.

**SECTION 7.
ASSIGNMENT**

This Agreement may not be assigned without the express written consent of the non-assigning party, except that Green Extreme 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 Green Extreme 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) in the preceding paragraph, Green Extreme 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 (30) 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.

**SECTION 8.
NOTICES**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mails by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for the City:

City of Plano, Texas
Attention: Mr. Bruce D. Glasscock
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:

City of Plano, Texas
Attention: Ms. Diane C. Wetherbee
City Attorney
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

If intended for Green Extreme:

Green Extreme Homes
Jean Brown, Executive Director
2320 King Arthur Blvd
Lewisville, TX 75056

SECTION 9. NO JOINT VENTURE

It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

SECTION 10. APPLICABLE LAWS

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable laws of the State of Texas.

SECTION 11. VENUE AND GOVERNING LAW

This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

**SECTION 12.
SEVERABILITY**

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**SECTION 13.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**SECTION 14.
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

**SECTION 15.
AMENDMENT**

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

**SECTION 16.
CAPTIONS**

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

**SECTION 17
RECITALS**

The recitals to this Agreement are incorporated herein.

**SECTION 18.
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.

**SECTION 19.
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.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

GREEN EXTREME HOMES, a Texas non-profit
corporation

Name: _____
Title: _____

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

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN)

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

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, _____, of **GREEN EXTREME HOMES**, a Texas non-profit corporation..

Notary Public, State of Texas

EXHIBIT "A"

SITUATED in the State of Texas, County of Collin and City of Plano, being part of the Joseph Klepper Survey, Abstract No. 213, being all of Lot 9 and part of Lot 10 of J. F. Kendricks 1st Addition, an addition to the City of Plano as recorded in Volume 23, Page 494 of the Collin County Map Records, said lots further described in Volume 563, Page 425, Volume 564, Page 219, Volume 582, Page 565, Volume 3174, Page 777 and Volume 3174, Page 780 of the Collin County Land Records with said premises being more particularly described as follows:

BEGINNING at a Roomè ½" capped iron rod found marking the northeast corner of Lot 10C of said Addition as recorded under County Clerk No. 2008-1118001340140 of the Collin County Land Records and being an interior corner of the herein described premises;

THENCE with the north line of Lot 10C and a south line of said premises, North 89°34'04" West, 86.38 feet to a Roomè ½" capped iron rod found in the west line of Lot 10, the east right-of-way line of "F" Avenue and marking the northwest corner of Lot 10C and the most westerly southwest corner of the herein described premises;

THENCE with the east right-of-way line of "F" Avenue, the west line of Lot 10 and the most westerly west line of said premises, North 01°11'02" East, 66.04 feet to an "X" found in concrete marking the intersection of the east right-of-way of "F" Avenue with the south right-of-way of 14th Street, the northwest corner of Lot 10 and the most northerly northwest corner of the herein described premises;

THENCE with the south right-of-way line of 14th Street, the north line of said premises and the north line of Lots 9 & 10, South 89°00'50" East, 424.05 feet to an "X" found in concrete marking the intersection of the south right-of-way of 14th Street with the west right-of-way of "G" Avenue, the northeast corner of Lot 9 and the northeast corner of the herein described premises;

THENCE with the west right-of-way line of "G" Avenue, the east line of Lot 9 and said premises, South 01°07'33" West, 191.72 feet to an "X" found marking the southeast corner of Lot 9, said premises and the northeast corner of Lot 12D of said Addition as recorded under County Clerk No. 2008-0819001007820 of the Collin County Land Records;

THENCE departing said west right-of-way line, along the north line of Lot 12D, the south line of Lot 9 and a south line of said premises, West, passing at 206.13 feet a 1" iron rod found marking the northwest corner of Lot 12D and the northeast corner of a 1.926 acre tract as recorded in Volume 4169, Page 2737 of the Collin County Land Records and continuing for a total distance of 276.16 feet to a Roomè ½" capped iron rod found marking the most southerly southwest corner of said premises, a corner of said 1.926 acre tract and the southeast corner of Lot 10D as recorded under County Clerk No. 2008-1118001340140 of the Collin County Land Records;

THENCE with a west line of said premises and the east line of Lot 10D, North, 67.57 feet to a ½" iron rod found marking an interior corner of said premises and the northeast corner of Lot 10D;

THENCE with the a south line of said premises and the north line of Lot 10D, South 89°29'36" West, 58.47 feet to a Roomè ½" capped iron rod found marking a southwest corner of said premises and the southeast corner of the aforementioned Lot 10C;

THENCE with a west line of said premises and the east line of Lot 10C, North 00°30'24" West, 65.25 feet to the point of beginning and containing 67,234 square feet or 1.54 acres of land.

Note: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is correct, but is made only for informational and/or identification purposes and does not override Item 2 of Schedule B hereof.

EXHIBIT B

MEMORANDUM OF UNDERSTANDING PURSUANT TO THE AFFORDABLE
COMMUNITIES OF TEXAS PROGRAM BETWEEN

TEXAS STATE AFFORDABLE HOUSING CORPORATION
AND
Green Extreme Homes

Dated: May 11, 2012

WHEREAS, Texas State Affordable Housing Corporation is a public non-profit corporation organized and created under the laws of the State of Texas (hereinafter referred to as the "**Corporation**") organized for purposes that have been determined by the Internal Revenue Service to be exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, The Corporation's purpose in awarding all goods, resources and/or funds governed by this agreement is generally to promote the public health, safety and welfare through the provision of adequate, safe and sanitary housing primarily for individuals and families of low, very low and extremely low income in the State of Texas, and to perform activities and services related to this purpose and for other purposes as set forth in §2306 subchapter Y of the Texas Government Code (the "**Act**"); and

WHEREAS, **Green Extreme Homes** is a non-profit corporation established pursuant to the laws of the State of Texas (hereinafter referred to as the "**Local Partner**");

WHEREAS, the parties wish to enter into this Memorandum of Understanding (the "**Agreement**") whereby they will cooperate in achieving common charitable and humanitarian objectives in accordance with the terms herein and pursuant to the policies of the Corporation (the "**Policies**") under its Affordable Communities of Texas Program (the "**ACT Program**"); and

NOW THEREFORE, in consideration of the covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereby agree as follows:

1. **Purpose.** The purpose of the Agreement is to acquire the Development, as defined in Attachment A, to create affordable housing for low and moderate income households. All real property associated with the Development will be owned by the Corporation for the term of any ground lease or land trust agreement, in either case to be defined hereinafter as the "Ground Lease", associated with this Agreement, or any future agreements between the Corporation and Local Partner, or any other qualified household or entity acceptable to the Corporation.
2. **Agreement.** This Agreement provides the basic terms and conditions of the relationship between the Corporation and Local Partner for the purpose of acquiring, rehabilitating, constructing and/or developing the Development. This Agreement shall be subject to any and all federal and state statutory limitations placed on the Corporation, including, but not limited to the Act and the Policies as approved, revised and ratified by the Corporation's Board of Directors from time to time. This Agreement is subject to termination and amendment according to the provisions listed herein, and does not represent a commitment

of funds to the Local Partner on behalf of the Corporation, unless otherwise noted in this Agreement.

3. **Term of Agreement.** Subject to Section 18 hereof, the term of this Agreement shall be five (5) years. This Agreement shall automatically renew for an additional five (5) years, and continue to renew every five years of as long as both parties agree, or until the Ground Lease between both parties is terminated.
4. **Responsibilities of Parties.** Under this Agreement, the Local Partner has agreed to participate in the Affordable Communities of Texas land trust program (the "**ACT Land Trust**"). The ACT Land Trust requires that both parties carry out their respective duties and responsibilities in order to fulfill the charitable purpose of this Agreement:
 - a. Corporation's Responsibilities.
 - i. Approve and publish to the Corporation's website, with assistance from Local Partner, a plan for redevelopment and revitalization of the Development;
 - ii. Negotiate option agreements, sales contracts or other forms of real property contracts, to acquire the Development;
 - iii. Assist Local Partner with the collection of due diligence materials necessary to complete acquisition and redevelopment planning for the Development;
 - iv. Commit, from the Corporation's own financial resources, an amount not to exceed \$600,000 for the acquisition of the Development site;
 - v. Hold title to the Development for the term of any ground lease that is executed by both parties upon acquisition of the Development;
 - vi. The Corporation shall manage audit and performance measurement reviews required under any contract, grants or other financial agreements used in conjunction with the acquisition and redevelopment of the Development under which the Corporation is the lead applicant or awardee; and
 - vii. Provide technical assistance to the Local Partner regarding planning, financing and redevelopment of the Development.
 - b. Local Partner's Responsibilities:
 - i. Conduct or cause to be completed and pay for all activities necessary for the review and due diligence of the Development prior to the acquisition of the Development;
 - ii. Research, apply for and manage any and all financial resources to be used by the Local Partner during the redevelopment of the Development;
 - iii. Commit the necessary financial resources to complete all due diligence and acquisition activities as may be needed;
 - iv. Prepare a plan for redevelopment of the Development with the assistance of the Corporation;
 - v. Conduct a feasibility analysis, apply for financing to renovate or redevelop, and manage the process of redevelopment of the Development;
 - vi. Provide written notification to the Corporation prior to the commencement of any work completed by the Local Partner or its contractors, to maintain acquired properties, repair major mechanical systems, correct structural deficiencies, or any other repairs and construction activity. All work, repairs, renovations or other construction activities commenced by the Local Partner or its contractors must

adhere to the Corporation's Construction Thresholds, as defined by the Policies;

- vii. Manage the marketing, listing, and sale or rental of the Development in accordance with the Policies and any additional restrictions required by the funding sources used to redevelop the Development;
- viii. Retain and make available for review by the Corporation all documents, letters or records regarding the review, inspection or redevelopment of the Development the Development under this Agreement, and transfer copies of all such documents, letters or records to the Corporation upon termination or expiration of this Agreement, as provided for herein;
- ix. Track and report to the Corporation, demographic, economic and other statistical data on homebuyers or renters as necessary and in accordance with the Policies and the funding sources used to redevelop the Development under this Agreement; and
- x. Execute any documentation necessary to complete the Development in a timely manner, including, but not limited to the Ground Lease, shared appreciation documents, land use restriction agreements, and any other applicable documentation pertaining to the acquisition, rehabilitation and sale of the property as needed by the Corporation.

5. **Exclusive Right to Redevelop.** The Corporation, acting in the role of Land Trust Administrator, shall execute a Ground Lease agreement with Local Partner. The Ground Lease shall grant the Local Partner access to the Development to complete stabilization, demolition, construction and other necessary functions to redevelop the property as provided for in this Agreement. The Ground Lease Agreement shall grant the Local Partner an exclusive right to redevelop the Development, in accordance with this Agreement and the Corporation's Policies, for a reasonable period as determined by the Corporation and the Local Partner. In the event the Local Partner ceases to exist in its current form, loses its nonprofit certification, chooses to terminate this Agreement, or fails to complete the redevelopment of the Development in a timely manner, the Corporation shall be authorized to redevelop the Development itself and without the involvement of the Local Partner.

6. **Redevelopment Standards.** Local Partner shall redevelop the Development in accordance with the Corporation's Construction Standards as defined in the Policies in addition to the following criteria:

- a. The redevelopment of the Development must advance the charitable mission of the Corporation, in the sole and absolute determination of the Corporation;
- b. The redevelopment of the Development must be financially feasible, in the sole and absolute determination of the Corporation;
- c. The redevelopment of the Development must be located in an area that provides access to good education, employment, transportation and other community services, in the sole and absolute determination of the Corporation; and
- d. The redevelopment of the Development must have a plan that guarantees access to safe, decent and affordable housing for low-income, very low income or extremely low-income Texans, in the sole and absolute determination of the Corporation.

