

CITY COUNCIL

1520 AVENUE K



DATE: 10/14/2013
CALL TO ORDER: 7:00 p.m.
INVOCATION: Pastor Brian McClane
Northpointe Church
PLEDGE OF ALLEGIANCE: Jr. Girl Scout Troop 3461

ITEM NO.	EXPLANATION	ACTION TAKEN
	<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 THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Animal Shelter Advisory Committee</u> Bryan Baldwin, Kevin Kimbrell, Sunny Ruth</p> <p><u>Board of Adjustment</u> Carolyn Kalchthaler, Robert Miller</p> <p><u>Building Standards Commission</u> Marsha Griggs, Richard Kelley, Arthur Stone</p> <p><u>Civil Service Commission</u> Robert Hill</p> <p><u>Community Relations Commission</u> Judy Drotman, Cynthia Moore, Cynthia Thomas, Michael Thomas, Mandy Tschoepe</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Cultural Affairs Commission</u></p> <p>Marion Brockette, Jr., Vicki Cravens, Ron Taylor, Janelle Twyford-Silvis, Sandy Yeh</p> <p><u>Heritage Commission</u></p> <p>Edward Coyle, Gary Graley, Ronald Morris, Douglas Shockey</p> <p><u>Library Advisory Board</u></p> <p>Richard Barnett, Kimberley Malouf, Tammy McSwain, John Pillow</p> <p><u>Parks and Recreation Planning Board</u></p> <p>Dustin Kolb, Pamela Weaver, Beth Webb</p> <p><u>Photographic Traffic Signal Advisory Committee</u></p> <p>Natalie Crawford, Robert Drotman, Peter Pennesi</p> <p><u>Planning and Zoning Commission</u></p> <p>M. Nathan Barbera, Doug Bender, Richard Grady, Thomas Juhn, Kayci Prince</p> <p><u>Plano Housing Authority</u></p> <p>Earnest Burke, Linda Prindiville, Wanda Russell</p> <p><u>Retirement Security Plan Committee</u></p> <p>Casey Srader, Sean Sullivan</p> <p><u>Self Sufficiency Committee</u></p> <p>Erin Abood, Scott Goebel, Charles Ho, Emmanuel Umoh</p> <p><u>Senior Citizens Advisory Board</u></p> <p>Karen Bellessa, Paul Gerber, Nancy Jensen, Ralph Steckel</p> <p><u>Tax Increment Financing Reinvestment Zone No. 2 Board</u></p> <p>Thomas Buning, Russell Coolik, Chris Hatcher, Alan Johnson, Hilton Kong, Pat Miner, Shirley Ogden, Corey Reinaker, James F. Schell</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>COMMENTS OF PUBLIC INTEREST</u> <u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u> <u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u> (a) September 23, 2013</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2013-328-B for the purchase of Rowlinson Natatorium Structural Roof Framing Repair Project to Reconstruction Experts, Inc., in the amount of \$135,503 and authorizing the City Manager to execute all necessary documents.</p> <p>(c) Bid No. 2013-222-C for a one (1) year contract with three (3) City optional renewals to purchase supply of water meters for Public Works, Customer & Utility Billing, and Inventory Control and Asset Disposal (ICAD) to HD Supply Waterworks, Ltd. in the estimated annual amount of \$348,666 and authorizing the City Manager to execute all necessary documents.</p> <p>(d) Bid No. 2013-367-B for Early Morn Drive & Rosehill Lane Drainage Improvements to Jim Bowman Construction Co., L.P. in the amount of \$385,006 and authorizing the City Manager to execute all necessary documents.</p> <p>(e) Bid No. 2013-351-B for Alley Reconstruction – Dallas North Estates to Jim Bowman Construction Company, L.P. in the amount of \$611,392 and authorizing the City Manager to execute all necessary documents.</p> <p>(f) Bid No. 2013-363-B for the purchase of two (2) Ford F350 Platform Trucks from Caldwell Country Automotive in the amount of \$61,782 for Fleet Services, to be utilized by Public Works, and authorizing the City Manager to execute all necessary documents.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p> <p>(g) To approve a Professional Services Agreement by and between the City of Plano and Halff Associates, Inc., in the amount of \$404,700 for Brown Branch 18-inch and 15-inch Sanitary Sewer Interceptor Capacity Improvements project; and authorizing the City Manager to execute all necessary documents.</p> <p>(h) To approve of a Landscape Architecture Services Agreement by and between the City of Plano and La Terra Studio, Inc. in the amount of \$97,740 for design services for a Skate Park Facility and authorizing the City Manager to execute all necessary documents.</p> <p>(i) To approve of a Landscape Architecture Services Agreement by and between the City of Plano and David C. Baldwin, Inc. in the amount of \$129,195 for design services for McCall Plaza and Parking Lot Renovation and authorizing the City Manager to execute all necessary documents.</p> <p>Approval of Change Order</p> <p>(j) To Parkscape Construction, Inc., increasing the contract by \$139,252 for the Oak Point Park & Nature Preserve, North Trail Extension, Change Order No. 1, Bid No. 2013-26-B.</p> <p>Approval of Expenditure</p> <p>(k) To approve the purchase of replacement parts for Neptune Technology Group, Inc. brand water meters in the estimated annual amount of \$177,846 from HD Supply Waterworks, Ltd., a sole source provider; through the use of the general exemption as allowed by Local Government Code, Chapter 252, Subchapter B, Section 252.022(a)(7)(A) and authorizing the City Manager to execute all necessary documents.</p> <p>Adoption of Resolutions</p> <p>(l) To approve the terms and conditions of an Economic Development Agreement by and between West Plano Village, Ltd. and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(m) To approve and authorize the execution of a Special Escrow Agreement for the deposit of funds in an amount sufficient to defease and pay certain outstanding "City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2005"; providing for the redemption of certain outstanding bonds of such series and resolving other matters incident and related thereto; and authorizing its execution by the City Manager and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Adoption of Ordinances</u></p> <p>(n) To abandon all right, title and interest of the City, in and to a portion of that certain 20-foot Sanitary Sewer Easement within the Villas of Pecan Creek, recorded in Volume 1004, Page 410, of the Deed Records of Collin County, Texas and being situated in the J. M. Salmons Survey, Abstract No. 815, 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, Jen Texas I, LLC., to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.</p> <p>(o) To approve a negotiated resolution between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2013 Annual Rate Review Mechanism filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; requiring the Company to reimburse Cities' reasonable ratemaking expenses; repealing conflicting resolutions or ordinances; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; adopting a savings clause; declaring an effective date; providing a most favored nations clause; and requiring delivery of this ordinance to the Company and the Steering Committee's legal counsel.</p> <p>(p) To approve the carrying-forward of certain fiscal year 2012-13 funds to fiscal year 2013-14; and providing an effective date.</p> <p>(q) To amend Section 2-1(e) of the City Code of Ordinances of the City of Plano, Texas to authorize use of the City logos and/or brand by licensees of the Plano Centre for the duration of their City license agreement and by partners or sponsors of the City of Plano Convention and Visitors Bureau in conjunction with events promoting, marketing and publicizing the City upon written approval of the City Manager; providing a severability clause, a repealer clause, a savings clause, a penalty clause, a publication clause and an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(1)	<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>Public Hearing and consideration of Ordinances requested in Zoning Cases 2013-16 through 2013-20 all of which are limited to the repeal of certain Specific Use Permits for Private Clubs. The following ordinances are proposed to be repealed which, if approved, will result in the rescission of the Specific Use Permit for an additional use of a Private Club and the applicant is the City of Plano.</p> <p>(a) Zoning Case 2013-16 - To rescind Specific Use Permit #506 for Private Club on 0.1± acre located on the west side of Bishop Road, 70± feet north of Kincaid Road. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #506 for Private Club.</p> <p>(b) Zoning Case 2013-17 - To rescind Specific Use Permit #502 for Private Club on 0.6± acre located on the west side of Bishop Road, 345± feet south of Legacy Drive. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #502 for Private Club.</p> <p>(c) Zoning Case 2013-18 - To rescind Specific Use Permit #509 for Private Club on 1.1± acres located on the west side of H Avenue, 250± feet north of 15th Street. Zoned Downtown Business/Government with Heritage Resource #24 Designation and Specific Use Permit #509 for Private Club.</p> <p>(d) Zoning Case 2013-19 - To rescind Specific Use Permit #450 for Private Club on 0.1± acre located on the east side of the DART railroad tracks, 25± feet north of 15th Place. Zoned Downtown Business/Government with Specific Use Permit #450 for Private Club.</p> <p>(e) Zoning Case 2013-20 - To rescind Specific Use Permit #533 for Private Club on 0.3± acre located at the northwest corner of K Avenue and 16th Street. Zoned Downtown Business/Government with Specific Use Permit #533 for Private Club.</p> <p>All locations are located within the City of Plano, Collin County, Texas, and the repeal of each ordinance will amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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: City of Plano</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(2)	<p>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2013-15, repealing in its entirety Ordinance No. 91-11-19; thereby rescinding Specific Use Permit No. 188 for the additional use of a Private Club on 1.0± acre of land out of the J.A. Salmons Survey, Abstract No. 814, located on the west side of U.S. Highway 75, 130± feet south of Chisholm Place in the City of Plano, Collin County, Texas, currently zoned Corridor Commercial with Specific Use Permit No. 187 for Restaurant and Specific Use Permit No. 188 for Private Club, and amending the Comprehensive Zoning Ordinance of the city, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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: City of Plano</p>	
(3)	<p>Consideration of an Ordinance to repeal Chapter 17.5, Sexually Oriented Businesses, of the City of Plano Code of Ordinances and adopting a new Chapter 17.5, Sexually Oriented Businesses of the City of Plano Code of Ordinances; providing definitions, licensing and regulations for Sexually Oriented Businesses, providing a penalty clause, a severability clause, a repealer clause, a savings clause, a publication clause, and an effective date.</p>	
(4)	<p>Consideration of a Resolution to authorize the establishment of fees for application and licensing of Sexually Oriented Businesses pursuant to Chapter 17.5, Sexually Oriented Businesses, of the City Code of Ordinances for the City of Plano, Texas; and providing an effective date.</p>	
(5)	<p>Consideration of an Ordinance to amend Section 6-487, Prohibited signs, and Section 6-491, Political signs/noncommercial purpose signs, of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano, and adding Article XII, Prohibited Signs on Public Property, to Chapter 14, Offenses – Miscellaneous, of the Code of Ordinances of the City of Plano, to provide sign regulations on public property; and providing repealer, severability, savings, penalty, and publication clauses and setting an effective date.</p>	
(6)	<p>Consideration of a Resolution to nominate an individual for election to the Collin County Central Appraisal District Board of Directors; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal/L Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. The Senator Florence Shapiro Council Chambers is accessible by elevator to the lower level. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
September 23, 2013**

COUNCIL MEMBERS PRESENT

Harry LaRosiliere, Mayor
Lissa Smith, Mayor Pro Tem
Ben Harris, Deputy Mayor Pro Tem
Pat Miner
André Davidson
Jim Duggan
Patrick Gallagher
David Downs

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane C. Wetherbee, City Attorney
Alice D. Snyder, Assistant City Secretary

Mayor LaRosiliere called the meeting to order at 5:05 p.m., Monday, September 23, 2013, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was present. Mayor LaRosiliere then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice and discuss matters of Litigation, 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 LaRosiliere reconvened the meeting back into the Preliminary Open Meeting at 6:29 p.m. in the Senator Florence Shapiro Council Chambers.

Consideration and action resulting from Executive Session discussion

Board of Adjustment

Upon a motion made by Council Member Gallagher and seconded by Council Member Duggan, the Council voted 8-0 to reappoint Carolyn Kalchthaler as Chair and move Ban Alali, Enghlab Eftekhari, Robert Miller and Anthony Salas to regular positions.

Building Standards Commission

Upon a motion made by Council Member Downs and seconded by Council Member Duggan, the Council voted 8-0 to reappoint Arthur Stone as Chair, move Pastor Sapinoso and Joe Milkes to regular positions, reappoint Marsha Griggs and move her to a regular position and appoint Richard Kelley as a regular member.

Collin County Central Appraisal District Board

Council Member Miner advised that this item would be tabled until the October 14 Council meeting.

Denton County Central Appraisal District Board

Mayor LaRosiliere advised that no nomination would be brought forward.

Heritage Commission

Upon a motion made by Council Member Miner and seconded by Council Member Downs, the Council voted 8-0 to reappoint Gary Graley as Chair and appointed Ronald Morris and Douglas Shockey as members.

Planning and Zoning Commission

Upon a motion made by Council Member Gallagher and seconded by Council Member Duggan, the Council voted 8-0 to appoint Richard Grady as Chair and Doug Bender, Kayci Brooks Prince and Thomas Juhn as members.

Personnel Appointments

Animal Shelter Advisory Committee

Upon a motion made by Council Member Downs and seconded by Council Member Duggan, the Council voted 8-0 to reappoint Sunny Ruth as Chair and to appoint Bryan Baldwin as a member.

Community Relations Commission

Upon a motion made by Council Member Davidson and seconded by Council Member Downs, the Council voted 8-0 to appoint Michael Caranfa as Chair and to appoint Cynthia Moore and Michael Thomas as members.

Cultural Affairs Commission

Upon a motion made by Council Member Davidson and seconded by Council Member Miner, the Council voted 8-0 to reappoint Allen Safir as Chair, reappoint Sandy Yeh as a member, appoint Vicki Cravens, Janelle Twyford-Silvis as members and to appoint Ron Taylor to an interim term as a member.

Library Advisory Board

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Gallagher, the Council voted 8-0 to reappoint John Pillow as Chair and to appoint Richard Barnett and Tammy McSwain as members.

Parks and Recreation Planning Board

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Miner, the Council voted 8-0 to appoint Beth Webb as Chair and Dustin Kolb as a member.

Photographic Traffic Signal Advisory Committee

Mayor LaRosiliere advised that the item would be tabled for future consideration.

Retirement Security Plan Committee

The Council stated a consensus in agreement with City Manager Glasscock's recommendation to reappoint Casey Srader as Chair.

Self Sufficiency Committee

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Gallagher, the Council voted 8-0 to appoint Charles Ho as Chair and Erin Abood, Scott Goebel and Bjorn Kirchdorfer as members.

Senior Citizens Advisory Board

Upon a motion made by Council Member Downs and seconded by Council Member Davidson, the Council voted 8-0 to appoint Nancy Jensen as Chair and Paul Gerber and Karen Bellessa as members.

Tax Increment Financing Reinvestment Zone No. 2 Board

Upon a motion made by Council Member Miner and seconded by Deputy Mayor Pro Tem Harris, the Council voted 8-0 to appoint Hilton Kong and Corey Reinaker as members.

Briefing on Comprehensive Plan Update and Public Outreach Efforts

Comprehensive Planning Manager Schwarz advised the Council regarding a major revision to the Comprehensive Plan which reflects the city residents' future vision for Plano and spoke to ensuring that all residents and businesses are able to provide input. She reviewed efforts taken since 2009 including researching other plans; identifying primary issues; developing a concept and outline for *Plano Tomorrow*; public meetings; creation of website and video materials; addressing DART's Cotton Belt proposal; implementation of the *Take the Case* Program; adoption of undeveloped land policies; and creation of Urban Mixed-Use zoning regulations. Ms. Schwarz reviewed the development of public outreach efforts to garner participation and spoke to updates to the Bicycle Transportation Policy. She advised that during the fall/winter of 2013-14 Staff will evaluate public engagement activities and analyze responses and 2014 will include development of the plan with review by the Planning and Zoning Commission and Council, public hearings and adoption. Ms. Schwarz responded to the Council, advising that both the Homeowners Council and Developer's Council will be contacted and spoke to methods of notification and options for survey participation. Council spoke to reaching out through schools and recreation activities and Ms. Schwarz reviewed the *Take the Case* Program.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agendas

No items were discussed.

Mayor LaRosiliere advised that the remaining item (Presentation of Plano Video “City of Excellence”) would be considered during the regular meeting. Nothing further was discussed. Mayor LaRosiliere adjourned the Preliminary Meeting at 6:54 p.m.

Harry LaRosiliere, MAYOR

ATTEST

Alice D. Snyder, Assistant City Secretary

PLANO CITY COUNCIL
September 23, 2013

COUNCIL MEMBERS PRESENT

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Pat Miner
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Patrick Gallagher
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STAFF PRESENT

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Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane C. Wetherbee, City Attorney
Alice D. Snyder, Assistant City Secretary

Mayor LaRosiliere convened the Council into the Regular Session on Monday, September 23, 2013, at 7:00 p.m. in the Senator Florence Shapiro Council Chambers of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Dr. Scott Fenton of Meadows Baptist Church led the invocation and Brownie Troop 3465 of Thomas Elementary led the Pledge of Allegiance.

Mayor LaRosiliere presented a proclamation recognizing the first White Ribbon Rally sponsored by the Collin County Council on Family Violence, receipt of the 2013 Gold Leadership Circle Award from the Texas Comptroller and the 2013 Achievement of Excellence in Procurement Award.

Comments of Public Interest

Bernistine Ross-Williams of Texas Communities Foundation requested the City focus on the homeless, particularly the number of women and children impacted.

Consent Agenda.

Upon a motion made by Council Member Duggan and seconded by Council Member Miner, the Council voted 8-0 to approve and adopt all items on the consent agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item "A")
September 9, 2013

Approval of Expenditures

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

Bid No. 2013-355-B for Plano-Richardson-Murphy Trail Connection Project No. 6246 to HQS Construction in the amount of \$1,092,346 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Purchase from an Existing Contract

To approve the purchase of Cisco Switch Software and Hardware Annual Maintenance, for one (1) year with two (2) City optional one (1) year renewals, in the estimated annual amount of \$240,044 from INX, LLC, a Presidio Company, through the Department of Information Resources contract and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1386) (Consent Agenda Item “C”)

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

To approve the terms and conditions of a Subdivision Improvement Agreement by and between the City of Plano, Texas, and TOG Development I, LLC for public improvements on Oceanview Drive and Acorn Drive/Acorn Court, associated with the construction of the Trails of Glenwood Phase IV. (Consent Agenda Item “D”)

Approval of Contract Modification

To approve and authorize Amendment No. 1 to the Distribution Pole License Agreement S0527371C that allows the City of Plano to mount Mesh Network devices on distribution poles owned by Oncor Electric Delivery Company LLC (f/k/a TXU Electric Delivery Company). (Consent Agenda Item “E”)

Approval of Expenditure

To approve the purchase of library materials including books, compact disks, and books on CD for Plano Public Library System (PPLS) in the amount of \$50,000 from Ingram Library Services through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “F”)

To approve the purchase of various library materials including books, compact disks and books on CD for Plano Public Library System (PPLS) in the amount of \$100,000 from Brodart through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “G”)

To approve the purchase of downloadable content (e-books, music, video and e-audio library materials) with Kindle functionality in an amount not to exceed \$175,000 from OverDrive, Inc., a sole source provider; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “H”)

To approve the purchase of various library materials including DVDs, music CDs and books on CD for Plano Public Library System (PPLS) in the amount of \$250,000 from Midwest Tape through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “I”)

To approve the purchase of library materials including books, compact disks, and books-on-CD for Plano Public Library System (PPLS) in the amount of \$500,000 from Baker & Taylor through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “J”)

To approve the purchase of a Motorola Radio Service Agreement from Motorola Solutions, Inc., a sole source provider for the City of Plano Digital Radio System in the estimated amount of \$485,528 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “K”)

Adoption of Resolutions

Resolution No. 2013-9-15(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between United Services Automobile Association, a Texas reciprocal inter-insurance exchange, and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “L”)

Resolution No. 2013-9-16(R): To approve the terms and conditions of a Third Amendment to Office Lease by and between Granite Park III, Ltd., and the City of Plano for Granite Park Three Office Building; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “M”)

Resolution No. 2013-9-17(R): To approve the purchase of a 3,070 square foot Sidewalk and Utility easement and a 8,656 square foot Temporary Construction easement, both located at the northwest corner of Park Boulevard and Republic Drive from Boxer F2, LP., in the total amount of \$60,301 and authorizing the City Manager to execute any necessary documents; and providing an effective date. (Consent Agenda Item “N”)

Resolution No. 2013-9-18(R): To approve the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Buffington Community Services Grant funds in the amount of \$385,533 for the provision of various community services; authorizing its execution by the City Manager; and providing the effective date. (Consent Agenda Item “O”)

Resolution No. 2013-9-19(R): To approve the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Community Development Block Grant funds in the amount of \$195,000 and HOME Investment Partnership funds in the amount of \$319,700 for the provisions of various community services and developments; authorizing the execution by the City Manager; and providing the effective dates. (Consent Agenda Item “P”)

Resolution No. 2013-9-20(R): To approve the terms and conditions of agreements between the City of Plano, Texas, and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$768,468; authorizing the City Manager to execute such agreements with these organizations for the provision of support of heritage preservation; and providing an effective date. (Consent Agenda Item “Q”)

Resolution No. 2013-9-21(R): To extend the time limits of an exclusive period for development of a preliminary project design and the negotiation of the terms and conditions of a development agreement by and between the City of Plano, Texas and Prescott Realty Group for the redevelopment of 4.6± acres located at the northwest corner of Park Boulevard and K Avenue in the City of Plano; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “R”)

Resolution No. 2013-9-22(R): To approve the terms and conditions of a Real Estate Contract by and between First CMC Properties, LLC and the City of Plano, Texas for purchase of property located at 1400 J Avenue, City of Plano, Collin County, Texas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “S”)

Resolution No. 2013-9-23(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between The University of Texas at Dallas and the City of Plano providing terms and conditions for educational services; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “T”)

Resolution No. 2013-9-24(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Murphy, Texas to allow the employees of the City of Murphy to take classes offered by City of Plano Professional Development Center; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “U”)

Resolution No. 2013-9-25(R): To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas and the Frisco Independent School District for the operation of the Police/School Resource Officer Program; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “V”)

Resolution No. 2013-9-26(R): To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas and the Plano Independent School District for the operation of the Police/School Resource Officer Program; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “W”)

Adoption of Ordinances

Ordinance No. 2013-9-27: To abandon all right, title and interest of the City, in and to a portion of that certain 20-foot Drainage Easement within Capital One Addition, Lot 3R, Block 1, recorded in Volume 2012, Page 164, Official Public Records of Collin County, Texas and being situated in the Samuel Brown Survey, Abstract No. 108, 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, Capital One National Bank, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. (Consent Agenda Item “X”)

Ordinance No. 2013-9-28: To repeal in its entirety Ordinance No. 2012-9- 27, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, a publication clause and an effective date. (Consent Agenda Item “Y”)

Ordinance No. 2013-9-29: To amend Ordinance No. 2011-10-7 codified as Section 8-3, City Ambulance Service, of Article I, Chapter 8, Fire Prevention and Protection, of the Code of Ordinances of the City of Plano to adopt increased user fees for ambulance services, and providing a repealer clause, a severability clause, a savings clause, and an effective date. (Consent Agenda Item “Z”)

Ordinance No. 2013-9-30: To repeal Ordinance No. 2013-8-15; establishing the number of certain classifications within the Fire Department for fiscal year 2013-14; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective September 23, 2013; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “AA”)

Ordinance No. 2013-9-31: To repeal Ordinance No. 2013-3-7; establishing the number of certain classifications within the Police Department for fiscal year 2013-14; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Police Department effective September 23, 2013; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “BB”)

Ordinance No. 2013-9-32: To repeal Ordinance No. 2012-10-8; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “CC”)

END OF CONSENT

The Council resumed discussion from the Preliminary Open Meeting.