7. **Affordability Threshold.** The redevelopment and use of the Development through this Agreement must meet the Corporation's statutory requirements for affordability (the "Affordability Threshold"). At a minimum, the Affordability Threshold requires the following:
 - a. At least 80% of all units to be rented or leased are affordable to households earning 80% or less than the area median income for County where the Development is located.
 - b. At least 80% of all units to be sold, shall be sold to qualified low-income households earning 80% or less than the area median income for the County where the Development is located.
 - c. The area median income shall be determined by family size based on figures produced annually by the United States Department of Housing and Urban Development.
 - d. All households that meet the Affordability Threshold of (a) or (b) above, as applicable, above shall be considered qualified households ("Qualified Households").
8. **Recorded Enforcement Documents.** To insure the fulfillment of the Affordability Threshold the Corporation will file a deed restriction or land use restriction agreement (each a "LURA") in the real property record that defines limitations on resale, occupancy and other concerns of the Development. Deed restrictions and LURAs will be filed as non-foreclosable instruments.
9. **Recapture Provisions.** The Local Partner understands that funding provided by the Corporation to acquire or hold properties will be subject to recapture provisions the Corporation shall provide the Local Partner with a recapture agreement (the "Recapture Agreement") detailing the requirements and terms of any recapture provisions. The Corporation shall have an exclusive right to set the terms and conditions of the Recapture Agreement for the Development under this Agreement.
10. **Insurance During Construction.** Prior to commencement of any work on the Development, the Local Partner shall submit appropriate written evidence from itself, or from any contractors hired by the Local Partner, of appropriate builder's risk insurance, liability and property insurance and worker's compensation insurance. The Corporation shall be listed as an "Additional Insured" on any relevant insurance policies carried by the Local Partner or any contractors hired by the Local Partner on the Development including, but not limited to, any general liability or property insurance, builders risk insurance and other types of insurance benefitting the Development, but not worker's compensation insurance.
11. **Discrimination.** Each party subject to this Agreement shall not permit discrimination against members of Qualified Households on the basis of their gender, race, religion, color, familial status, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability.
12. **Release of Individual Units.** The release of any individual unit from the Development to a household, whether a Qualified Household or not, shall require submission of the appropriate income certification documents and approval by the Corporation, and as further defined in the Ground Lease.

13. **Project Monitoring.** The Corporation requires that the Development undergo a regular review to determine that the project continues to meet the threshold criteria and goals of the ACI Program. The Corporation may require an asset management or asset oversight review be completed on an annual, semi-annual or other periodic length of time, on all properties rented, leased or otherwise managed by the Local Partner but not sold to a Qualified Household, as determined by the Corporation. The Corporation shall set its fee for annual asset oversight and compliance activities in the Ground Lease agreement.
14. **Disposition Restrictions.** The Corporation may require the Local Partner and/or a Qualified Household, as applicable, through a Recorded Enforcement Document, Ground Lease or other appropriate documentation, to covenant and agree not to sell, transfer or otherwise dispose of an acquired property prior to the expiration of the Recorded Enforcement Document or other period required in writing by the Corporation (other than pursuant to the lease of rental units to Qualified Households) without (i) complying with any applicable provisions of any Recorded Enforcement Document or any other relevant documents of the Corporation (which may allow a sale of a Qualified Project to another Qualified Household possibly subject to a ground lease agreement or otherwise) and (ii) obtaining the prior written consent of the Corporation. Such consent of the Corporation shall be granted or withheld in its sole and absolute discretion. Any such sale, transfer or other disposition of a Qualified Project in violation of this Section 17 shall be null and void and of no force and effect.
15. **Additional Financing.** This Agreement does not represent an intent or commitment by the Corporation to provide any other financing or other funds to the Local Partner for rehabilitation, construction or other purpose not explicitly identified in this Agreement.
16. **Transfer and Assignment.** This Agreement may not be transferred or assigned to any other entity by the Local Partner without the prior written consent of the Corporation, which consent may be withheld in the Corporation's sole and absolute discretion.
17. **Waiver of Trial by Jury.** The Corporation and Local Partner each (a) agrees not to elect a trial by jury with respect to any issue arising out of this Agreement or the relationship between the parties, as Corporation and the Local Partner, that is triable of right by a jury and (b) waives any right to trial by jury with respect to such issue to the extent that any such right exists now or in the future. This waiver of right to trial by jury is separately given by each party, knowingly and voluntarily with the benefit of competent legal counsel.
18. **Termination.** This Agreement may be terminated at the Corporation's option upon thirty (30) days within notice to the Local Partner upon the occurrence of any of the following events:
 - a. The Local Partner makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition of bankruptcy or is adjudicated as bankrupt or insolvent, or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation;
 - b. If any material statement or representation made by or on behalf of the Local Partner to the Corporation shall prove to be untrue, or if the Local Partner or any Guarantor shall have withheld any material information incident thereto;

- c. If there shall be a material adverse change, as determined by the Corporation, in the financial condition or business operations of Local Partner;
 - d. If Local Partner fails to comply with any obligation hereunder or to satisfy all of the conditions of this Agreement and the Policies in a timely manner;
 - e. The Local Partner fails to maintain its existence as a non-profit corporation in the same or similar form it was when it executed this Agreement; or
 - f. The Local Partner uses any funds provided by or through the Corporation in any manner inconsistent with the charitable mission of the Corporation or the purposes of this Agreement and the Policies. In the event that termination of the contract occurs, the Local Partner shall either buy out any existing ground leases, or the Corporation will buy out the improvements to any properties on which an existing ground lease stands, at an amount deemed reasonable by both the Local Partner and Corporation.
19. **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements.
20. **USA Patriot ACT Compliance.** As a condition of this Agreement, Local Partner shall certify that (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.
21. **Amendments.** This Agreement may be changed or amended only by a written agreement, signed by both parties.
22. **Liability.** ALTHOUGH THE LOCAL PARTNER UNDERSTANDS AND HEREBY ACKNOWLEDGES THAT THE ACTS AND ACTIVITIES TO BE ENGAGED IN AND PERFORMED BY THE LOCAL PARTNER UNDER THIS AGREEMENT MAY POTENTIALLY SUBJECT RECIPIENT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS TO THE RISK OF SERIOUS INJURY, ILLNESS OR EVEN LIFE-THREATENING CONDITIONS, THE LOCAL PARTNER HEREBY INDEMNIFIES THE CORPORATION FOR ANY DAMAGES OR INJURY THAT MAY BE SUSTAINED IN CONNECTION WITH OR AS A RESULT OF THE PERFORMANCE BY THE LOCAL PARTNER, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF THE LOCAL PARTNER'S DUTIES AND RESPONSIBILITIES UNDER THIS AGREEMENT AND AGREES AND UNDERSTANDS THAT THE CORPORATION SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY SUCH DAMAGE OR INJURY, INCLUDING, BUT NOT LIMITED TO, THE GROSS NEGLIGENCE OF THE CORPORATION.
23. **Not a Partnership.** No person performing any of the work or services described hereunder on behalf of the Local Partner shall be considered an officer, agent, servant or employee of the Corporation, nor shall any such person be entitled to any benefits available or granted to employees of the Corporation.

24. **Notices.** Any notice given under this Agreement shall be in writing and shall for all purposes be deemed to be fully given by a party if sent, by first class mail with proper postage prepaid or by overnight courier, to the other party at its address indicated below. The date of the mailing or pick up by the overnight courier shall be deemed to be the date on which such notice was given. Either party may change its address for the purpose of this Agreement by giving the other party written notice of its new address. The parties' current addresses appear below.

If too Corporation:
Texas State Affordable Housing Corporation
2200 East Martin Luther King Jr. Blvd.
Austin, Texas 78702
Phone #: (512) 477-3555
Fax #: (512) 477-3557

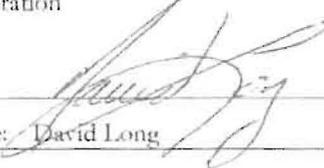
If to Local Partner:
Green Extreme Homes
2320 King Arthur Blvd
Lewisville, TX 75056
Phone: 972-899-4246
Fax: 972-899-4247

25. **Governing Law.** The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Texas, and any dispute arising hereunder shall be subject to the jurisdiction of the courts of the United States of America or the State of Texas sitting in Travis County, Texas.
26. **Headings.** The section and paragraph headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
27. **Severability.** If any term or provision of this Agreement or the application thereof to any party hereto or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to any party hereto or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
28. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.
29. **Addendums.** All addendums attached hereto are incorporated herein and made a part of this Agreement in all respects.

Signature Page Follows

IN WITNESS WHEREOF, the undersigned parties have caused their duly authorized representatives to execute this Agreement effective as of the date first above written

TEXAS STATE AFFORDABLE HOUSING CORPORATION, a Texas non-profit corporation

By: 
Name: David Long
Title: President

Green Extreme Homes, a Texas non-profit corporation

By: 
Name: Jean Brown
Title: Executive Director

Attachment A

Property Description

The Development consists of two legal lots as described below.

Lot 1: Being 1.23 +/- acres of land and improvements located in the Southwest Quadrant of 14th Street and Avenue G

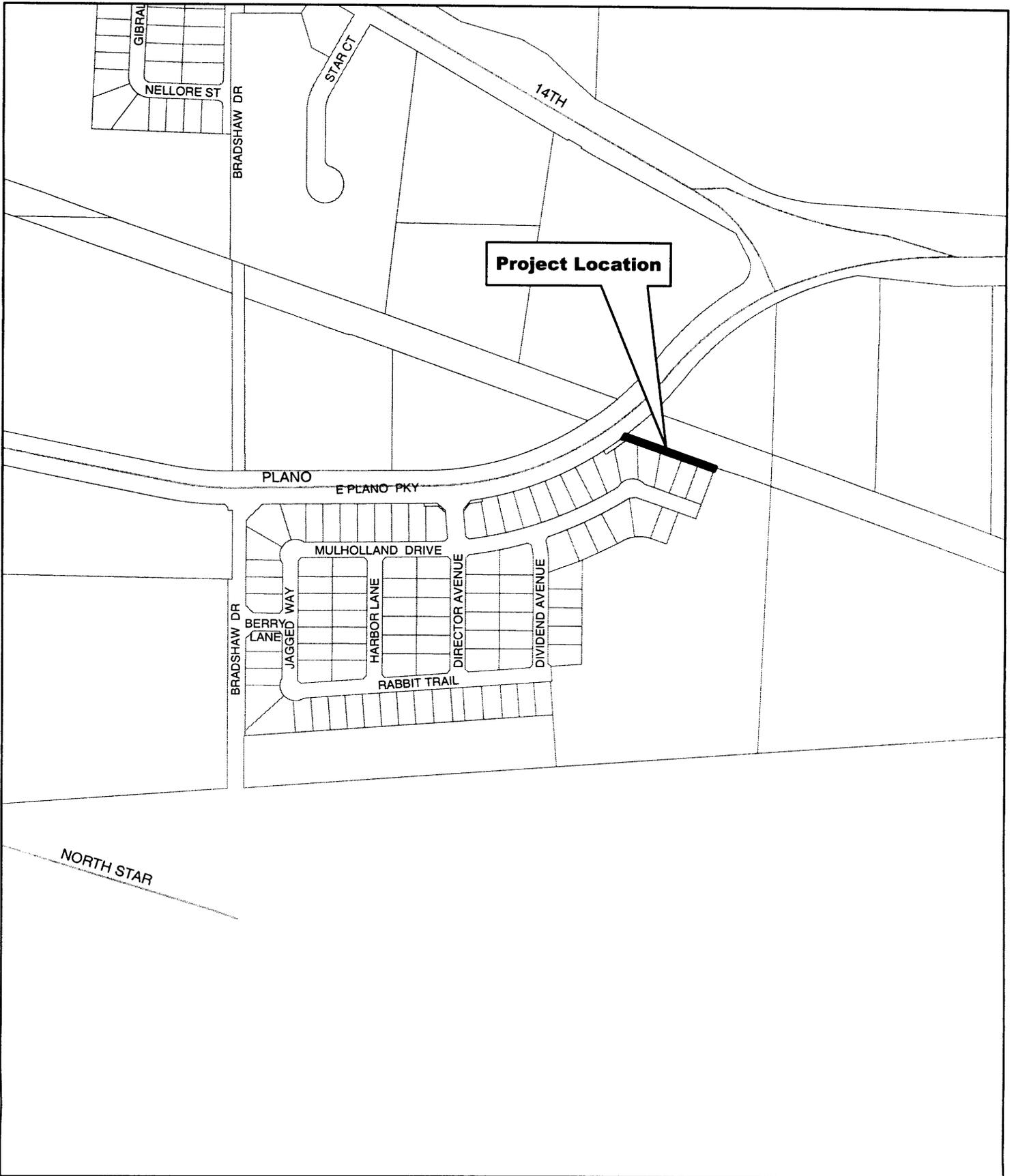
Lot 2: Being 0.31 +/- acres of land and improvements located at the Southeast Corner of 14th Street and Avenue F