Presentation of Plano Video "City of Excellence"

Marketing and Community Engagement Director Vail-Grube introduced the video produced in partnership with the International City Manager's Association (ICMA) focusing on economic development, community revitalization and quality City services. She advised that the video will be available on the ICMA channel and the Plano website.

Public Hearing and adoption of Ordinance No. 2013-9-33 of the City of Plano, Texas, to amend the Bicycle Transportation Policy Statement, Bicycle Transportation Plan Map, and the "Parks and Recreation" Element of the Comprehensive Plan as originally adopted by Resolution No. 86-11-22(R) and Resolution No. 87-9-4(R); providing procedures approving the utilization of said policy statement, map, and element as revised and amended by the appropriate personnel and departments of the City of Plano for the purpose of guiding future development within the City of Plano, Texas; and providing an effective date. Applicant: City of Plano (Regular Agenda Item "1")

Senior Planner Sims spoke to previous updates and the need to address completion of the park system, maintenance and upgrades of existing facilities and provision of services to a changing population. He spoke regarding revision of the Bicycle Plan including objectives and strategies from recent plan updates, new designations of bicycle trail facilities, focus on crossing highways, trail connections with other cities and available land for expansion of shared-use paths. He advised that the document includes a summary of recent bicycle transportation projects and a change in focus from specific projects to general goals. Mr. Sims advised that with regard to the Parks and Recreation Element, issues include changing demographics and their impact on recreation services; new facilities versus renovation and maintenance; sharing/privatization/innovation of park facilities; tourism; and water conservation and sustainability. He further advised that both the Parks and Recreation Planning Board and Planning and Zoning Commission recommend approval.

Trail System Planner Burke advised the Council regarding proposed bicycle connections at US 75/15th Street and Park Boulevard. She advised regarding the connection north of Legacy Drive at US 75 and stated that Staff would review an at-grade improvement at Spring Creek Parkway. Council Member Davidson spoke to clarifying color references on the map. Mr. Sims spoke to participation from the bicycle community and Ms. Burke advised that enforcement is accomplished by existing personnel.

Mayor LaRosiliere opened the Public Hearing. Citizen Mike Emmons thanked Staff for their efforts and spoke in support of the request. No one else spoke for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Downs and seconded by Council Member Miner, the Council voted 8-0 to amend the Bicycle Transportation Policy Statement, Bicycle Transportation Plan Map, and the "Parks and Recreation" Element of the Comprehensive Plan as recommended by the Planning and Zoning Commission and further to adopt Ordinance No. 2013-9-33.

Consideration of a Resolution to nominate an individual for election to the Collin County Central Appraisal District Board of Directors; and providing an effective date. (Regular Agenda "2")

Upon a motion made by Council Member Miner and seconded by Council Member Downs, the Council voted 8-0 to table the request until October 14, 2013.

Nothing further was discussed. Mayor LaRosiliere adjourned the meeting at 7:46 p.m.

Harry LaRosiliere, MAYOR

ATTEST

Alice D. Snyder, Assistant 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:		10/14/13			
Department:		Public Works			
Department Head		Gerald Cosgrove			
Agenda Coordinator (include phone #): Michael Parrish x7554					
CAPTION					
Bid No. 2013-328-B for the purchase of Rowlinson Natatorium Structural Roof Framing Repair Project to Reconstruction Experts, Inc., in the amount of \$135,503, 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:	2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		78,723	194,277	0	273,000
Encumbered/Expended Amount		-78,723	-5,534	0	-84,257
This Item		0	-135,503	0	-135,503
BALANCE		0	53,240	0	53,240
FUND(s): CAPITAL RESERVE					
COMMENTS: Funds are included in the FY 2013-14 Capital Reserve Fund. This item, in the amount of \$135,503 will leave a balance of \$53,240 for the projects to maintain and repair Rowlinson Natatorium.					
STRATEGIC PLAN GOAL: Roof framing repairs relate to the City's Goal of Financially Strong City with Service Excellence.					
SUMMARY OF ITEM					
Staff recommends the bid of Reconstruction Experts, Inc., in the amount of \$135,503, be accepted as the lowest, responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents. This purchase is for the Rowlinson Natatorium (2013-328-B).					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Award Memo, Bid Recap					



City of Plano
1520 K Avenue
Plano, TX 75074

P.O. Box 860358
Plano, TX 75086-0358
Tel: 972.941.7000
plano.gov

TO: Michael Parrish, Sr. Buyer

FROM: Richard Medlen,
Facilities Maintenance Superintendent

DATE: September 18, 2013

SUBJECT: **Rowlinson Natatorium Structural Roof Framing Repair – Bid #2013-328-B**

I have reviewed the bids submitted for the Rowlinson Natatorium structural roof framing repair and recommend award to the lowest responsive responsible bid submitted by Reconstruction Experts, Inc., base bid of \$135,503. An additional bid was received from Nedderman & Associates Inc. for a base bid of \$249,000.

The structural roof framing repairs are required to maintain the safety of the public using the building due to several structural beams that have cracked that support equipment and the roof structure of the building.

The funding for the project is in Capital Reserve Account #54471.

Please contact me if you have any questions.

Thanks

/liw

Xc: Jim Razinha
Matt Yager
Colette Hall
David Crapps

CITY OF PLANO

BID NO. 2013-328-B ROWLINSON NATATORIUM STRUCTURAL ROOF FRAMING REPAIR PROJECT BID RECAP

Bid Opening Date/Time: September 4, 2013 @ 1:00 PM

Number of Vendors Notified: 7256

Vendors Submitting "No Bids": 0

Number of Non-Responsive Bids: 0

Number of Responsive Bids Submitted: 2

Reconstruction Experts, Inc.	\$135,503
Nedderman & Associates, Inc.	\$249,000

Recommended Vendor:

Reconstruction Experts, Inc.	\$135,503
------------------------------	-----------

Michael Parrish

October 1, 2013

Michael Parrish, Senior 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:		10-14-2013			
Department:		Public Works			
Department Head		Gerald Cosgrove			
Agenda Coordinator (include phone #): Nancy Corwin X7137					
CAPTION					
Bid No. 2013-222-C for a one (1) year contract with three (3) City optional renewals to purchase supply of water meters for Public Works, Customer & Utility Billing, and Inventory Control and Asset Disposal (ICAD) to HD Supply Waterworks, Ltd in the estimated annual amount of \$348,666 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:	2013-14, 2014-15, 2015-16, 2016-17	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	583,315	1,045,998	1,629,313
Encumbered/Expended Amount		0	0	0	0
This Item		0	-348,666	-1,045,998	-1,394,664
BALANCE		0	234,649	0	234,649
FUND(S): WATER & SEWER FUND; WAREHOUSE FUND					
<p>COMMENTS: This item establishes an annual contract for Water Meter purchases and approves price quotes. Expenditures will be made in the Meter Services, Utility Billing Field Services, and Warehouse Inventory cost centers based on need within the approved budget appropriations for each year of the contract. The estimated expenditure for Water Meters to be purchased from this contract for FY 2013-14 is \$348,666. Future purchases will be made within annually approved budget appropriations at an estimated annual expenditure of \$348,666 per year for fiscal years 2014-15, 2015-16 and 2016-17. The remaining budget funds will be used for other meter maintenance parts and supplies.</p> <p>STRATEGIC PLAN GOAL: Contracts for new and replacement Water Meters relate to the City's Goals of 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 supply of water meters for Public Works, Customer & Utility Billing, and Inventory Control and Asset Disposal (ICAD) from HD Supply Waterworks, Ltd (Line 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13) in the estimated annual amount of \$348,666. (Bid No. 2013-222-C)					



CITY OF PLANO COUNCIL AGENDA ITEM

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

Date: August 20, 2013
To: Nancy Corwin, Buyer
Thru: Gerald P. Cosgrove, PE, Director of Public Works
From: Gentry Strickland, Utility Operations Superintendent
Subject: Bid 2013-222-C Supply of Water Meters

I have completed the review and evaluation of proposals submitted in the above mentioned bid.

Mueller Systems is being deemed non-responsive as they took the following exceptions to our specifications:

- They did not allow for the City of Plano to reserve the right to accept or reject any/all price escalations which is an exception to the City of Plano's terms and conditions.
- The 1½" and 2" meters have nylon coated ductile iron bodies where our specifications require bronze bodies
- Nuts, bolts and gaskets are not included with the Turbine type meters where our specifications require they be included
- Repair or replacement of warranty covered meters is at the discretion of Mueller Systems where our specifications require only replacement with a new meter and state that rebuilt meters will not be accepted

Badger Meter is being deemed non-responsive as they took the following exceptions to our specifications:

- Nuts and bolts are stainless steel where our specifications require Grade A zinc
- Their turbo meters are warranted for only one year and six months where our specifications require two years
- Their compound meters are warranted for only one year and six months where our specifications require two years
- They did not allow for the City of Plano to reserve the right to accept or reject any/all price escalations which is an exception to the City of Plano's terms and conditions.
- They reserve the right to provide their newest product solutions as an alternative to the proposed products where our specifications state that meters cannot deviate from the specifications.

Aclara Technologies is being deemed non-responsive as they took the following exceptions to our specifications:

- Instructions for Bidding Section 22. Aclara does not agree that the City may purchase goods from another vendor at Aclara's expense.
- General Terms and Conditions Section 8. Price escalation. The price provided in Aclara's proposal is fixed through the initial term of the contract. Should the City desire to purchase additional equipment (due to expansion or replacement after the initial contract term, such equipment will be sold at Aclara's then current list price.

- General Terms and Conditions Section 9 Price Reduction Aclara considers many factors when pricing competitive bids as such Aclara is unable to offer most favored customer price adjustments.
- General Terms and Conditions Section 14 Delivery Promise Penalties. Aclara does not agree that the City may purchase goods from another vendor at Aclara's expense.

Zenner is being deemed non-responsive as the meters they proposed include registers which are not Absolute Encoded as required by the bid specifications.

All items proposed by HD Supply Waterworks meet the bid specifications. It is my recommendation the entire bid except for line item 14 and line item 15 be awarded to HD Supply Waterworks in the estimated amount of \$348,666.

Due to the specifications not referencing required warranty information for the Aclara Star MTU Model 501-8150D & Model 501-13715D, the Customer & Utility Services Department recommends not awarding line item 14 & 15 of the bid, and rebid those line items with updated specifications.

Failure to award this contract will result in the inability to purchase water meters for the maintenance of existing meters as well as the installation of meters for newly developed homes and businesses. Existing meters will begin to slow down and/or stop working completely. Newly developed homes and businesses will not have water service. Revenues will decrease significantly as consumed water will not be billed accurately.

CITY OF PLANO

Bid NO. 2013-222-C
Supply of Water Meters
Bid RECAP

Bid opening Date/Time: June 17, 2013 @ 2:00 PM

Number of Vendors Notified: 536

Vendors Submitting "No Bids": 0

Bids Evaluated Non-Responsive to Specification: 4

Number of Bids Considered: 1

HD Supply Waterworks	\$348,666.00
(Line 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13)	

Recommended Vendor(s):

HD Supply Waterworks	\$348,666.00
(Line 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13)	

Nancy Corwin

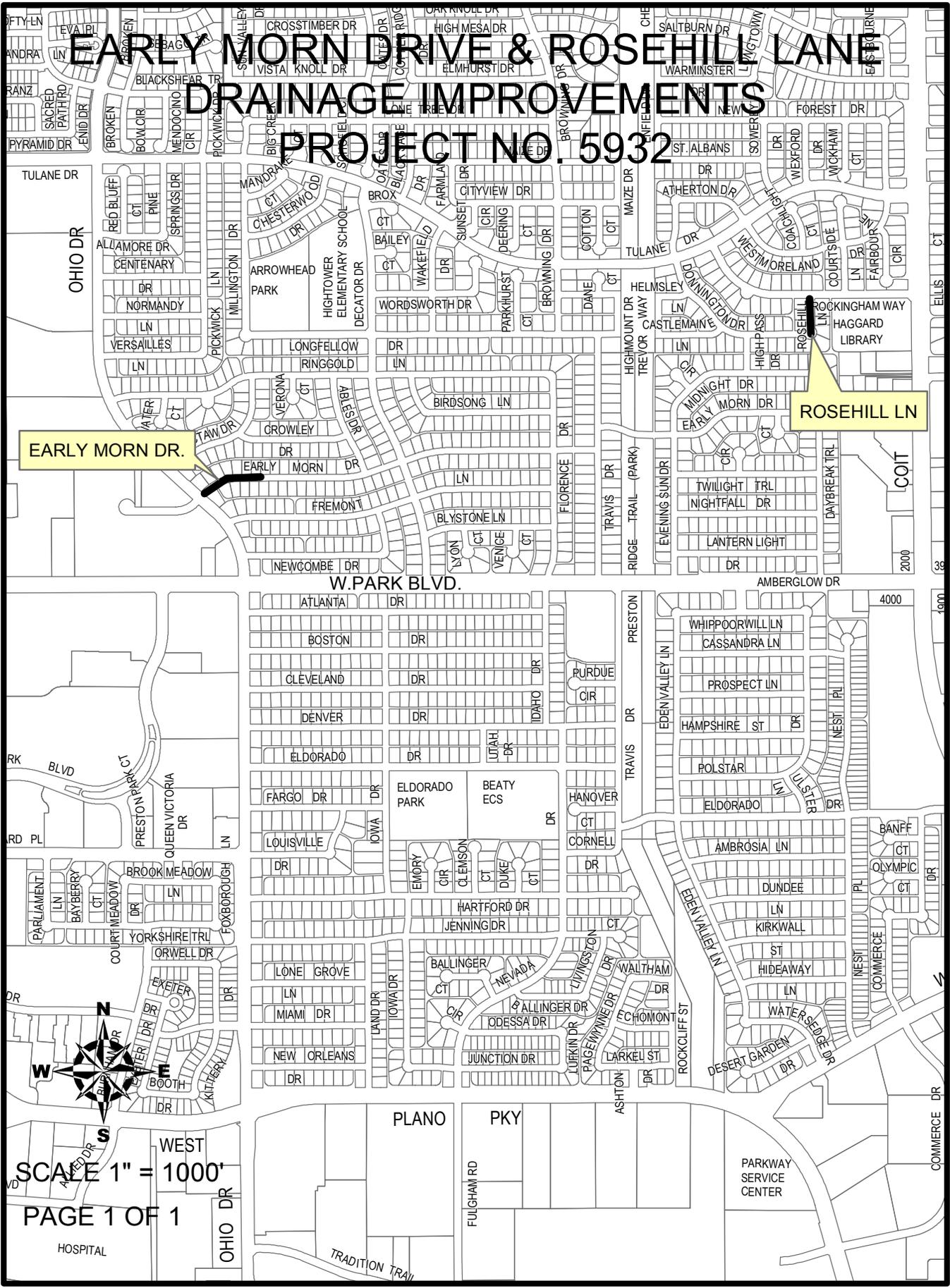
June 17, 2013



**CITY OF PLANO
COUNCIL AGENDA ITEM**

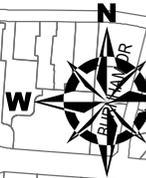
CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/14/13		
Department:		Engineering		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #):			Kathleen Schonne (7198)	
			Project No. 5932	
CAPTION				
Bid No. 2013- 367- B for Early Morn Drive & Rosehill Lane Drainage Improvements to Jim Bowman Construction Co., L.P., in the amount of \$385,006 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: 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	800	534,200	0	535,000
Encumbered/Expended Amount	-800	-69,590	0	-70,390
This Item	0	-385,006	0	-385,006
BALANCE	0	79,604	0	79,604
FUND(S): MUNICIPAL DRAINAGE CIP				
COMMENTS: Funds are available in the 2013-14 Municipal Drainage CIP. This item, in the amount of \$385,006, is anticipated to leave a balance of \$79,604 for the Rose Hill & Early Morn Drainage Improvements project. STRATEGIC PLAN GOAL: Constructing drainage improvements in necessary areas relates to the City's Goal of Great Neighborhoods – 1 st Choice to Live.				
SUMMARY OF ITEM				
Staff recommends bid of Jim Bowman Construction Co, L.P., in the amount of \$385,006.15 for Alternate Number 1 (Cement Meets/Below TCEQ Source Cap Emission Limits), be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents. The second vendor being recommended is McMahon Contracting, L.P., in the amount of \$447,075.57. Engineer's estimate was \$495,000.00. The project consists of drainage improvements on: (1) Early Morn Drive from Ohio Drive to 500 feet east and (2) Rosehill Lane from Rockingham Way to 500 feet south.				
List of Supporting Documents: Location Map, Bid Tabulation			Other Departments, Boards, Commissions or Agencies N/A	

EARLY MORN DRIVE & ROSEHILL LANE DRAINAGE IMPROVEMENTS PROJECT NO. 5932



EARLY MORN DR.

ROSEHILL LN



SCALE 1" = 1000'
PAGE 1 OF 1

HOSPITAL

PLANO PKY

PARKWAY SERVICE CENTER

**CITY OF PLANO
BID TABULATION**

2013-367-B EARLY MORN DRIVE & ROSEHILL LANE DRAINAGE IMPROVEMENTS - PROJECT NO. 5932

BIDDER:	BID BOND	BASE BID	ALT. 1 TOTAL BID
JIM BOWMAN CONSTRUCTION CO., LP	YES	\$385,006.15	\$385,006.15
MICMAHAN CONTRACTING LP	YES	\$447,075.57	\$447,075.57
CAMINO CONSTRUCTION, LP	YES	\$457,267.00	\$457,267.00
TEXAS STANDARD CONSTRUCTION LTD	YES	\$541,485.90	\$541,485.90

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

Michael Parrish

September 17, 2013

Michael Parrish, Senior Buyer

Date

“BID TABULATION STATEMENT”

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

PURCHASING DIVISION
CITY OF PLANO TEXAS



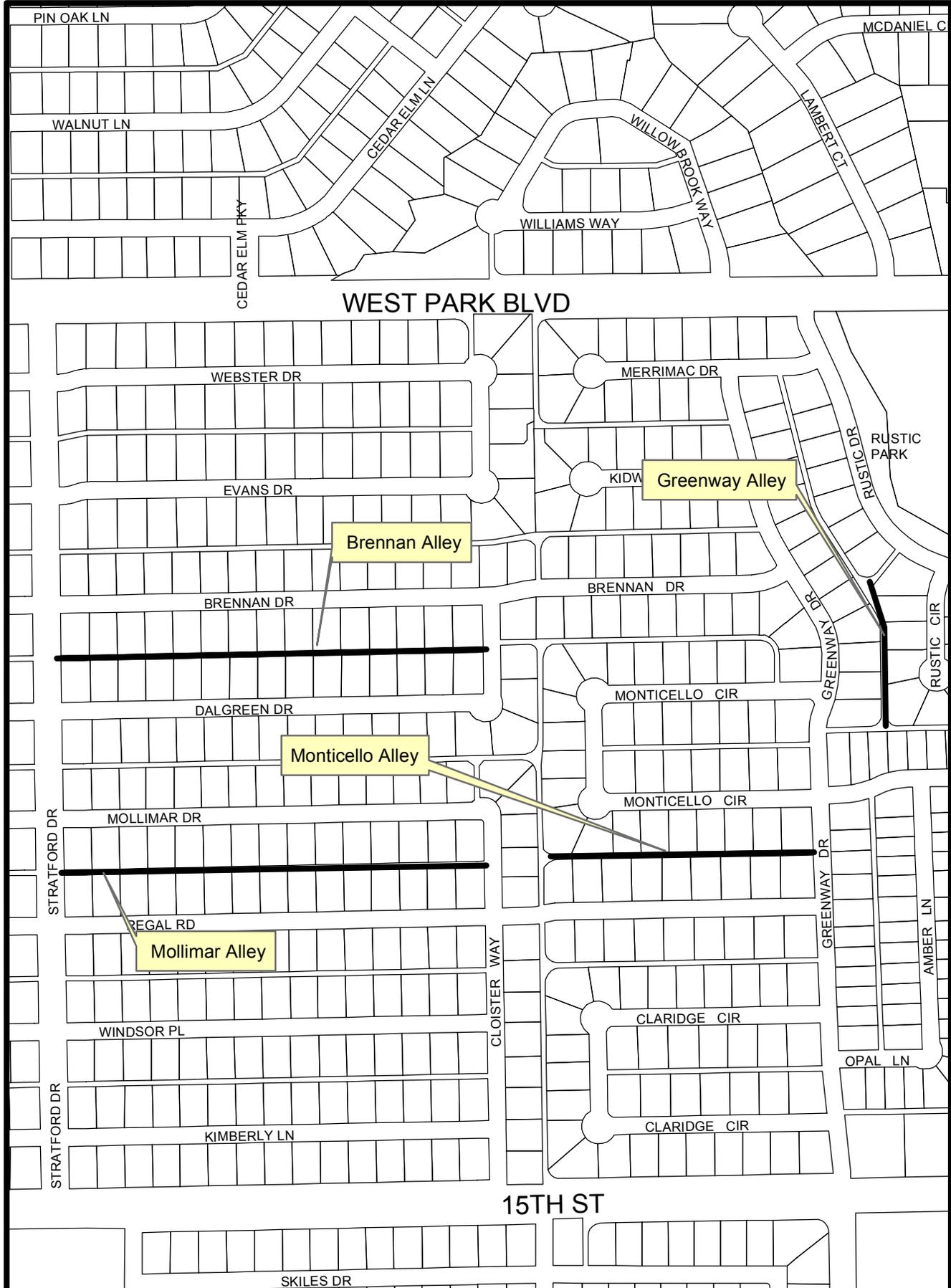
**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/14/13		
Department:		Engineering		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #):		Kathleen Schonne (7198)		Project No. 6247
CAPTION				
Bid No. 2013-351-B for Alley Reconstruction – Dallas North Estates to Jim Bowman Construction Company, L.P. in the amount of \$611,392 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: 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	2,888,823	4,614,150	3,000,000	10,502,973
Encumbered/Expended Amount	-2,888,823	-2,479,851	0	-5,368,674
This Item	0	-611,392	0	-611,392
BALANCE	0	1,522,907	3,000,000	4,522,907
FUND(S): STREET IMPROVEMENT CIP AND CAPITAL RESERVE CIP				
<p>COMMENTS: Funds are available in the 2013-14 Street Improvement CIP and Capital Reserve CIP. This item, in the amount of \$611,392, is anticipated to leave a balance of \$1,522,907 for Residential Street & Alley Replacement projects in the 2013-14 CIP.</p> <p>STRATEGIC PLAN GOAL: Reconstruction of alleyways near the end of their useful life relates to the City's goal of Great Neighborhoods – 1st Choice to Live.</p>				
SUMMARY OF ITEM				
<p>Staff recommends the alternate bid for green cement of Jim Bowman Construction, LP, in the amount of \$611,392 be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents.</p> <p>The second vendor being recommended is the alternate bid for green cement of Urban Construction Group, in the amount of \$649,210.</p> <p>Engineer's estimate was \$720,000.</p> <p>The project consists of the reconstruction of approximately 4900 LF of 10-foot wide concrete alley at five alley locations:</p> <p>Alley between Monticello Circle & Regal Road from Greenway Drive to the West, Alley between Mollimar Drive and Regal Road from Stratford Drive to Cloister Way, Alley between Greenway Drive and Rustic Circle from alley north of Monticello Circle to the north, Alley between Brennan Drive and Dalgreen Drive from Stratford Drive to Cloister Way, and Alley between Lowrey Way and Legacy Drive from Lowrey Way (West) to Lowrey Way (East)</p>				
List of Supporting Documents: Location Maps, Bid Tabulation		Other Departments, Boards, Commissions or Agencies N/A		