**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:		7/23/2012			
Department:	Public Works				
Department Head	Gerald Cosgrove				
Agenda Coordinator (include phone #):		Kathy Schonne (X-7198)		Proj. #6049	
CAPTION					
<p>An Ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in and to a portion of that certain Water Line Easement recorded in Volume 4746, Page 481, of the Deed Records of Collin County, Texas and being situated in the G. H. Pegues Survey, Abstract No. 700 and the M. R. Foster Survey, Abstract No. 332, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owners, GSW Land Investors, Hallmark Land Holdings, Inc., and Parkway Heights Homeowners' Association, to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2011-2012	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(s): N/A					
COMMENTS: This item has no fiscal impact.					
STRATEGIC PLAN GOAL: Abandoning all right, title and interest of the City to the easement relates to the City's Goal of Financially Strong City with Service Excellence.					
SUMMARY OF ITEM					
<p>The 12" water line has been removed from private property and placed within the public right-of-way of Mulholland Drive within Parkway Heights, Phase 1.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Location Map			N/A		

Easement Abandonment



Location Map

An Ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in and to a portion of that certain 15' Water Line Easement recorded in Volume 4746, Page 481, of the Deed Records of Collin County, Texas and being situated in the G. H. Pegues Survey, Abstract No. 700 and the M. R. Foster Survey, Abstract No. 332, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owners, GSW Land Investors, Hallmark Land Holdings, Inc., and Parkway Heights Homeowners' Association, to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.

WHEREAS, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in and to a portion of that certain 15' Water Line Easement recorded in Volume 4746, Page 481, of the Deed Records of Collin County, Texas and being situated in the G. H. Pegues Survey, Abstract No. 700 and the M. R. Foster Survey, Abstract No. 332, which is located within the city limits of Plano, Collin County, Texas, and which is more particularly described in Exhibit "A-1" attached hereto and incorporated herein by reference; and

WHEREAS, the Property Owner has filed with the City a Petition for Abandonment, a copy of which is attached hereto as Exhibit "B" and made a part hereof by reference; and

WHEREAS, the Public Works Department has determined that there will be no detrimental effect on the City if the Easement is abandoned and quitclaimed to the abutting Property Owner; and has advised that the Easement should be abandoned;

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

Section I. All the right, title and interest of the City of Plano, Texas, in and to the Easement is hereby abandoned, and all right, title and interest of the City in and to the Easement is hereby quitclaimed to the abutting Property Owner in accordance with its respective interest. A certified copy of this Ordinance may be recorded in the Collin County Land Records to reflect this abandonment and quitclaim. The City Manager or his authorized designee, is hereby authorized to execute on behalf of the City of Plano, Texas, any instruments necessary to complete the abandonment and quitclaim of the Easement by the City of Plano.

Section II. The abandonment and quitclaim is without prejudice to any and all improvements, facilities, equipment or lines of any public utility, municipal or otherwise, if any, which are presently located within any portion of the Easement. Any such utility shall have the continued right to locate, maintain, repair, reconstruct, preserve or relocate improvements, facilities, equipment or lines in such portion of the Easement.

Section III. The City Council hereby finds and determines that the abandonment of the Easement is in the public interest of the City of Plano, Texas, and its citizens, and will inure to the benefit of the public generally.

Section IV. This Ordinance shall become effective immediately upon its passage as set forth below.

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "B"

PETITION FOR ABANDONMENT

[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting City of Plano 15' Water Line Easement, Vol. 4746, Pg. 481 D.R.C.C.T. (hereinafter called "Easement"), more particularly described by metes and bounds in the field note description attached hereto and incorporated herein as **Exhibit "A-1"** do hereby request that the City of Plano, Texas (called "City") abandon the Easement.

1. The Owners are requesting the abandonment of the Easement for the following reasons:

The 12" water line within this easement has been relocated to Mulholland Drive in Parkway Heights, Phase 1.

2. The following public interest will be served as a result of the abandonment:

The 12" water line has been removed from private property and placed within the public right-of-way of Mulholland Drive in Parkway Heights, Phase 1.

3. Unless the City determines that this abandonment is exempt from payment of fair market value, the Owners agree to pay to the City the fair market value of the Easement as determined by an appraisal obtained by the City (called "Price"). The appraisal shall be conclusive as to the fair market value. The Owners shall reimburse the City for the cost of the appraisal and other costs incident to the abandonment (called "Costs"). The Price and Costs shall be paid to the City prior to the abandonment. Should the Plano City Council decide not to abandon the Easement, the Price shall be returned to the Owners, but the Costs shall be retained by the City. Each Owner's share of the Price and Costs shall be in the same proportion as their abutting ownership as hereinafter defined.

4. ~~If the Owners are providing a replacement easement for the Easement requested to be abandoned herein, Owners will attach a metes and bounds description or plat identifying the replacement easement and attach same to this Petition as Exhibit "B-1".~~

5. The Owners hereby represent and affirm to the City that no other property owner, lessee, tenant or easement or license holder uses the Easement to access or to serve their property.

6. **The Owners further agree to release, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, demands, suits, judgments and costs, including reasonable**

and necessary attorney's fees and expenses, arising out of, related to or resulting from the abandonment of the Easement by City.

7. The Owners understand and agree that the abandonment is in the sole discretion of the Plano City Council. The Owners also understand and agree that the Easement will be abandoned to them in proportion to their abutting ownership. The abutting ownership will be determined by the number of linear feet of frontage adjacent to the Easement owned by each property owner. Based on the foregoing, the Owners hereby represent and affirm that they have searched the public land records and determined that the abutting ownership is in the following proportions:

550.19 LINEAR FEET – 100%

8. ~~Owners shall also prepare a map or drawing showing the Easement to be abandoned along with a designation of all abutting property owners. This map or drawing shall be attached hereto and incorporated herein as **Exhibit "C-1"**.~~
9. ~~Owners shall also prepare a separate field note description for each portion of the Easement to be released to each abutting property owner. This description shall be attached hereto and incorporated herein as **Exhibit "D-1"**.~~

[Remainder of page blank]

10. The undersigned officers and/or agents of the Owners hereby represent and affirm that they have the necessary authority to execute this Petition for Abandonment on behalf of the Owners.

GSW Land Investors
Typed Name of Owner

15455 Dallas Parkway Suite 1000
Address

Addison, TX 75001
City, State and Zip

Dated: 6/18/12

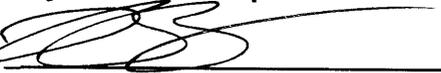

Signature of Owner

Hallmark Land Holdings, Inc.
Typed Name of Owner

15455 Dallas Parkway Suite 1000
Address

Addison, TX 75001
City, State and Zip

Dated: 6/18/12

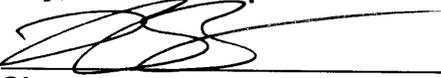

Signature of Owner

Parkway Heights Homeowners' Association
Typed Name of Owner

15455 Dallas Parkway Suite 1000
Address

Addison, TX 75001
City, State and Zip

Dated: 6/18/12


Signature of Owner

Contact Person for Property Owners:

Name: Beau Brooks
Phone No: (972) 387-6054

FOR DEPARTMENTAL USE ONLY

The Easement to be abandoned is to one or more abutting property owners and is exempt from the requirement that fair market value be paid for the following reason(s):

- The Easement consists of narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development code ordinances;
- The Easement consists of streets or alleys, owned in fee or used by easement;
- The Easement consists of land or a real property interest originally acquired for streets, rights-of-way, or easements that the City of Plano has decided to exchange with Owner for other land to be dedicated and used for streets, rights of way, easements, or other public purposes, including transactions partly for cash;
- The Easement contains land that the City wants to have developed by an independent foundation;
- The Easement is located within a reinvestment zone designated by law that the City desires to have developed under a project plan adopted by the municipality for the zone.


Public Works Department
City of Plano, Texas

EXHIBIT "A-1"

EASEMENT ABANDONMENT

PROPERTY DESCRIPTION

STATE OF TEXAS:
COUNTY OF COLLIN:

BEING a tract of land situated in the G.H. Pegues Survey, Abstract No. 700 and the M.R. Foster Survey, Abstract No. 332, City of Plano, Collin County, Texas, being a portion of a tract of land as described in deed to GSW Land Investors, L.P., recorded in 20120509000545850, Deed Records, Collin County, Texas (DRCCT), being a portion of a tract of land as described in deed to Hallmark Land Holdings, Inc., recorded in 20120509000545890, DRCCT, being a portion of a tract of land as described in deed to Parkway Heights (a.k.a. Harrington Mills) Homeowners' Association, Inc., recorded in 20120523000604460, DRCCT, being situated across a portion of Lots 10, 11, 12, 13, 14 & 33X, Block G of the final plat of Parkway Heights, Phase 1, an addition to the City of Plano, Collin County, Texas as recorded in 20120410010000760, Plat Records, Collin County, Texas, being a portion of a Permanent 15' Water Line Easement to the City of Plano, Texas as recorded in Volume 4746, Page 481, DRCCT, and being more particularly described as follows:

BEGINNING at a 1/2" rebar with a yellow plastic cap stamped "Goodwin & Marshall" recovered at the intersection of the southerly line of Plano Parkway (110' R.O.W. per Volume 5596, Page 1362, DRCCT), with the southerly line of a tract of land as described in deed to Dallas Area Rapid Transit Property Acquisition Corporation (DART), recorded in Volume 3424, Page 126, DRCCT, being the most northerly corner of said Lot 33X, Block G, said point lying in the northerly line of said water line easement;

THENCE S 69°33'31" E, departing the southerly line of said Plano Parkway, along the southerly line of said DART tract, a northerly line of said Parkway Heights, Phase 1 and said water line easement, at a distance of 305.72 feet passing a 1/2" rebar capped set at the northeast corner of said Parkway Height, Phase 1, continuing a total distance of 525.72 feet to a point in a northerly line of said GSW Land Investors, L.P. tract, at the northeast corner of the herein described tract of land, from which a 1/2" rebar found at the northeast corner of said GSW Land Investors, L.P. tract bears S 69°33'31" E, 1199.32 feet;

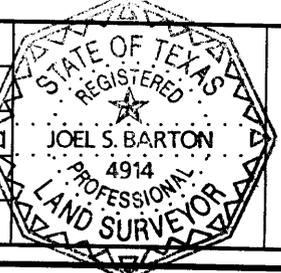
THENCE S 20°26'29" W, departing the southerly line of said DART tract and the northerly line of said GSW Land Investors, L.P. tract and said water line easement, a distance of 15.00 feet to the southerly line of said water line easement;

THENCE N 69°33'31" W, along the southerly line of said water line easement, a distance of 535.19 feet to the southerly line of said Plano Parkway and a northerly line of said Parkway Heights, Phase 1;

THENCE Northeasterly, departing the southerly line of said water line easement, along the southerly line of said Plano Parkway and a northerly line of said Parkway Heights, Phase 1, along a non tangent curve to the left, having a radius point that bears N 36°48'31" W, 1055.00 feet, a central angle of 00°57'48", an arc distance of 17.74 feet, and a chord that bears N 52°42'35" E, 17.74 feet to the POINT OF BEGINNING and containing 7,956 square feet or 0.183 acre of land.