DALLAS NORTH ESTATES ALLEY RECONSTRUCTION



PROJECT # 6247



DALLAS NORTH ESTATES ALLEY RECONSTRUCTION PROJECT # 6247



**CITY OF PLANO
CORRECTED BID TABULATION
2013-351-B ALLEY RECONSTRUCTION – DALLAS NORTH ESTATES - PROJECT NO. 6247**

BIDDER:	BID BOND	BASE BID	ALT. 1 TOTAL BID	ADD. AKN.
JIM BOWMAN CONSTRUCTION CO., LP	YES	\$611,392.00	\$611,392.00	Y
URBAN CONSTRUCTION GROUP	YES	\$649,210.00	\$649,210.00	Y
3D PAVING AND CONTRACTING, LLC	YES	\$669,535.00	\$676,182.90	N
THE FAIN GROUP, INC.	YES	\$685,753.32	\$685,753.32	Y
DCI CONTRACTING INC.	YES	\$706,940.00	\$706,940.00	Y
CAMINO CONSTRUCTION, LP	YES	\$757,380.00	\$757,380.00	Y

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

Michael Parrish

September 19, 2013

Michael Parrish, Senior Buyer

Date

“BID TABULATION STATEMENT”

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

PURCHASING DIVISION
CITY OF PLANO TEXAS



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/14/13		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Lincoln Thompson x7376				
CAPTION				
Bid # 2013-363-B for the purchase of two (2) Ford F350 Platform Trucks from Caldwell Country Automotive in the amount of \$61,782.00, for Fleet Services, to be utilized by Public Works, 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:	2013-14	Prior Year (CIP Only)	Current Year	Future Years
				TOTALS
Budget		0	84,000	0
Encumbered/Expended Amount		0	0	0
This Item		0	-61,782	0
BALANCE		0	22,218	0
FUND(S): EQUIPMENT REPLACEMENT FUND				
COMMENTS: Funds are available in the FY 2013-14 Adopted Budget to purchase two (2) Ford F-350 Platform Trucks for the scheduled replacements of unit #03308 in Cost Center #744/Signs & Markings and unit #36037 in Cost Center #743/Signals. Remaining balance will be used for other Fleet and Equipment purchases.				
STRATEGIC PLAN GOAL: Providing two (2) Ford F-350 Platform Trucks for Fleet Services relates to the City's Goal of a Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the bid of Caldwell Country Automotive in the amount of \$61,782.00, be accepted as the lowest responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents. This purchase is for the Fleet Department to be utilized by Public Works (Bid # 2013-363-B).				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Award Memo, Bid Recap.			N/A	



Memorandum

Date: September 17, 2013
To: Bruce D. Glasscock, City Manager
From: Reid Choate, Fleet Manager
Subject: Platform Truck Purchase Recommendation

Fleet Services has reviewed all bids received on City of Plano bid #2013-363-B and recommends award to Caldwell Country Automotive, the lowest responsive, responsible bidder, meeting specifications for two (2), Ford F350 Platform Trucks, in the amount of \$61,782.00. The apparent low bid submitted by Reliable Chevrolet stated that vehicles must be ordered by September 19, 2013. The City of Plano is unable to accept this stipulation and thus Reliable Chevrolet is deemed non-responsive.

These vehicles are for the scheduled replacements for unit 03308 in Cost Center 744/Signs and Markings and unit 36037 in Cost Center 743/Signals, approved in the FY12-13 Equipment Replacement Fund. Due to the age and mileage, Fleet Services recommends these units be replaced. If these vehicles are not replaced it would limit the Departments in their capacity to maintain City infrastructure within the City of Plano.

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

CITY OF PLANO

BID NO. 2013-363-B
Platform Body Pick-Up Trucks
BID RECAP

Bid opening Date/Time: September 9, 2013 @ 2:00 pm

Number of Vendors Notified: 331

Number of Vendors Submitting "No Bids": 0

Number of Bids Deemed Non-Responsive: 2

Number of Bids Submitted: 5

Caldwell Country Automotive	\$ 61,782.00
Southwest Ford	\$ 62,200.50
Randall Reed's Prestige Ford	\$ 64,650.00

Recommended Vendor:

Caldwell Country Automotive	\$ 61,782.00
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Lincoln Thompson

Lincoln Thompson
Senior Buyer

September 19, 2013

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:	10/14/13
Department:	Engineering
Department Head:	Gerald P. Cosgrove, P.E.
Agenda Coordinator (include phone #): Kathleen Schonne (7198)	
Project No. 6345	

CAPTION

To approve a Professional Services Agreement by and between the City of Plano and Halff Associates, Inc., in the amount of \$404,700, for Brown Branch 18-Inch and 15-Inch Sanitary Sewer Interceptor Capacity Improvements project; and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	200,000	2,000,000	2,200,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-404,700	0	-404,700
BALANCE	0	-204,700	2,000,000	1,795,300

FUND(S): SEWER CIP

COMMENTS: Funds are included in the 2013-14 Sewer CIP. This item, in the amount of \$404,700 will exceed the current year balance by \$204,700 for the Brown Branch 18-Inch and 15-Inch Sanitary Sewer Interceptor Capacity Improvements project. The overage will be funded through savings and reallocations from other projects in the 2013-14 Sewer CIP.

STRATEGIC PLAN GOAL: Improving the capacity of sewer lines relates to the City's Goals of Safe Large City and Financially Strong City with Service Excellence.

SUMMARY OF ITEM

This agreement is for professional engineering services to facilitate the survey, design and preparation of construction documents for approximately 5,200 linear feet (LF) of; new sanitary sewer interceptor main, manholes and associated appurtenances to increase service capacity from north of East Parker Road to east of Spring Creek Parkway. The project will also include the replacement of approximately 2,500 linear feet (LF) of 6-inch and 8-inch water main, and up to 2,500 linear feet (LF) of 8-inch sanitary sewer main. The contract fee is for \$404,700.00, and is detailed as follows:

BASIC SERVICES

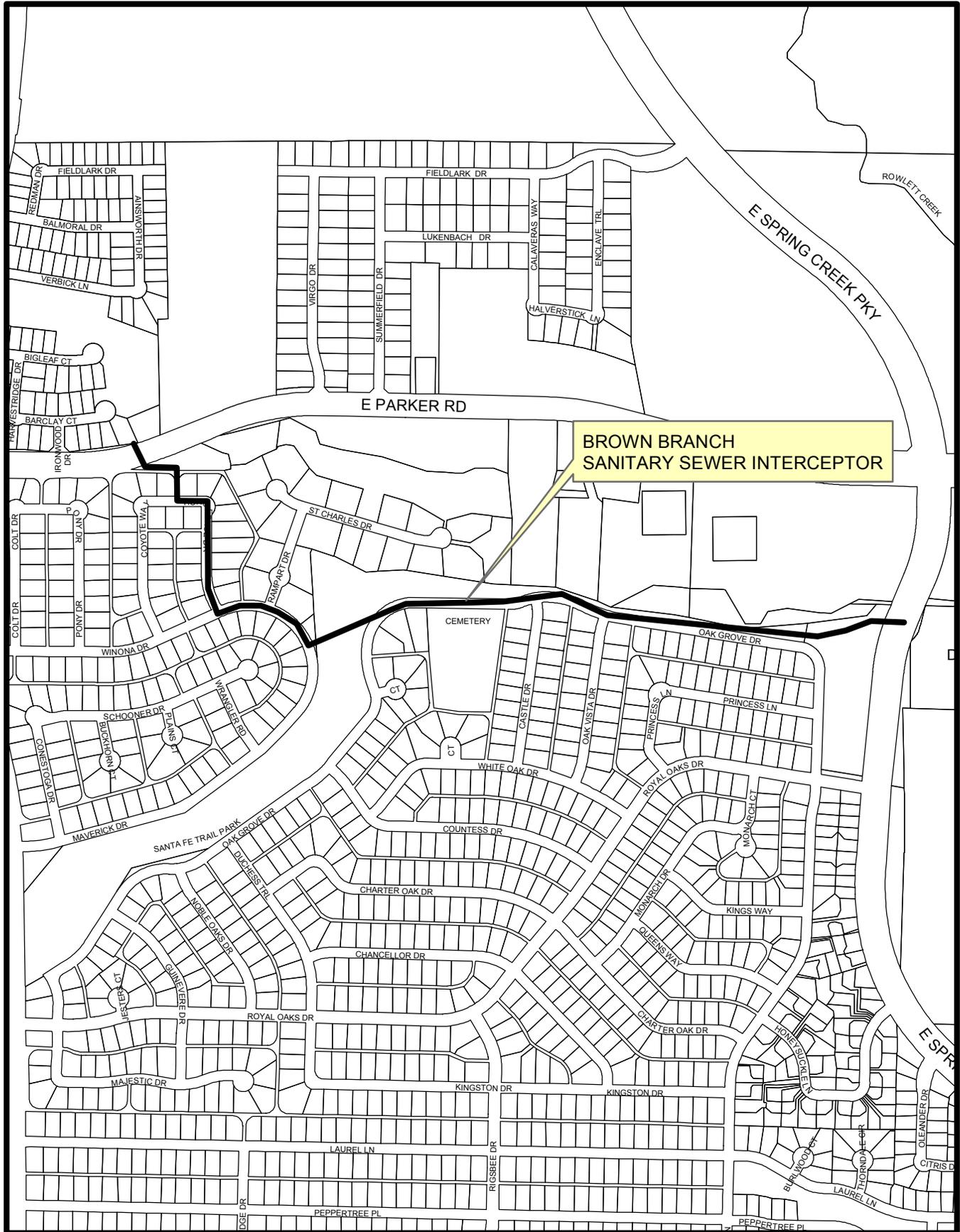
A. Research and Data Collection	\$ 12,700.00
B. Project Start-Up, Coordination and Management	\$ 26,100.00
C. Preliminary Design Report	\$ 49,100.00
D. Design Survey	\$ 40,000.00
E. Geotechnical Report	\$ 11,800.00
F. Preliminary Design	\$ 120,700.00



**CITY OF PLANO
COUNCIL AGENDA ITEM**

G. Final Design	\$ 60,400.00
H. Bid Phase Service	\$ 9,600.00
SUBTOTAL BASIC FEE	\$ 330,400.00
SPECIAL SERVICES	
A. Easement Surveying	\$ 10,400.00
B. CCTV Inspection	\$ 16,500.00
C. Subsurface Utility Exploration	\$ 11,100.00
D. Construction Administration	\$ 28,500.00
E. Construction Control Survey	\$ 4,100.00
F. Reimbursable Expenses	\$ 3,700.00
SUBTOTAL SPECIAL SERVICES	\$ 74,300.00
TOTAL FEE	\$ 404,700.00
List of Supporting Documents: Location Map; Engineering Services Agreement	Other Departments, Boards, Commissions or Agencies N/A