NOTE:

The bearings shown hereon are referenced to the Street Dedication Plat for Shiloh Road and Plano Parkway, and Los Rios Boulevard recorded in Cabinet F, Slide 18, Plat Records, Collin County, Texas.

<p>GOODWIN & MARSHALL</p> <hr/> <p>CIVIL ENGINEERS ~ PLANNERS ~ SURVEYORS</p> <hr/> <p>2405 Mustang Drive, Grapevine, TX. 76051 Metro (817) 329-4373</p>	<p><i>Joel S. Barton</i></p>	Scale: NONE		Sheet
		Date: 6/8/2012		1
		Job No.: 10434		of
		Drafted: T. J. M.		3
		Checked: J. S. B.		

GRAPHIC SCALE 1"=100'

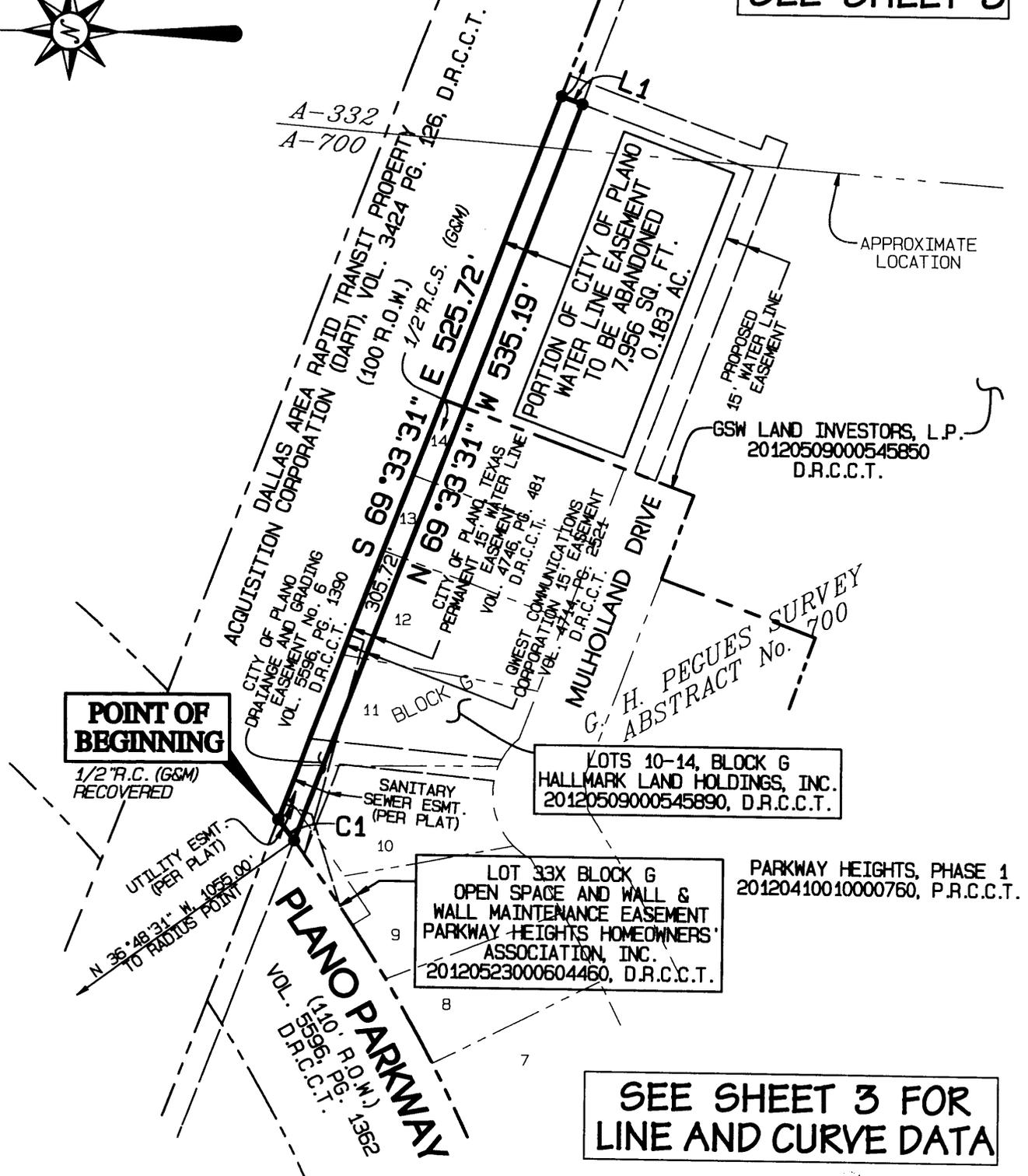


0 100



EXHIBIT "A-1" EASEMENT ABANDONMENT

SEE SHEET 3



POINT OF BEGINNING

1/2 R.C. (G&M)
RECOVERED

UTILITY ESMT.
(PER PLAT)
N 36° 48' 31" W 1055.00'
TO RADIALS POINT

PLANO PARKWAY
VOL. 5596 (110 P.O.W.)
PG. 1392
D.R.C.C.T.

LOTS 10-14, BLOCK G
HALLMARK LAND HOLDINGS, INC.
20120509000545890, D.R.C.C.T.

LOT 33X BLOCK G
OPEN SPACE AND WALL &
WALL MAINTENANCE EASEMENT
PARKWAY HEIGHTS HOMEOWNERS
ASSOCIATION, INC.
20120523000604460, D.R.C.C.T.

PARKWAY HEIGHTS, PHASE 1
20120410010000760, P.R.C.C.T.

**SEE SHEET 3 FOR
LINE AND CURVE DATA**

GOODWIN & MARSHALL INC.
CIVIL ENGINEERS ~ PLANNERS ~ SURVEYORS
2405 Mustang Drive, Grapevine, TX. 76051
Metro (817) 329-4373

Joel S. Barton

Scale: 1"=100'
Date: 6/8/2012
Job No.: 10434
Drafted: T. J. M.
Checked: J. S. B.

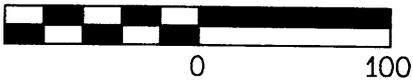
STATE OF TEXAS
REGISTERED
JOEL S. BARTON
4914
PROFESSIONAL
LAND SURVEYOR

Sheet
2
of
3

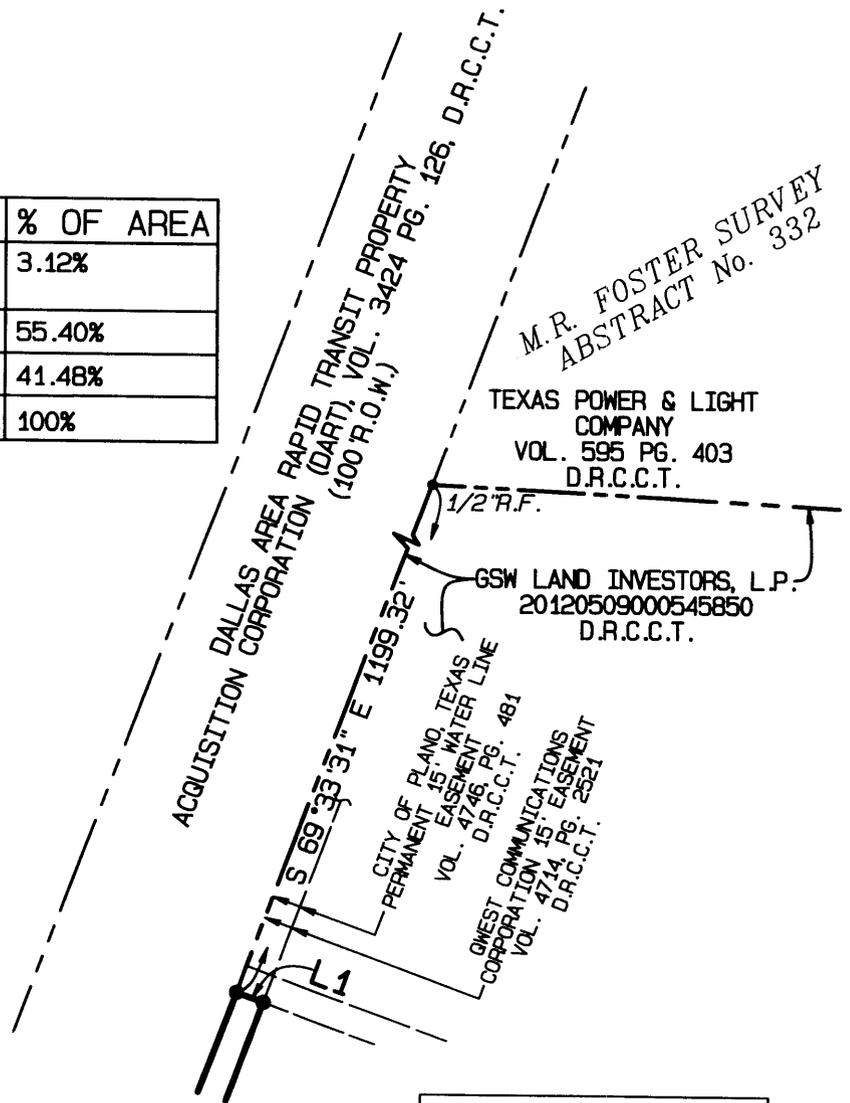
EXHIBIT "A-1"

EASEMENT ABANDONMENT

GRAPHIC SCALE 1"=100'



OWNER	AREA	% OF AREA
PARKWAY HEIGHTS HOMEOWNERS' ASSOCIATION, INC.	248 SQ. FT.	3.12%
HALLMARK LAND HOLDINGS, INC.	4,408 SQ. FT.	55.40%
GSW LAND INVESTORS, L.P.	3,300 SQ. FT.	41.48%
TOTAL	7,956 SQ. FT.	100%



SEE SHEET 2

LINE DATA

LINE	BEARING	DISTANCE
L1	S20°26'29"W	15.00'

CURVE DATA

CURVE	RADIUS	DELTA	LENGTH	CHORD BEARING	CHORD
C1	1055.00'	0°57'48"	17.74'	N52°42'35"E	17.74'

GOODWIN AND MARSHALL

CIVIL ENGINEERS ~ PLANNERS ~ SURVEYORS

2405 Mustang Drive, Grapevine, TX. 76051
Metro (817) 329-4373

Joel S. Barton

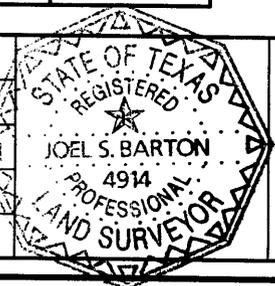
Scale: 1"=100'

Date: 6/8/2012

Job No.: 10434

Drafted: T. J. M.

Checked: J. S. B.

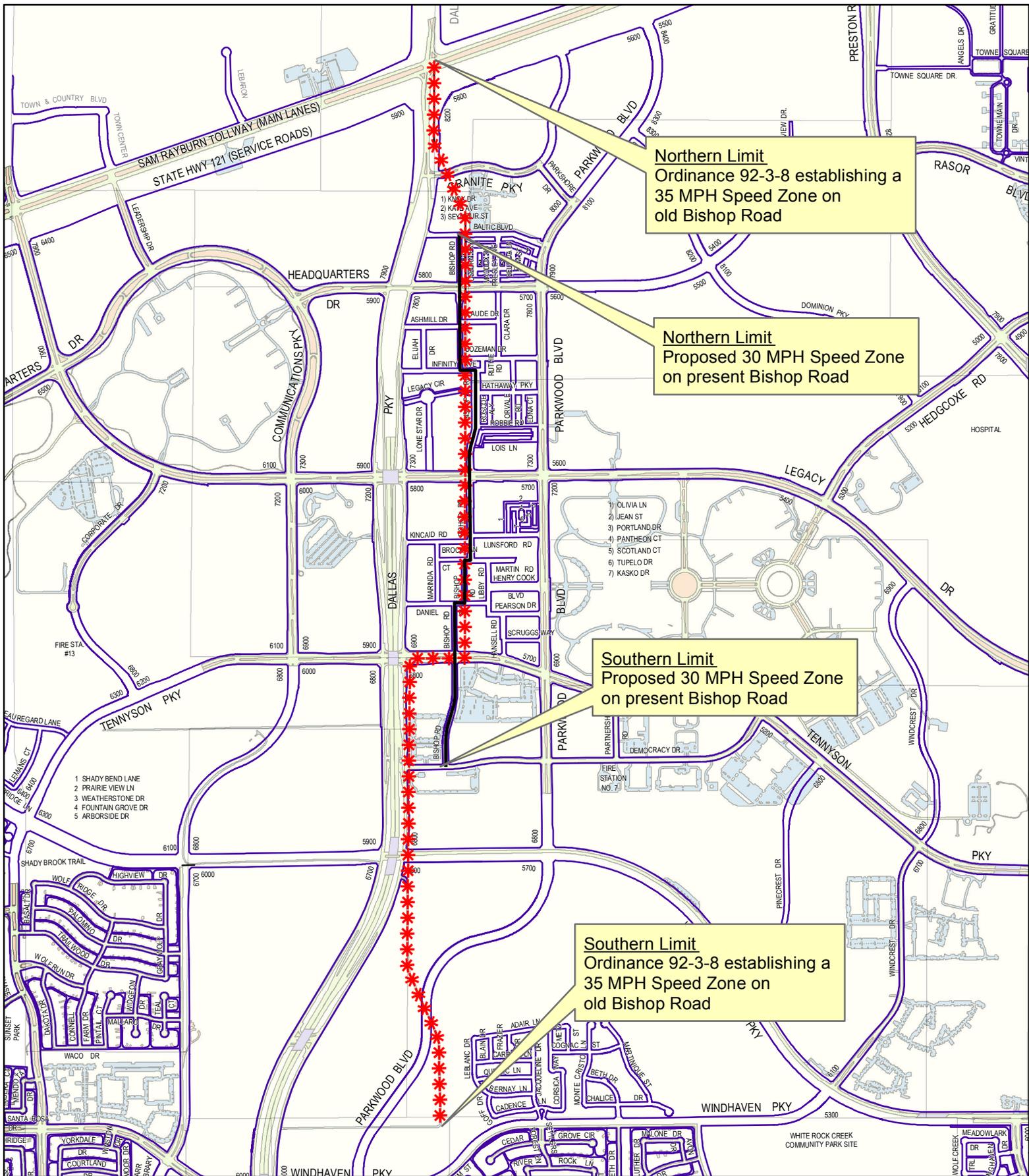


Sheet
3
of
3

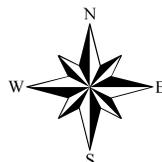


CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		7/23/2012		
Department:	Public Works			
Department Head	Gerald Cosgrove			
Agenda Coordinator (include phone #): Kathy Schonne (X-7198)				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, amending Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limits for motor vehicles operating on certain sections of Bishop Road within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, a publication clause, and an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): GENERAL FUND				
COMMENTS: Any revenue received via fines as a result of this Ordinance is undeterminable at this time.				
STRATEGIC PLAN GOAL: Passage of this Ordinance relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
<p>Transportation Engineering Division (TED) staff recently identified a discrepancy between the end points and posted speed limit of Bishop Road and the end points and speed limit for Bishop Road as listed in the City Code. The listing in the City Code is based upon Ordinance No. 92-3-8, adopted March 12, 1992. The listed speed limit is 35 miles per hour (MPH) and the end points are McCamy Trail and State Highway 121. This roadway no longer exists, having been absorbed into the Dallas Parkway right-of-way, abandoned to the adjacent property owners, or having been platted out of existence by new development. The present Bishop Road was created during the platting process for the various subdivisions that together comprise parts of The Legacy Town Center and The Shops at Legacy Town Center. This roadway runs from Democracy Drive northward to Baltic Boulevard and is posted at 30 MPH due to its multiple pedestrian-friendly urban design features. The TED has prepared an ordinance for City Council consideration that repeals the section of Ordinance No. 92-3-8 pertaining to Bishop Road and replaces it with a 30 MPH speed limit on Bishop Road from Democracy Drive to Baltic Boulevard. The TED recommends adoption of the attached ordinance.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	



Bishop Road Speed Limit Revision



Transportation Engineering Division

An Ordinance of the City of Plano, Texas, amending Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limits for motor vehicles operating on certain sections of Bishop Road within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, a publication clause, and an effective date.

WHEREAS, Section 545.356 of the Texas Transportation Code, as amended, grants to cities operating under a Home Rule Charter the authority to control the operation of motor vehicles using its streets and to prescribe reasonable and safe prima facie maximum speed limits for the same; and

WHEREAS, traffic and engineering studies of Bishop Road have been completed, and the City Council is of the opinion that the speed limits applicable to certain portions of this roadway should be altered.

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

Section I. The following prima facie maximum speed limits hereafter indicated for motor vehicles are hereby determined and declared to be reasonable and safe, and such maximum speed limits are hereby fixed at the rate of speed indicated for motor vehicles traveling upon the named streets or highways or parts thereof. No motor vehicle shall be operated along or upon said portions of said named streets or highways within the corporate limits of the City of Plano in excess of the speeds now set forth.

Section II. Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the City of Plano Code of Ordinances is hereby amended by the repeal of the following Subsection:

“Bishop Road:

- (1) Thirty-five (35) miles per hour along Bishop Road from McKamy Trail to its intersection with S.H. 121.”

Section III. Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the City of Plano Code of Ordinances is hereby amended by the addition of the following Subsections to read as follows:

“Bishop Road:

- (1) Thirty (30) miles per hour along and upon Bishop Road from its intersection with Democracy Drive to its intersection with Baltic Boulevard.”

Section IV. The Traffic Engineer of Plano is hereby authorized to cause to be erected appropriate signs indicating such speed zones.

Section V. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, except that an ordinance of the City establishing a school zone and speed limit therefore within the zones changed herein, shall not be repealed but shall prevail over this Ordinance. 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 full effect.

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

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

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

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

DULY PASSED AND APPROVED this 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

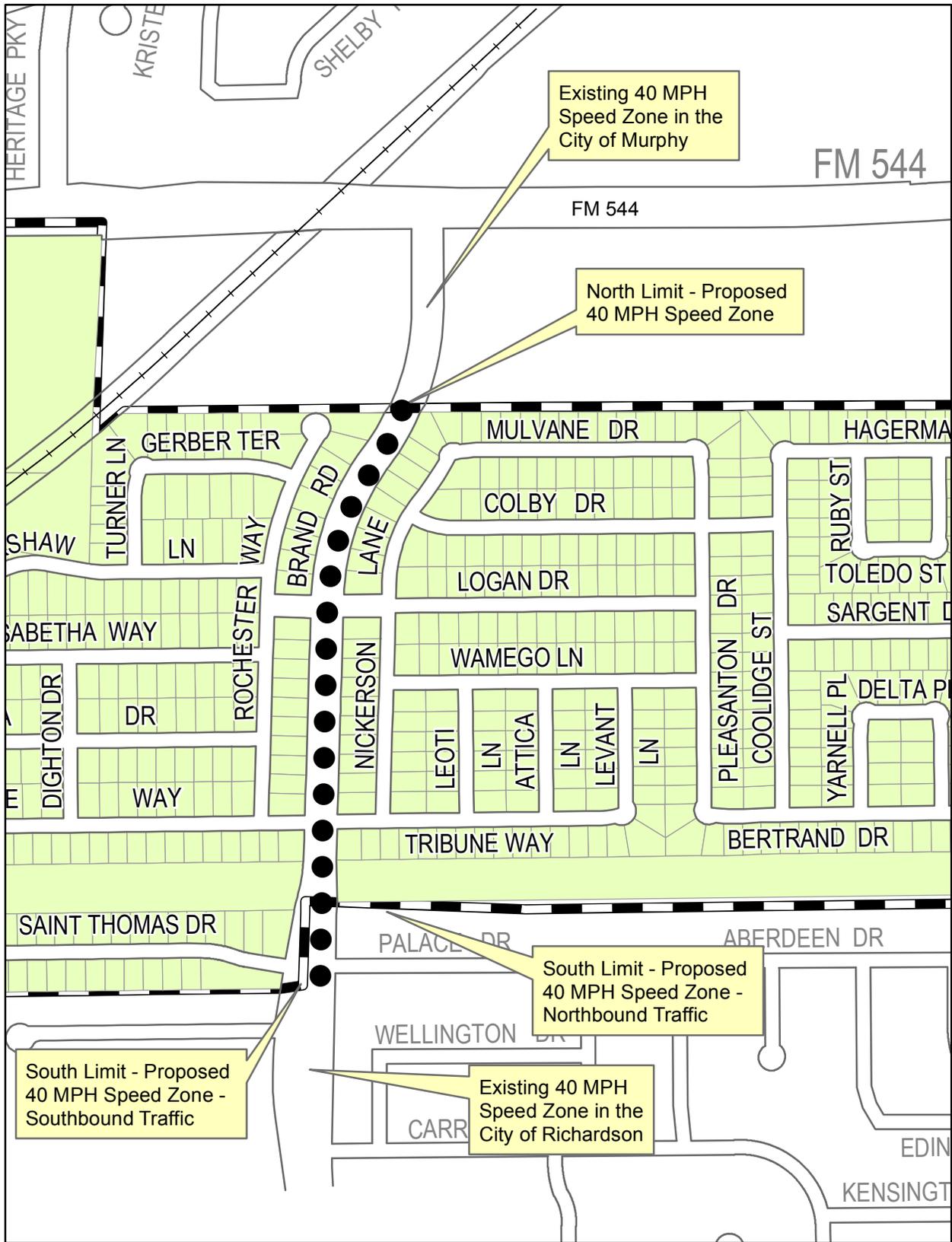
APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

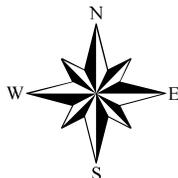


CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		7/23/2012		
Department:	Public Works			
Department Head	Gerald Cosgrove			
Agenda Coordinator (include phone #):		Kathy Schonne (X-7198)		
CAPTION				
An Ordinance of the City of Plano, Texas, amending Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limit for motor vehicles operating on Brand Road within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		0	0	0
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): GENERAL FUND				
COMMENTS: Any revenue received via fines as a result of this Ordinance is undeterminable at this time. STRATEGIC PLAN GOAL: Passage of this Ordinance relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
The City of Plano Transportation Engineering Division (TED) received a request to review the speed limit on Brand Road from the north city limit line south to the south city limit line. The segments of Brand Road that are in the cities of Murphy and Richardson are already zoned at 40 miles per hour, so this would make the speed limit consistent. The TED performed an engineering and traffic investigation and determined that this section of street should be speed zoned for 40 miles per hour. The TED supports speed zoning Brand Road from the north city limit line south to the south city limit line at 40 miles per hour and has prepared the attached ordinance for City Council consideration.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	



**Brand Road
40 MPH Speed Zoning
Recommendation**



Transportation Engineering Division

An Ordinance of the City of Plano, Texas, amending Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limit for motor vehicles operating on Brand Road within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.

WHEREAS, Section 545.356 of the Texas Transportation Code, as amended, grants to cities operating under a Home Rule Charter the authority to control the operation of motor vehicles using its streets and to prescribe reasonable and safe prima facie maximum speed limits for the same; and

WHEREAS, traffic and engineering studies of Brand Road have been completed, and the City Council is of the opinion that the speed limit applicable to this roadway should be altered.