BROWN BRANCH SANITARY SEWER INTERCEPTOR CAPACITY IMPROVEMENT PROJECT # 6345



**BROWN BRANCH 18-INCH AND 15-INCH SANITARY SEWER INTERCEPTOR
CAPACITY IMPROVEMENTS**

PROJECT NO. 6345

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 **HALFF ASSOCIATES, 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 **BROWN BRANCH 18-INCH AND 15-INCH SANITARY SEWER INTERCEPTOR CAPACITY IMPROVEMENTS** 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
Engineering Department
Attn: Shahrzad Tavana, P.E.
P.O. Box 860358
Plano, TX 75086-0358

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

Halff Associates, Inc.
Attn: Charlie Moran, P.E., Project Manager
1201 N. Bowser Road
Richardson, TX 75081-2220

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: 9/30/2013

BY: 
Patrick Lee Acker, P.E., RPLS
VICE PRESIDENT

HALFF ASSOCIATES, INC.
A Texas Corporation

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

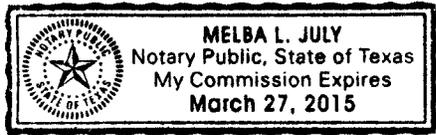
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 30TH day of SEPTEMBER, 2013, by **PATRICK LEE ACKER, P.E., ASLA, VICE PRESIDENT**, of **HALFF ASSOCIATES, INC.**, a **TEXAS** corporation, on behalf of said corporation.



Melba L. July

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013, 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

BROWN BRANCH 18-INCH AND 15-INCH SANITARY SEWER INTERCEPTOR CAPACITY IMPROVEMENTS CITY OF PLANO, TX PROJECT # 6345

PROJECT DESCRIPTION:

This project provides professional engineering services to facilitate the survey, design and preparation of construction documents for approximately 5,200 linear feet (LF) of new sanitary sewer interceptor main, manholes and associated appurtenances to increase service capacity from east of Spring Creek Parkway to North of E Parker Road, located within the City of Plano, Texas. The project will also include the replacement of approximately 2,500 linear feet of 6-inch and 8-inch water main, and up to 2,500 linear feet of 8-inch sanitary sewer main.

BASIC SERVICES:

A. Design Standards –

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

City of Plano (City):

- a) Geodetic Monumentation Manual
- b) Manual for Right-of-Way Management
- c) Stream Bank Stabilization Manual
- d) Erosion & Sediment Control Manual
- e) Thoroughfare Standards Rules & Regulations
- f) Manual for the Design of Water & Sanitary Sewer Lines
- g) Standard Construction Details
- h) Special Provisions to Standard Specifications for Public Works
Construction

NCTCOG:

- i) Standard Specifications for Public Works Construction, 1998
Amendment

ASCE:

- j) Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data)
2. All plans submitted to the City for construction shall be signed and sealed in accordance with state law.

B. Research and Data Collection –

1. Meet with City 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 including:
 - a) City GIS mapping, including aerial topographic and orthographic information
 - b) Available sanitary sewer model
 - c) City standard details, specifications and design manuals or guidelines
 - d) Existing street and alley paving types
 - e) Property ownership and tax plat information
 - f) Existing survey data
 - g) Existing sanitary sewer TV inspection tapes, field logs and reports
 - h) Existing water and sewer maps
 - i) Existing water/sanitary sewer record drawings
 - j) Available data from the Sanitary Sewer Operations Divisions
2. Meet with the City project manager and conduct an on-site review and walk through. Review project requirements, expectations and schedule.
3. Contact franchise utility companies to obtain record information and identify type, size, location, and depth for franchise utilities.

C. Project Start-Up, Coordination and Management

1. Develop a work plan and task schedule. Conduct internal kick-off and coordination meetings. Prepare and provide progress/status reports monthly (12 reports assumed).
2. Attend up to four (4) submittal review meetings with the City including review of preliminary design report and recommendations.
3. Attend up to four (4) site meetings with City Staff and/or property owners.
4. Coordinate with franchise utilities to inform them of the project, identify possible conflicts and establish critical issues for design, project schedule or construction.

D. Preliminary Design Report

Develop a design report consisting of the following:

1. Location Description
2. Review existing materials and reports to be provided by the City that are relevant to this project and perform field investigations to evaluate the existing conditions, existing alignment and potential alternative alignments. The information and data obtained is to be used in the development of the preliminary recommendations and exhibits for this project.

3. Review utility maps provided by utility franchises and verify, to the degree reasonably possible using surface visible objects, that lines are shown properly on design plans. Utilize information to coordinate survey and base mapping information. Note areas for potential conflict of lines to be resolved during surveying and design.
4. Support Data and Exhibits - Water / Sewer Maps, Location Maps, TV Inspection Summary Reports, Pictures of Proposed Alignment, etc.
5. Analysis and Recommendations for the following:
 - a) Proposed pipe size(s) – Perform sewershed analysis and determine design flow based on existing zoning and land uses to be provided by the City.
 - b) Proposed pipe material(s)
 - c) Proposed alignment of main(s) – Develop and evaluate an alternative alignment for the replacement of the existing interceptor. Provide exhibits on 11-inch by 17-inch sheets outlining the alternative.
 - d) Proposed and existing adjacent water/sanitary sewer mains, franchise utilities, and storm lines. The Consultant will note the need and make recommendations for potential Subsurface Utilities Engineering (SUE) Work in project area.
 - e) Proposed pavement restoration and replacement needs.
 - f) Permits, outside agency coordination and or Environmental Services required to complete the project.
 - g) Potential Rights of Ways (ROW) or easements required for the project – Approximate area of new easement(s) or new property required to complete this project.
 - h) Evaluation of construction methods for the project.
 - i) Possible impacts to Customers, property owners and businesses affected by the project, including service disruption, noise, dust, access, etc.
6. Provide preliminary engineer's statement of probable construction cost for the recommended replacement alternative.

E. Design Survey –

1. Perform surveying and base mapping services for a 60-foot wide by 5,200 linear foot corridor to facilitate design.
2. Establish vertical and horizontal survey control points within the project area. Survey control shall be established using GPS and shall be tied to the City regional control network NAD 83 adjusted to surface coordinates. Each control point will be checked for relative horizontal and vertical accuracy using standard surveying techniques.

3. Tie right-of-way monuments, property corners, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and other visible surface features to the project control baseline. Existing utility structures shall be located and referenced by utility name (i.e. Oncor Elec., Verizon Telephone, Atmos Gas, Etc.). Right-of-way and property lines will be shown based on available record information and generally aligned with the surveyed property corners and monuments.
4. Vertical topographic information tying visible 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. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

F. Geotechnical Report –

1. Perform geotechnical engineering as needed to establish the rock line elevation at the creek crossing and one other location where construction by other than open cut is anticipated. A maximum of four (4) geotechnical borings are anticipated.
2. 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 (shall not) be shown on the vertical profile view of the construction plans.
3. Submit one copy of geotechnical report to the City with the preliminary design plans.

G. Preliminary Design –

1. Prepare construction drawings and submit to City for review at preliminary (60%) and final (90%) design stages. Address staff comments at each submittal phase. The sealed construction documents will be provided to the City for preparation and distribution of one complete bid package.
2. The construction drawings will include:
 - a) Plan and profile pipeline drawings of 5,200 LF of sanitary sewer interceptor main.
 - b) Plan and profile pipeline drawings of 1,300 LF of 8-inch sanitary sewer main in Coyote Way, Horseshoe Drive and Maverick Drive and up to 1,200 LF of 8-inch sanitary sewer main in Oak Grove Drive.
 - c) Plan view design layouts for 1,300 LF of 8-inch water main in Coyote Way, Horseshoe Drive and Maverick Drive and up to 1,200 LF of 8-inch water main in Oak Grove Drive.
 - d) Pavement replacement plans for up to 2,500 LF of 26-foot wide streets impacted by open cut construction: Coyote Way, Horseshoe Drive, Maverick Drive, and Oak Grove Drive.
 - e) Suggested Construction Staging and Phasing Plans indicating where the contractor can stockpile materials and generally outlining the workflow for construction.

- f) City-standard details for manholes and associated water and sewer pipe and appurtenances
 - g) An erosion control plan in conformance with TCEQ requirements, NCTCOG Standards and City standards. Preparation and implementation of the Storm Water Pollution Prevention Plan (SWPPP) is the contractor's and owner's responsibility.
3. Prepare construction drawings and details for an inverted siphon at the creek crossing between Maverick Dr. and Oak Grove Dr. Existing flow monitoring data will be used to help size the siphon.
 4. Submit preliminary construction drawings to franchise utilities.
 5. Cost Estimate - Prepare engineer's opinion of probable construction cost and submit with preliminary (60%) and sealed (100%) construction drawings.
 6. Bid Book – The following items will be submitted with the final (90%) and sealed (100%) construction drawings.
 - a) Specifications – Review the City standard technical specifications for application/use on this project. Prepare any additional technical specifications as required.
 - b) Quantity Take-Off – Based on typical bid items for similar work, tabulate the quantities and prepare contractor's bid form. Halff will provide bid items list.
 - c) Provide the drawings, technical specifications and bid form to the City for their use.

H. Final Design –

1. Incorporate City final comments into the plans and bid documents.
2. Revise preliminary plans incorporating comments from the City.
3. Incorporate comments from the utility companies.
4. Finalize construction plans for proposed improvements.
5. Finalize special technical specifications and special conditions (if any).
6. Incorporate standard details into the construction plans and prepare additional details as required.
7. Take off final construction quantities and prepare pre-final construction cost estimates.
8. Submit an electronic copy of the corrected bid schedule and special technical specifications in MS Word format to the City for inclusion in the bid document. The City will provide the original unbound bid document to the Consultant for printing purposes.

I. 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 four plan review rooms from a list approved by the City. These documents are to be furnished at no cost to the plan review rooms when requested.
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 within four working days of the bid letting.
9. Evaluate the low and second low bidders. Prepare letter of recommendation to the City 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 sets of final construction plans and the contract documents manual to the City for construction.

SPECIAL SERVICES:

A. Easement Surveying –

1. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for utility easements or temporary construction easements on a per parcel basis. Deliver three (3) reviewed and approved originals to the City. Fee shall be based upon 3 parcels.
2. Prepare exhibits with the field notes first and drawings second.
3. Set new iron pins as required to sufficiently locate the new easements.

B. CCTV Inspection (Subconsultant) –

1. Television inspection of 4,600 linear feet of existing 15-inch and 18-inch sanitary sewer interceptor and 850 linear feet of existing 8-inch sanitary sewer main east and west of Rampart Dr.
2. Provide video recorded survey on DVD according to NASSCO standards. The DVD will include the project name, line size and material, date and time of inspection, footage counter, and defects shown for a minimum of 10 seconds before proceeding with the inspection.
3. One DVD shall be submitted to the City.

C. Subsurface Utility Exploration –

1. The Subsurface Utility Engineering (SUE) work required for this project will be performed in general accordance with the recommended practices and procedures described in ASCE Publication CI/ASCE 38-02.
2. The Quality Levels from the designated ASCE Publication to be utilized on this project are as follows:
 - a) Quality Level A (QL"A") – Also known as "locating", this quality level provides precise three dimensional (x,y,z) information at critical locations by exposing specific utilities. Non-destructive vacuum excavation equipment is used to expose the utilities at specific points which are then tied down by survey.