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

Section I. The following prima facie maximum speed limits hereafter indicated for motor vehicles are hereby determined and declared to be reasonable and safe, and such maximum speed limits are hereby fixed at the rate of speed indicated for motor vehicles traveling upon the named streets or highways or parts thereof. No motor vehicle shall be operated along or upon said portions of said named streets or highways within the corporate limits of the City of Plano in excess of the speeds now set forth.

Section II. Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the City of Plano Code of Ordinances is hereby amended by the addition of the following Subsection to read as follows:

“Brand Road:

(1) Forty (40) miles per hour along and upon Brand Road from its intersection with the north city limit line to its intersection with the south city limit line.“

Section III. The Traffic Engineer of Plano is hereby authorized to cause to be erected appropriate signs indicating such speed zone.

Section IV. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, except that an ordinance of the City establishing a school zone and speed limit therefore within the zones changed herein, shall not be repealed but shall prevail over this Ordinance. 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 full effect.

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

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

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

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

DULY PASSED AND APPROVED this 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		7/23/12		
Department:		City Secretary		
Department Head		Diane Zucco		
Agenda Coordinator (include phone #): Alice Snyder, Ext. 7515				
CAPTION				
<p>An Ordinance of the City of Plano, Texas amending Chapter 2, Administration, of the Code of Ordinances of the City of Plano, Texas to include a new section allowing the City Council to remove board, commission, and committee members with or without cause, and providing a repealer clause, a savings clause, a severability 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:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Amending an Ordinance relates to the City's goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
<p>An ordinance including a new section in Chapter 2, Administration allowing City Council to remove board, commission, and committee members with or without cause.</p>				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas amending Chapter 2, Administration, of the Code of Ordinances of the City of Plano, Texas to include a new section allowing the City Council to remove board, commission, and committee members with or without cause, and providing a repealer clause, a savings clause, a severability clause, and an effective date.

WHEREAS, the Code of Ordinances currently lacks a general provision providing the City Council can remove board, commission, and committee members with or without cause; and

WHEREAS, the City Council hereby finds and determines that it is necessary to adopt such a provision.

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

Section I. Chapter 2, Administration, of the City of Plano Code of Ordinances is hereby amended to include Article XX to read as follows:

“Removal of Board, Commission, and Committee members.

Notwithstanding any other provisions in this Chapter or in the Code of Ordinances, all members of all City boards, commissions, and committees may be removed at any time by the City Council with or without cause, unless state law requires otherwise.”

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

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

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		07/23/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): Linda Thomason x8301				
CAPTION				
<p>Public Hearing and an Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 129 for tax abatement consisting of a 4.624 acres tract of land located in the Samuel H. Brown Survey, Abstract No. 108 and the Jabez Degman Survey, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): N/A				
<p>COMMENTS: This item has no fiscal impact. Notice of public hearing published on July 15, 2012 to create Reinvestment Zone 129. The real property improvements amount is \$45,000,000.00 and the business personal property amount is \$8,000,000.00. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.</p>				
SUMMARY OF ITEM				
<p>This relates to a Tollway 121 Hotel, LP, a Texas limited partnership, request for tax abatement on Reinvestment Zone 129 and the creation of the zone on Granite Parkway.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Ordinance				
Metes and Bounds				

An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 129 for tax abatement consisting of a 4.624 acres tract of land located in the Samuel H. Brown Survey, Abstract No. 108 and the Jabez Degman Survey, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.

WHEREAS, the City Council of the City of Plano, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone for tax abatement, as authorized by V.T.C.A. Tax Code Chapter 312 (referred to as the "Property Redevelopment and Tax Abatement Act" or the "Act"); and

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 23rd day of July, 2012, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

WHEREAS, the City held such public hearing after giving written notice of said hearing to all taxing units overlapping the territory inside the proposed reinvestment zone; and

WHEREAS, the City at such hearing invited any interested person or his representative to appear for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the notice calling such public hearing should be included in such proposed reinvestment zone, and the concept of tax abatement; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all matters relating to the creation of the reinvestment zone.

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

Section I. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

Section II. Definitions. For the purposes of this Ordinance, the following terms and phrases shall have the following meanings ascribed to them:

- a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Act, any activity at the location, including, but not limited to, new construction.

- b) Taxable Real Property - Taxable real property shall be as defined in the Texas Property Tax Code and shall not include personal property as defined in said code, nor shall it include land.
- c) Taxable Tangible Personal Property - Shall be defined, for purposes of this Ordinance, as tangible personal property, such as office machines and office furnishings, but shall specifically exclude inventory or supplies.
- d) Base Year - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.

Section III. The City, after conducting the above-mentioned hearing and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and to the land included in the zone and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and
- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 129, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2015.

Section VI. To be eligible for tax abatement a project shall:

- a) Be located wholly within the zone as established herein.
- b) Not include property that is owned or leased by a member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.
- c) Conform to the requirements of the City's Zoning Ordinance and all other applicable laws and regulations.
- d) Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

Section VII. Written tax abatement agreements with property owner(s) located within the zone shall provide the terms regarding duration of exemption and share of taxable Real Property Improvements and Tangible Personal Property value from taxation as approved hereunder as shown below:

- a) Ten (10) consecutive tax years beginning with and including the January 1, 2015 assessment date for the Real Property Improvements.
- b) Ten (10) consecutive tax years beginning with and including the January 1, 2015 assessment date for the Tangible Personal Property Improvements.
- c) Share of taxes abated – fifty percent (50%) of taxes on the total value of appraised Real Property Improvements for the years 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024.
- d) Share of taxes abated – fifty percent (50%) of taxes on the total appraised value of Tangible Personal Property for the years 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024.

Section VIII. Any written agreements authorized under this Ordinance must include provisions for:

- a) Listing the kind, number and location of all proposed improvements of the property; and
- b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements; and
- c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and
- d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.

Section IX. If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof.

Section X. This Ordinance shall become effective from and after its date of passage.

DULY PASSED AND APPROVED this 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

FIELD NOTES DESCRIPTION

BEING A TRACT OF LAND LOCATED IN THE SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108 AND THE JABEZ DEGMAN SURVEY, ABSTRACT NO. 279, COLLIN COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO TOLLWAY/121 PARTNERS, LTD. AS RECORDED IN COUNTY CLERK NO. 98-0037186, OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (D.R.C.C.T.), SAID TRACT ALSO BEING LOT 1R, BLOCK B OF GRANITE PARK PHASE III, RECORDED IN INSTRUMENT NO. 20060814010003470, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS (O.P.R.C.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" IN THE NORTH RIGHT-OF-WAY LINE OF GRANITE PARKWAY (A 92 FOOT RIGHT-OF-WAY), BEING THE SOUTHWEST CORNER OF LOT 4R OF SAID BLOCK "B" AND BEING THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID GRANITE PARKWAY AS FOLLOWS:

NORTHWESTERLY, AN ARC LENGTH OF 164.19 FEET ALONG A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 404.00 FEET, A DELTA ANGLE OF 23°17'08", AND A CHORD BEARING N 76°08'36"W, 163.06 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 104.17 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 486.50 FEET, A DELTA ANGLE OF 12°16'07", AND A CHORD BEARING N 70°38'06"W, 103.97 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 197.50 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 776.00 FEET, A DELTA ANGLE OF 14°34'55", AND A CHORD BEARING N 84°03'37"W, 196.96 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE MOST EASTERLY SOUTH CORNER OF LOT 2, BLOCK "B", GRANITE PARK AS SHOWN BY THE PLAT RECORDED IN DOCUMENT NO. 2002-0191594 OF THE PLAT RECORDS OF COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE ALONG THE EAST BOUNDARY LINE OF SAID LOT 2, AS FOLLOWS:

N 00°15'30"E, 42.87 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 21°45'28"W, 111.61 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 00°15'30"E, 227.84 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, SAID IRON ROD BEING IN A WESTERLY LINE OF SAID LOT 4R;

THENCE ALONG THE COMMON LINE OF SAID LOT 4R AND LOT 1R, AS FOLLOWS:

NORTHEASTERLY, AN ARC LENGTH OF 161.46 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 355.00 FEET, A DELTA ANGLE OF 26°03'31", AND A CHORD BEARING OF N 63°07'57" E, 160.07 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", THE BEGINNING OF A CURVE TO THE LEFT;

NORTHEASTERLY, AN ARC LENGTH OF 114.56 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 864.42 FEET, A DELTA ANGLE OF 7°35'35", AND A CHORD BEARING OF N 46°18'23" E, 114.47 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 47°25'16" E, 44.35 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 18°26'12" E, 138.29 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 54°01'25" E, 113.80 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 23°10'57" E, 13.31 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 19.58 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, A DELTA ANGLE OF 18°42'00", AND A CHORD BEARING OF S 13°49'57" E, 19.50 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 29.29 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 72.25 FEET, A DELTA ANGLE OF 23°13'32", AND A CHORD BEARING OF S 16°05'43" E, 29.09 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 125.46 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 187.50 FEET, A DELTA ANGLE OF 38°20'21", AND A CHORD BEARING OF S 46°52'39" E, 123.14 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 66°02'50" E, 83.22 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

SOUTHWESTERLY, AN ARC LENGTH OF 55.68 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 525.00 FEET, A DELTA ANGLE OF $6^{\circ}04'35''$, AND A CHORD BEARING OF $S 59^{\circ}17'52'' W$, 55.65 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHWESTERLY, AN ARC LENGTH OF 100.62 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET, A DELTA ANGLE OF $72^{\circ}03'53''$, AND A CHORD BEARING OF $S 26^{\circ}18'13'' W$, 94.12 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 77.12 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 370.00 FEET, A DELTA ANGLE OF $11^{\circ}56'34''$, AND A CHORD BEARING OF $S 3^{\circ}45'26'' E$, 76.98 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

$S 02^{\circ}12'51'' W$, 24.99 FEET TO THE PLACE OF BEGINNING AND CONTAINING 4.624 ACRES (201,432 SQUARE FEET) OF LAND, MORE OR LESS.



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:		07/23/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): Linda Thomason x8301				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and Tollway 121 Hotel, LP providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s): N/A				
COMMENTS: This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.				
SUMMARY OF ITEM				
This relates to a Tollway 121 Hotel, LP, a Texas limited partnership, request for tax abatement on Reinvestment Zone 129 and the creation of the zone on Granite Parkway.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Resolution				
Tax Abatement Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and Tollway 121 Hotel, LP providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas and Tollway 121 Hotel, LP, a Texas limited partnership, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

3. Owner shall maintain the taxing situs of the Personalty on the Real Property and may not relocate the taxing situs of the Personalty in other Reinvestment Zones in the City.

IMPROVEMENTS

4. (a) The Owner agrees to add the Personalty required under Section 2 by December 31, 2014, unless an extension as a result of an Event of Force Majeure is approved by the City in writing.

(b) By December 31, 2014, the Owner shall make or cause to be made improvements to the Real Property consisting of a new building(s) and/or building improvements that are at least 250,000 gross square feet of full-service business class hotel space which shall include a minimum of 285 hotel guest rooms and a minimum of 30,000 gross square feet of meeting/conference space (including pre-function space) with an assessed taxable value of not less than Forty Five Million Dollars (\$45,000,000.00) for **new improvements added** to the Real Property between the dates of August 1, 2012 through December 31, 2014, as determined by the Collin County Central Appraisal District. The real property abatement for the new improvements shall begin in the 2015 tax year pursuant to Section 11(a) herein unless an extension as a result of an Event of Force Majeure has been approved by the City in writing. The abatement shall not include any existing real property taxable value assessed on the property as of August 1, 2012.

(c) In the Event of a Force Majeure "Event" the affected party shall notify the City in writing not less than sixty (60) days of the onset of the Event with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event. The City Manager shall consider such request and may grant an extension of time to complete the obligations; such extension shall not be unreasonably withheld. If the Event results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the Improvements and/or Personalty shall be met.

(d) The term "Event of Force Majeure" means 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, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner at the Real Property. The term shall not include a downturn in the economy.

DEFAULT

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

(a) Owner allows its personal property taxes or real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal

procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within thirty (30) days of receipt of notice of such delinquency; or

(b) Owner fails to construct the Improvements required in Section 4(b); or

(c) (i) In the first year of the abatement period for the Personalty, the assessed taxable value of the Personalty is less than the minimum amount set forth in Section 2; or

(ii) At any time during the Agreement, the Personalty is removed from the Real Property and the result is the taxable appraised value of the Personalty is below the minimum amount set forth in Section 2; or

(d) At any time during the Agreement, the assessed taxable value of the Real Property Improvements is less than the minimum amount set forth in Section 4(b) as a result of the Owner's protest; or

(e) (i) Owner fails to provide the annual certification as required in Section 9 below; or

(ii) Owner fails to comply with the Assignment provision in Section 10; or

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

6. In the event that the Owner defaults under Section 5 of this Agreement, the City shall give Owner written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated except any damages as specified below shall survive the termination of this Agreement. Notice shall be in writing as provided below. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

7. Upon the occurrence of an event of default under Section 5(a) (b) or (f) above and that remains uncured after the time periods set forth in Section 6 hereof, all taxes, including previously abated taxes which would have been paid to the City by the defaulting party without the benefit of this Agreement, shall become due and owing to the City from the defaulting party, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07 and Texas Government Code Chapter 2264.

Upon the occurrence of an event of default under Section 5(c) (d) or (e) above and that remains uncured, at the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City by the defaulting party without the benefit of this Agreement to become due and owing to the City from the defaulting party, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by

V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety (90) days of notice of default.

EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS

8. 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.

ANNUAL CERTIFICATION

9. Beginning November 1, 2015, and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "B"** hereto) to the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

10. If Owner wishes to assign its rights and duties under this Agreement, it must comply with the following provisions. A failure to comply is an event of default and all remedies may apply including but not limited to a suspension of the abatement for the year(s) for which non-compliance occurred.

(a) City Consent Required. Except as permitted by (b) below, this Agreement may not be assigned without the express written consent of the City. The assignment agreement must be furnished in a form acceptable to the City and be provided at least sixty (60) days prior to the effective assignment date for the City Council review and approval.

(b) Exceptions to City Consent. Owner may assign this Agreement without obtaining the City's consent:

(i) To a wholly owned affiliate of Owner; or

(ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety percent (90%) of the assets of the Owner; or

(iii) Upon the sale of the Real Property by Owner.

(c) Prior to the effective date of the assignment or sale under (a) or (b) above, the assigning party agrees to have the assignee or successor execute an agreement with the City to be bound to all the terms and conditions of this Agreement, without exception, and the assignee or successor shall be responsible for any default(s) of the assignee or seller that occurred prior to or after the effective date of the assignment.

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and real property improvement taxes belonging to Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) (i) The tax abatement as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2015 through December 31, 2024.

(ii) The tax abatement as to Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2015 through December 31, 2024.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the taxable value of the Personalty and Real Property improvements for the tax years set forth above.

(c) The Owner shall have the right to protest and/or contest any assessment of the Personalty or real property improvements where such assessment is above the minimum amount required to be maintained under Sections 2 and 4 of this Agreement. The abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those required in Section 2 and 4 as a result of an Owner filed protest and/or contest, or the removal of Personalty from the Real Property.

NOTICE

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Bruce D. Glasscock
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

For Owner by notice to:

Tollway 121 Hotel, LP
c/o Granite Properties
Attention: Mr. David R. Cunningham
5601 Granite Parkway, Suite 800
Plano, Texas 75024

With a copy to:

Munsch Hardt Kopf & Harr, P.C.
Attention: Mr. Robert H. Voelker
3800 Lincoln Plaza
500 N. Akard
Dallas, TX 75201

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

MISCELLANEOUS PROVISIONS

13. During the term of the Agreement, the Owner further agrees that the City, its agents and employees, shall have reasonable right (with no less than five (5) business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and Real Property improvements in order to insure that the location of the Personalty and Real Property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

14. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Owner's respective defaults of its obligations hereunder.

15. Based upon the certification provided by Owner, the City represents that the Real Property is not owned by any member of the city council or planning commission.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 23rd day of July, 2012, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Owner pursuant to its duly authorized representatives.

18. This instrument shall constitute a valid and binding agreement between the City and the Owner when executed in accordance herewith.

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

20. This Agreement is performable in Collin County, Texas.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

OWNER
TOLLWAY 121 HOTEL, LP,
a Texas limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

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

EXHIBIT "A"
LEGAL DESCRIPTION
LOT 1R, BLOCK "B"
GRANITE PARK PHASE III

FIELD NOTES DESCRIPTION

BEING A TRACT OF LAND LOCATED IN THE SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108 AND THE JABEZ DEGMAN SURVEY, ABSTRACT NO. 279, COLLIN COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO TOLLWAY/121 PARTNERS, LTD. AS RECORDED IN COUNTY CLERK NO. 98-0037186, OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (D.R.C.C.T.), SAID TRACT ALSO BEING LOT 1R, BLOCK B OF GRANITE PARK PHASE III, RECORDED IN INSTRUMENT NO. 20060814010003470, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS (O.P.R.C.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" IN THE NORTH RIGHT-OF-WAY LINE OF GRANITE PARKWAY (A 92 FOOT RIGHT-OF-WAY), BEING THE SOUTHWEST CORNER OF LOT 4R OF SAID BLOCK "B" AND BEING THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID GRANITE PARKWAY AS FOLLOWS:

NORTHWESTERLY, AN ARC LENGTH OF 164.19 FEET ALONG A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 404.00 FEET, A DELTA ANGLE OF 23°17'08", AND A CHORD BEARING N 76°08'36"W, 163.06 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 104.17 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 486.50 FEET, A DELTA ANGLE OF 12°16'07", AND A CHORD BEARING N 70°38'06"W, 103.97 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 197.50 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 776.00 FEET, A DELTA ANGLE OF 14°34'55", AND A CHORD BEARING N 84°03'37"W, 196.96 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE MOST EASTERLY SOUTH CORNER OF LOT 2, BLOCK "B", GRANITE PARK AS SHOWN BY THE PLAT RECORDED IN DOCUMENT NO. 2002-0191594 OF THE PLAT RECORDS OF COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE ALONG THE EAST BOUNDARY LINE OF SAID LOT 2, AS FOLLOWS:

N 00°15'30"E, 42.87 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 21°45'28"W, 111.61 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 00°15'30"E, 227.84 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, SAID IRON ROD BEING IN A WESTERLY LINE OF SAID LOT 4R;

THENCE ALONG THE COMMON LINE OF SAID LOT 4R AND LOT 1R, AS FOLLOWS:

NORTHEASTERLY, AN ARC LENGTH OF 161.46 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 355.00 FEET, A DELTA ANGLE OF 26°03'31", AND A CHORD BEARING OF N 63°07'57" E, 160.07 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", THE BEGINNING OF A CURVE TO THE LEFT;

NORTHEASTERLY, AN ARC LENGTH OF 114.56 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 864.42 FEET, A DELTA ANGLE OF 7°35'35", AND A CHORD BEARING OF N 46°18'23" E, 114.47 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 47°25'16" E, 44.35 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 18°26'12" E, 138.29 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 54°01'25" E, 113.80 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 23°10'57" E, 13.31 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 19.58 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, A DELTA ANGLE OF 18°42'00", AND A CHORD BEARING OF S 13°49'57" E, 19.50 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 29.29 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 72.25 FEET, A DELTA ANGLE OF 23°13'32", AND A CHORD BEARING OF S 16°05'43" E, 29.09 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 125.46 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 187.50 FEET, A DELTA ANGLE OF 38°20'21", AND A CHORD BEARING OF S 46°52'39" E, 123.14 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 66°02'50" E, 83.22 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

SOUTHWESTERLY, AN ARC LENGTH OF 55.68 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 525.00 FEET, A DELTA ANGLE OF 6°04'35", AND A CHORD BEARING OF S 59°17'52" W, 55.65 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHWESTERLY, AN ARC LENGTH OF 100.62 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET, A DELTA ANGLE OF 72°03'53", AND A CHORD BEARING OF S 26°18'13" W, 94.12 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 77.12 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 370.00 FEET, A DELTA ANGLE OF 11°56'34", AND A CHORD BEARING OF S 3°45'26" E, 76.98 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 02°12'51" W, 24.99 FEET TO THE PLACE OF BEGINNING AND CONTAINING 4.624 ACRES (201,432 SQUARE FEET) OF LAND, MORE OR LESS.

**EXHIBIT “B”
CERTIFICATION FORM**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 129
Tax Abatement Agreement (the “Agreement”) between Tollway 121 Hotel, LP, a Texas limited partnership, (“Owner”) and the City of Plano.

This letter certifies that Owner is in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2015, through December 31, 2024. This form is due on November 1 of each year the Agreement is in force.

TOLLWAY 121 HOTEL, LP, a Texas
limited partnership
By: Granite Properties, Inc.,
its General Partner

By: _____
Name: _____
Title: _____

[NOTE: MUST BE CFO OR CEO]

DATE: June 19, 2012
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of June 18, 2012

AGENDA ITEM NO. 6
PUBLIC HEARING: ZONING CASE 2012-18
APPLICANT: CONNIE COSGROVE

Request for Specific Use Permit for Day Care Center (In-home) on 0.1± acre located on the north side of Oakland Hills Drive, 640± feet west of Norman Drive. Zoned Single-Family Residence-7. Tabled June 4, 2012.

APPROVED: 4-2 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 3 **OPPOSE:** 2

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

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Approved as submitted. The Commissioners voting in opposition believed that more than eight children is too many for an in-home day care center.

FOR CITY COUNCIL MEETING OF: July 23, 2012 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

BM/dc

xc: Connie Cosgrove
Kenneth Alexander
Richard Matkin, PISD
Cliff Bormann, Assistant Building Official

CITY OF PLANO
PLANNING & ZONING COMMISSION

June 18, 2012

Agenda Item No. 6

Public Hearing: Zoning Case 2012-18

Applicant: Connie Cosgrove

DESCRIPTION:

Request for Specific Use Permit for Day Care Center (In-home) on 0.1± acre located on the north side of Oakland Hills Drive, 640± feet west of Norman Drive. Zoned Single-Family Residence-7. Tabled June 4, 2012.

REMARKS:

This item was tabled at the June 4, 2012, Planning & Zoning Commission meeting. It must be removed from the table.

The requested zoning is a Specific Use Permit (SUP) for Day Care Center (In-home). The Zoning Ordinance defines day care center (in-home) as an operation providing care in the caretaker's residence for less than 24 hours a day for up to 12 children under the age of 14, provided that the total number of children, including the caretaker's own children, is no more than 12 at any time. The purpose and intent of an SUP is to authorize and regulate a use not normally permitted in a district which could be of benefit in a particular case to the general welfare, provided adequate development standards and safeguards are established for such use during the review of an SUP application.

In order to ensure compliance with applicable zoning regulations and building code requirements, during mid-2011 the Building Inspections Department began requiring applicants to specify the number of children on an in-home day care center permit application. The in-home day care center permit application is linked to the fire safety inspection that applicants are required to obtain for their state licensing. Since the fire safety inspection is required annually, this allows the city a more effective manner to enforce zoning and health safety code requirements.