- b) Quality Level B (QL" B") – Also known as "designating", Quality Level B information is obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities. This information is surveyed to applicable tolerances defined by the project and reduced onto plan documents.
3. The Consultant will utilize a vacuum excavation truck to excavate test holes for the purpose of exposing utilities that may be present at up to four (4) locations in the project area. Consultant will complete 1-foot by 1-foot test holes up to 8 feet deep. These holes are assumed to be in soil, not rock. Access may be via adjacent parking lots or parking alongside the roadway with no lane closures outside of residential streets. If lane closure on a non-residential street is necessary, it will only be performed between the hours of 9:00 AM and 4:00 PM, Monday through Saturday. Lane closure, if necessary will require a permit with the City's Engineering Department with an approved traffic control plan. Existing sidewalk removed for SUE shall be replaced within 72 hours with asphalt in accordance with City standard details and specifications.
4. The Consultant will perform up to 5,000 linear feet of Level B SUE to designate utilities as requested by the City.
5. Produce a field sketch depicting the existing utilities, labeled with current owner information, discovered during the SUE Level A process. The line size and depth from existing grade will also be presented on the SUE field sketch. Base maps/topographic files prepared for this project in Microstation format shall be used in preparing the SUE field sketch. All discovered and any unidentifiable utilities discovered during the SUE Level A activities will be depicted on the construction plan sheets for the project.
6. The SUE field work shall be done in coordination with the site field surveying to allow the utilities' horizontal and vertical locations to be tied to the project horizontal and vertical control.

D. Construction Administration –

1. Provide up to 10 site visits by the design engineer, if requested by the City, with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. 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 24" x 36" 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.

E. Construction Control Survey –

1. Re-establish survey control points prior to start of construction, if needed.

F. Reimbursable Expenses –

1. Reproduction of plan sets for submittals (11 full size, 11 half size budgeted) including the following:
 - a) Preliminary Design Report - Two hard copies of the report with color photographs and one CD with pdf files of the preliminary design report
 - b) Preliminary Submittal (minimum 60% design) - Two (2) sets of 22-inch by 34-inch full-size prints, two (2) sets of 11-inch by 17-inch prints, one (1) CD with pdf files of drawings, engineer's opinion of probable construction cost
 - c) Final Submittal (minimum 90% design) - Two (2) sets of 22-inch by 34-inch full-size prints, two (2) sets of 11-inch by 17-inch prints, one (1) hard copy of technical specifications and Bid Form (8.5-inch by 11-inch), one (1) CD with pdf files of drawings technical specifications and Bid Form, return the previous marked-up submittal, including checklist and staff comments.
 - d) Final Submittal Comment Back-Check: Construction Documents revised per staff comments on final (90%) submittal, ready to be signed and sealed and issued for bid. Two (2) sets of 22-inch by 34-inch full-size prints, one (1) hard copy of technical specifications and Bid Form (8.5-inch by 11-inch), one (1) CD with pdf files of drawings technical specifications and Bid Form, return the previous marked-up submittal, including checklist and staff comments.
 - e) Signed and sealed construction documents, ready to be issued for bid. Five (5) set of 22-inch by 34-inch full-size original drawings, five (5) set of 11-inch by 17-inch copies of drawings, five (5) hard copies of technical specifications and bid form (8.5-inch by 11-inch), one (1) CD with pdf files of drawings technical specifications and Bid Form, engineer's opinion of probable construction cost
 - f) The following drawings are anticipated:
Plan/profile sheet scale: 1" = 20' horizontal scale, 1" = 5' vertical scale. The following sheets are anticipated: approximately twelve (12) interceptor pipeline plan and profile sheets, six (6) plan and profile sheets for adjacent water and sanitary sewer replacement design, eight (8) construction phasing plan sheets, one (1) full profile sheet, five (5) pavement restoration plans, four (4) general detail sheets, two (2) overall layout/survey control sheets, two (2) erosion control plan and details sheets, one (1) title sheet, and one (1) general notes sheet.
2. Reproduction of plan sets for construction contractor (5 full size, 8 half size anticipated with 3 sets of the contract documents manual)
3. Mileage for meetings and site visits (600 miles budgeted).

NOT INCLUDED IN THIS CONTRACT:

Services not identified, whether specifically noted or implied, in this proposal are considered as additional services and may require a modification to the scope and an increase in the budget including but not limited to the following items:

- A. Rights of Entry - Right of entry to private property for cleaning, TV inspection, and survey will be required for this project. The City will obtain the required rights of entry in a timely manner as required to complete the project
- B. Additional meetings.
- C. Travel expenses outside of the DFW metroplex are excluded.
- D. Reproduction costs for information provided by the City - The City shall provide all reproduction of requested materials at no cost to Halff Associates, Inc.
- E. Supporting document, submittals, and meetings for Texas Water Development Board funding. Services Associated with TWDB funding shall be performed by City's designated representative/Consultant.
- F. Environmental Services.
- G. Asbestos Abatement.
- H. Preparation of abandonment documents for existing easements.
- I. Drainage Design
- J. Preparation of Water or sanitary sewer pipe models
- K. Public coordination beyond attending meetings as described in scope of services.
- L. Design of lift station, aerial crossing design, force main, meter station, or odor control facilities.
- M. Rehabilitation design of existing interceptor.
- N. Review and or approval of contractors pay requests
- O. Construction surveying.
- P. Structural Engineering Design.
- Q. Cleaning of sanitary sewer mains.

EXHIBIT "B"

**PRELIMINARY SCHEDULE FOR
BROWN BRANCH 18- INCH AND 15-INCH SANITARY SEWER INTERCEPTOR
CAPACITY IMPROVEMENTS
PROJECT # 6345**

Activity	Duration (working days)
Notice to Proceed	0
Preliminary Design Report Draft	30
City's Review of Draft Design Report	15
Revise Preliminary Design Report	10
Survey and Base Mapping	30
Preliminary Design	60
City First Review	15
Final Design & Preparation of Special Conditions and Technical Specifications	60
City Second Review	15
Revise Final Plans & Specifications	10
City Final Review	5
Assemble Bid Documents	5
Advertise for Bids	12
Receive Bids	0
Research Bidder(s) and Prepare Recommendation	5
Council Award	20
Prepare & Execute Contract	30
Schedule Preconstruction Meeting	7
Notice to Proceed	10
Construction	310

A working day is defined as Monday through Friday, excluding City of Plano Holidays.

EXHIBIT "C"

PAYMENT SCHEDULE

**BROWN BRANCH 18- INCH AND 15-INCH SANITARY SEWER INTERCEPTOR
CAPACITY IMPROVEMENTS
CITY OF PLANO, TX
PROJECT # 6345**

BASIC SERVICES:

A. Research and Data Collection	\$ 12,700.00
B. Project Start-Up, Coordination and Management	\$ 26,100.00
C. Preliminary Design Report	\$ 49,100.00
D. Design Survey	\$ 40,000.00
E. Geotechnical Report	\$ 11,800.00
F. Preliminary Design	\$ 120,700.00
G. Final Design	\$ 60,400.00
H. Bid Phase Services	\$ 9,600.00

SUBTOTAL BASIC FEE \$ 330,400.00

SPECIAL SERVICES:

A. Easement Surveying	\$ 10,400.00
B. CCTV Inspection	\$ 16,500.00
C. Subsurface Utility Exploration	\$ 11,100.00
D. Construction Administration	\$ 28,500.00
E. Construction Control Survey	\$ 4,100.00
F. Reimbursable Expenses	\$ 3,700.00

SUBTOTAL SPECIAL SERVICES \$ 74,300.00

TOTAL FEE \$ 404,700.00

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

HALFF ASSOCIATES, INC.
Name of Consultant

By: 
Signature

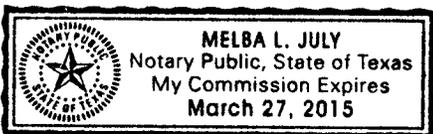
PATRICK LEE ACKER P.E.
Print Name

Vice President
Title

9/30/2013
Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 30TH day of SEPTEMBER, 2013.




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:		10/14/13		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
Approval of a Landscape Architecture Services Agreement by and between the City of Plano and La Terra Studio, Inc. in the amount of \$97,740 for design services for Skate Park Facility and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2013-14	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	1,075,000	0	1,075,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-97,740	0	-97,740
BALANCE	0	977,260	0	977,260
FUND(S): PARK IMPROVEMENT CIP				
<p>COMMENTS: Funds are included in the FY 2013-14 Park Improvement CIP. This item, in the amount of \$97,740, will leave a current year balance of \$977,260 for the Special Use Facilities project.</p> <p>STRATEGIC PLAN GOAL: Planning, designing and selecting a site for the proposed skate park relates to the City's goal of Great Neighborhoods - 1st Choice to Live.</p>				
SUMMARY OF ITEM				
<p>This Landscape Architectural Services agreement is for the site selection and conceptual planning of a skate park. Improvements will include skateable features such as stairs, rails, bowls and ramps, as well as lighting, benches or viewing areas, shade structures, and safety signage.</p> <p>The estimated construction cost for this project is \$950,000. The total conceptual design fee is \$97,740 and includes site selection, community outreach meetings, conceptual design, surveying, geotechnical investigation, and reimbursable expenses. The fee is 10.2% of the estimated construction budget for the project. Completion of construction documents will be included in a separate contract after the site has been selected and a conceptual design has been completed.</p> <p>La Terra Studio, Inc. was selected through an Request for Qualifications (RFQ) process. Five other Landscape Architect/Skate Park Design firms responded to the RFQ.</p>				



CITY OF PLANO COUNCIL AGENDA ITEM

List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies
Landscape Architecture Services Agreement		

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PLANO, TEXAS AND
LA TERRA STUDIO, INC.
2013-30-B**

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 **LA TERRA STUDIO, INC.**, a Texas corporation, hereinafter referred to as "Professional" to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of Professional for planning and design (Phase 1 and Phase 2) of a Skate Park Facility, hereinafter referred to as the "Project"; and

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

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

I. ENGAGEMENT

The City hereby agrees to retain Professional to perform professional services in connection with the planning and design (Phase 1 and Phase 2) of a Skate Park Facility and Professional agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. SCOPE OF SERVICES

Professional shall provide all labor, supervision, materials and equipment necessary for the planning and design (Phase 1 and Phase 2) of a Skate Park Facility. These services shall be provided in accordance with the Specifications for Skate Park Facility, a copy of which is attached hereto and incorporated herein as **Exhibit "A"**, and the Professional's Bid in response thereto, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "B"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) The Specifications for Skate Park Facility (**Exhibit "A"**);
- (b) The Professional's Bid (**Exhibit "B"**);
- (c) Insurance Requirements (**Exhibit "C"**); and
- (d) Affidavit of No Prohibited Interest (**Exhibit "D"**).

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

III. TIME OF COMPLETION

Contractor agrees and covenants that all work hereunder shall be completed by December 31, 2014, following notice to proceed from City.

IV. PAYMENT

Payments hereunder shall be made to Professional following City's acceptance of the work and within thirty (30) days of receiving Professional's invoice for the services delivered. Total compensation under this contract shall not exceed the sum of **NINETY SEVEN THOUSAND SEVEN HUNDRED FORTY AND NO/100 DOLLARS (\$97,740.00)**.

Professional 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. Professional 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. INSURANCE

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

VI. INDEMNIFICATION

PROFESSIONAL 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 PROFESSIONAL'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 PROFESSIONAL, 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 PROFESSIONAL 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.