This is an existing in-home day care center and the applicant is seeking an SUP in order to provide child care to more than eight children. This in-home day care center has been in operation since 1998 providing child care services to twelve children. The

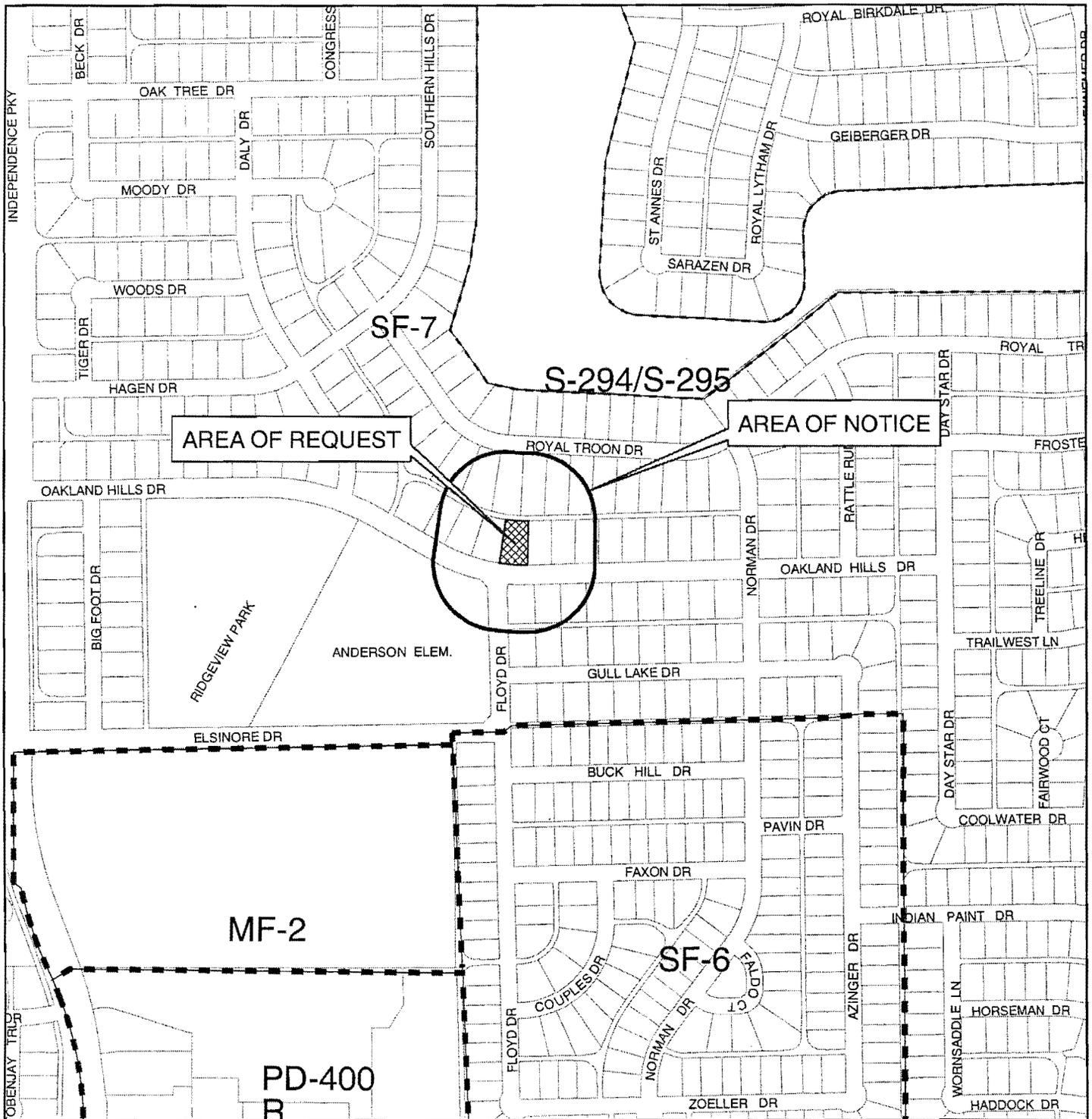
Zoning Ordinance requires an SUP for Day Care Center (In-home) that provides care to more than eight children. Due to the number of children, the applicant could not obtain a renewed Certificate of Occupancy (CO) without an SUP for Day Care Center (In-home) to meet the Zoning Ordinance requirements, as well as to meet the state requirement as noted above. The applicant is also required to comply with Subsection 3.110 (Home Occupations) of Section 3.100 (Supplementary Regulations for Principal Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations) of the Zoning Ordinance.

Children at this in-home day care center are dropped off and picked up at different times, in order to minimize possible traffic problems within the neighborhood. While the property is located mid-block, Oakland Hills Drive is a collector street with a wider pavement width (37 feet) designed to accommodate on-street parking while still allowing remaining traffic to circulate through the neighborhood. The wider pavement is sufficient to accommodate parking along the front of the property when dropping off and picking up children.

On June 11, 2012, the City Council directed staff to initiate amendments to the Zoning Ordinance that would further limit the number of children allowed in an in-home day care center. However, the Commission is obligated to evaluate this zoning case in accordance with the current regulations that allow in-home day center operators with more than eight children to apply for an SUP. Therefore, for reasons noted above, staff recommends for approval of this zoning case.

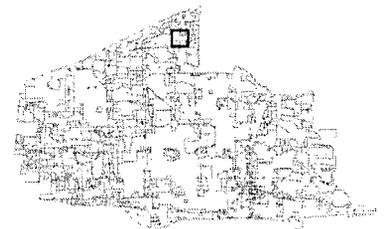
RECOMMENDATION:

Recommended for approval as submitted.



Zoning Case #: 2012-18

Existing Zoning: SINGLE-FAMILY RESIDENCE-7



○ 200' Notification Buffer



Area of Request

OAKLAND HILLS DRIVE

FLOYD DRIVE



Source: City of Plano, Planning Dept.
Date: June, 2012

Zoning Case 2012-18

Zoning Case 2012-18

An Ordinance of the City of Plano, Texas, amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 629 so as to allow the additional use of Day Care Center (In-home) on 0.1± acre of land out of the Samuel Young Survey, Abstract No. 1039, located on the north side of Oakland Hills Drive, 640± feet west of Norman Drive, in the City of Plano, Collin County, Texas, presently zoned Single-Family Residence-7; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication 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 23rd day of July, 2012, for the purpose of considering granting Specific Use Permit No. 629 for the additional use of Day Care Center (In-home) on 0.1± acre of land out of the Samuel Young Survey, Abstract No. 1039, located on the north side of Oakland Hills Drive, 640± feet west of Norman Drive, in the City of Plano, Collin County, Texas, presently zoned Single-Family Residence-7; 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 23rd day of July, 2012; and

WHEREAS, the City Council is of the opinion and finds that the granting of Specific Use Permit No. 629 for the additional use of Day Care Center (In-home) on 0.1± acre of land out of the Samuel Young Survey, Abstract No. 1039, located on the north side of Oakland Hills Drive, 640± feet west of Norman Drive, in the City of Plano, Collin County, Texas, presently zoned Single-Family Residence-7, would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

WHEREAS, the City Council is of the opinion and finds that such change 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. The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to grant Specific Use Permit No. 629 for the additional use of Day Care Center (In-home) on 0.1± acre of land out of the Samuel Young Survey, Abstract No. 1039, located on the north side of Oakland Hills Drive, 640± feet west of Norman Drive, in the City of Plano, Collin County, Texas, presently zoned Single-Family Residence-7, said property being more fully described on the legal description in Exhibit "A" attached hereto.

Section II. The change granted in Section I is granted subject to the Day Care Center (In-home) being operated as a home occupation use only.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

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

PASSED AND APPROVED THIS THE 23RD DAY OF JULY, 2012.

Phil Dyer, MAYOR

ATTEST:

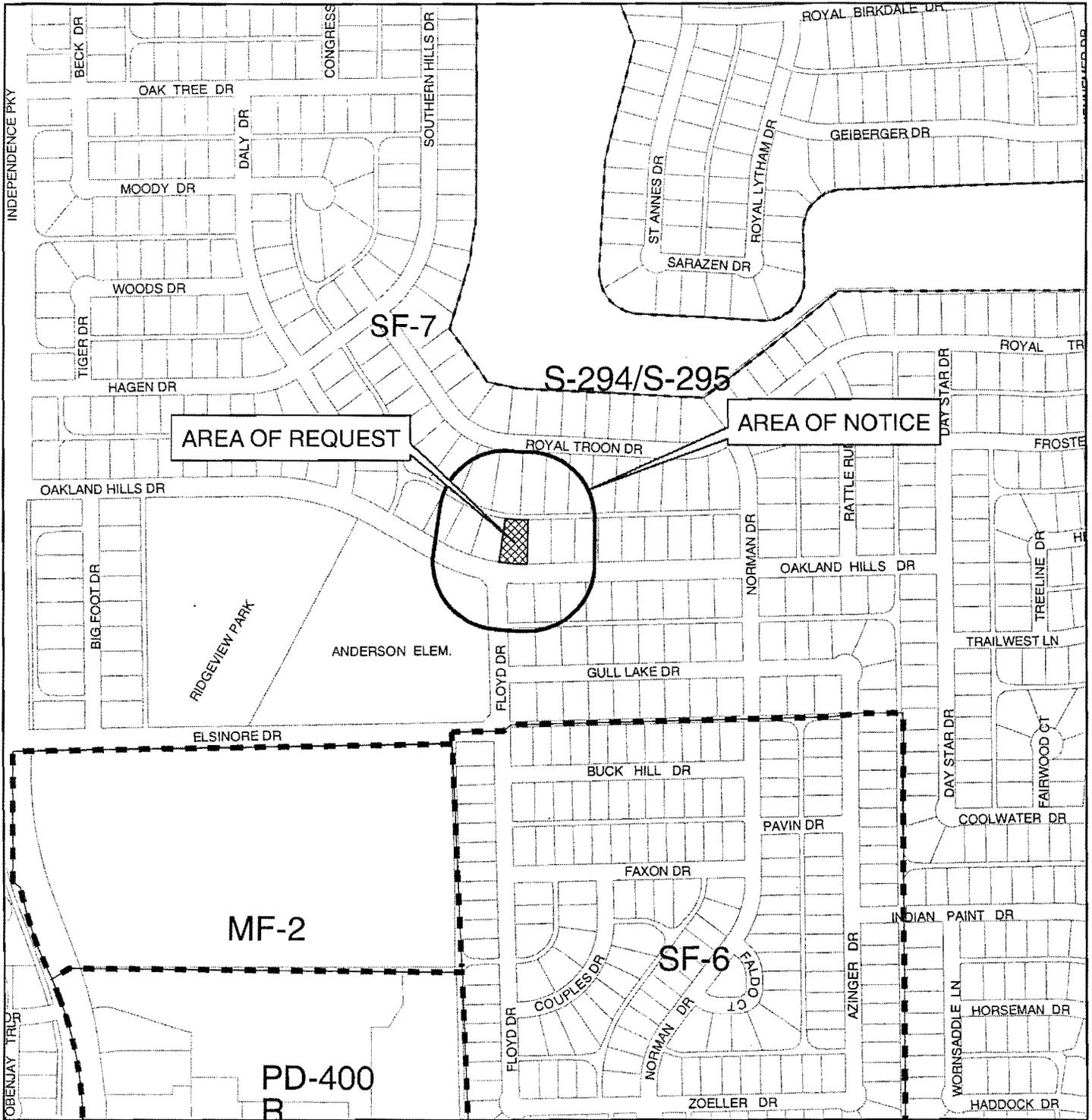
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

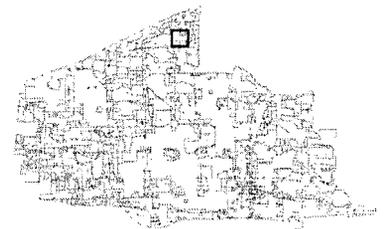
Zoning Case 2012-18

Being a tract of land situated in the Samuel Young Survey, Abstract No. 1039, in the City of Plano, Collin County, Texas, and being all of Block M, Lot 11 of Ridgeview Ranch Addition Phase 1, an addition to the City of Plano, Collin County, Texas, according to the map or plat thereof recorded in Cabinet K, Slide 550 of the Plat Records of Collin County, Texas.



Zoning Case #: 2012-18

Existing Zoning: SINGLE-FAMILY RESIDENCE-7



○ 200' Notification Buffer