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

VII. INDEPENDENT CONTRACTOR

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

VIII. ASSIGNMENT AND SUBLETTING

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

IX. AUDITS AND RECORDS

Professional agrees that at any time during normal business hours and as often as City may deem necessary, Professional shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of three (3) years from the date of City's acceptance of the final Project, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

X. PROHIBITED INTEREST

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

XI. CONTRACT 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 Agreement, terminate further work under this agreement, in whole or in part by giving at least thirty (30) days prior written notice thereof to Professional with the understanding that all services being terminated shall cease upon the date such notice is received unless otherwise indicated in writing by the City.

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

XII. OWNERSHIP OF DOCUMENTS

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

XIII. TRADE SECRETS

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

Similarly the City agrees that the Project created is intended solely for the use and benefit of Plano, Texas and any distribution to another destination marketing organization without the written consent of Professional is prohibited unless required by law or court order.

The City will be responsible for its employees or agents complying with the provisions of this Agreement.

XIV. COMPLETE AGREEMENT

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

XV. MAILING OF NOTICES

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

City of Plano, Texas
Parks and Recreation Department
Attn: Liz Del Turco
P.O. Box 860358
Plano, TX 75086-0358

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

la terra studios, Inc.
Attn: Kris M. Brown
2111 Commerce St.
Dallas, TX 75201

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. 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.

XVII. MISCELLANEOUS

A. Paragraph Headings:

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

B. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

SIGNED on the date indicated below.

LA TERRA STUDIO, INC.

DATE: 2013/09/30

BY: [Signature]
Name: Kris Brown
Title: president

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

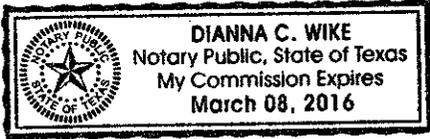
APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF Collin §

This instrument was acknowledged before me on the 30th day of September, 2013 by Kristopher Brown, (Authorized representative) President (Title) of LA TERRA STUDIO, INC., a Texas corporation, on behalf of said corporation.



Dianna C Wike
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013 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

Solicitation 2013-30-B

RFQ for Skate Park Facility

Bid designation: Public



City of Plano

EXHIBIT A
PAGE 1 OF 15

Bid 2013-30-B RFQ for Skate Park Facility

Bid Number **2013-30-B**
Bid Title **RFQ for Skate Park Facility**

Bid Start Date **Jan 31, 2013 7:59:12 AM CST**
Bid End Date **Feb 15, 2013 2:00:00 PM CST**
Question &
Answer End **Feb 8, 2013 2:00:00 PM CST**
Date

Bid Contact **Nicole Griffin**
Buyer
Purchasing Division
nicoleg@plano.gov

Description

The City of Plano invites the submittal of responses to this RFQ from extensively experienced, highly qualified firms or teams for planning, conceptual design, construction documents, and assist with construction administration of a Skatepark Facility in Plano, Texas.

EXHIBIT A
PAGE 2 OF 15



RFQ NO.: 2013-30-B

REQUEST FOR QUALIFICATIONS

For

SKATE PARK FACILITY

DOCUMENTS ARE DUE TO THE PURCHASING DIVISION PRIOR TO:

2:00 PM (CST) on FRIDAY, FEBRUARY 15, 2013

NO LATE RFQ'S WILL BE ACCEPTED

*****VENDOR MUST SUBMIT ONE (1) ORIGINAL AND FIVE (5) COPIES. NO PRICING IS REQUIRED AT THIS TIME. IF "COPIES" ARE NOT SUBMITTED WITH THE ORIGINAL, YOUR RFQ MAY BE CONSIDERED "NON-RESPONSIVE TO SPECIFICATIONS" AND MAY NOT BE CONSIDERED FOR FURTHER EVALUATION.**

Time Critical RFQ Deliveries: The City of Plano, Texas cannot guarantee, due to internal procedures, any RFQs sent Priority Mail will be picked up and delivered by the closing date and time. It is recommended that critical RFQs deliveries be made either in person or via an alternate delivery method.

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICIATION PLEASE CONTACT:

Nicole Griffin
Buyer II
nicoleg@plano.gov

EXHIBIT A
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**REQUEST FOR QUALIFICATIONS
For
SKATE PARK FACILITY**

RFQ NO.: 2013-30-B

STATEMENT OF PURPOSE

The City of Plano invites the submittal of responses to this RFQ from extensively experienced, highly qualified firms or teams for planning, conceptual design, construction documents, and assist with construction administration of a Skate Park Facility in Plano, Texas.

The selection of the design consultant will be based on information provided in both written and graphic form and on interviews as requested.

- A. Key Personnel and Project Manager Qualifications, and proven stability of your firm (20%)
- B. Project team experience including experience with projects of similar size and scope, experience at conducting public meetings, experience garnering public feedback online, and other relevant project experience (20%)
- C. Project Understanding and Approach (15%)
- D. Methods of Cost Estimating and Accuracy Controls (10%)
- E. Quality of work exhibited in both written and graphic form (20%)
- F. References (15%)

Public Opening

RFQ's will be publicly opened in the Purchasing Division, Municipal Center, 1520 Avenue K, Suite 370, Plano, TX 75074 on **Friday, February 15, 2013 at 2:00 pm (CST)**. Only the names of the firms submitting RFQs will be read aloud at the public opening.

Delivery of RFQ Instructions

Mark RFQ package(s): **"RFQ No. 2013-30-B, RFQ for SKATE PARK FACILITY"**. All RFQ's must be delivered or mailed sealed to the following location **prior to 2:00 pm (CST), Friday, February 15, 2013**.

City of Plano – Purchasing Division
Attn: Nicole Griffin- Buyer II
1520 Avenue K, Suite 370
Plano, TX 75074

Questions Concerning this RFQ

To ensure that all prospective respondents have accurately and completely understood the requirements, questions will accept questions up until **2:00 pm (CST) on Friday, February 8, 2013**. Questions **must** be submitted online through www.bidsync.com. Please **do not** email your questions. You will be directed to submit your questions online through www.bidsync.com. Questions **will not** be accepted after **2:00 pm (CST) on Friday, February 8, 2013**.

CITY OF PLANO GENERAL TERMS AND CONDITIONS

1. **THESE TERMS AND CONDITIONS APPLY TO ANY PROCUREMENT OF PRODUCTS OR SERVICES BY THE CITY OF PLANO (CITY).**
2. **ADDITIONAL TERMS:** Notwithstanding acceptance by the City of the goods or services ordered hereby, no additional terms or conditions of vendor, whether contained within vendor's invoice or otherwise, shall be accepted by City.
3. **CONFLICTS:** In the event the terms and conditions herein expressed conflict with the terms and conditions of any specifications issued by the City in conjunction with this purchase, the specifications shall supersede these terms and conditions to the extent of the conflict.
4. **AUTHORIZATION:** The City of Plano will not accept or pay for articles delivered or services performed without a specific written Purchase Order.
5. **CONFORMITY OF GOODS/SERVICES:** All goods to be delivered or services to be performed shall conform in every respect to the specifications issued by the City in conjunction with its solicitation of bids or proposals. In the event no such specifications were issued, the goods or services shall conform to the proposal submitted by the vendor.
6. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By acceptance of this order, in addition to the guarantees and warranties provided by law, contractor expressly guarantees and warrants as follows:
 - A. that the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the contractor will bear the cost of inspecting and/or testing articles rejected.
 - B. that the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the contractor will, at contractor's own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, losses, liabilities and suits arising there from.
 - C. that the articles to be delivered hereunder will be manufactured, sold and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
 - D. that nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.
7. **PRICING:** Unit pricing shall be in strict conformity with the bid or proposal submitted by vendor, unless a price increase is authorized by the City.
8. **PRICE ESCALATION:** price escalations may be permitted by the City of Plano during the term of the contract. All requests for price escalation shall be in written form and shall demonstrate industry-wide or regional increases in the contractor's costs. Include documents supporting the price escalation, such as manufacturer's direct cost, postage rates, railroad commission rates, federal/state minimum wage laws, federal/state unemployment taxes, FICA, etc. Increases will apply only to the products(s) and/or service(s) affected by an increase in raw material, labor, or another like cost factor. The City of Plano reserves the right to accept or reject any/all price escalations.
9. **PRICE REDUCTION:** if during the life of the contract, the contractor's net prices to other customers for the same product(s) and/or service(s) are lower than the City of Plano's contracted prices, an equitable adjustment shall be made in the contract price.
10. **TAXES:** the City of Plano is exempt from federal manufacturer's excise and state sales and use tax. Tax exemption certificates will be executed by the City and furnished upon request.
11. **PACKAGING:** unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
12. **F.O.B./DAMAGE:** all orders shall be F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The City of Plano assumes no liability for goods delivered in damaged or unacceptable condition. The contractor shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.
13. **DELIVERY TIMES:** deliveries will be acceptable only during normal working hours at the designated location.
14. **DELIVERY PROMISE – PENALTIES:** default in promised delivery without acceptable reasons, or failure to meet specifications, authorizes the purchasing division to purchase goods elsewhere, and charge any increase in cost and handling to the defaulting contractor.

**CITY OF PLANO
GENERAL TERMS AND CONDITIONS**

15. **INSPECTION, REJECTION, AND EXCESS SHIPMENT:** In addition to other rights provided by law, the City reserves the right (a) to inspect articles delivered and to return those which do not meet specifications or reasonable standards of quality, (b) to reject articles shipped contrary to instructions or in containers which do not meet recognized standards, and (c) to cancel the order if not filled within the time specified. The City may return rejected articles or excess shipment on this order, or may hold the articles subject to the vendor's order and at vendor's risk and expense, and may in either event charge the vendor with the cost of shipping, unpacking, inspecting, repacking, reshipping and other like expenses.
16. **INVOICES:** invoices must be submitted by the contractor to the City of Plano, Accounting Department, P.O. Box 860279, Plano, TX, 75086-0279. The City Purchase Order number must appear on all invoices, delivery memoranda, bills of lading, packing and correspondence.
17. **PAYMENT TERMS:** payment terms are net 30 unless otherwise specified by the City. Upon receipt of a properly executed invoice and verification of delivery from the consignee, payment will be processed for items or services delivered.
18. **PATENT RIGHTS:** the contractor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.
19. **FUNDING:** the contractor recognizes that any contract shall commence upon the effective date 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 the 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.
20. **ASSIGNMENT:** the contractor shall not sell, assign, transfer or convey this contract in whole, or part, without the prior written consent of the purchasing division.
21. **INTERLOCAL AGREEMENT:** contractor agrees to extend prices and terms to all entities who have entered into or will enter into joint purchasing interlocal cooperation agreements with the City of Plano.
22. **AUDIT:** the City of Plano reserves the right to audit the records and performance of contractor during the contract and for three years thereafter.
23. **INSURANCE:** the City requires contractor to carry the minimum insurance as required by state laws and insurance requirements outlined in the bid/proposal documents.
24. **CHANGE ORDERS:** no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in this contract. All change orders to the contract will be made in writing by the City of Plano.
25. **INDEMNIFICATION:** contractor agrees to defend, indemnify and hold the City and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage, 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 the 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 the contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, and its officers, agents, employees or separate contractors. 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 City.

**CITY OF PLANO
GENERAL TERMS AND CONDITIONS**

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 city the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the product and grant city a reimbursement for the product. Contractor will proceed under subsection (c) above only if subsections (a) and (b) prove to be commercially 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, 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 City has the legal right to use said products. 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.

26. **TERMINATION FOR DEFAULT:** the City of Plano reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. The City reserves the right to terminate the contract immediately in the event the contractor fails to 1) meet delivery schedules or, 2) otherwise perform in accordance with these specifications. Breach of contract or default authorizes the City to award contract to another contractor, purchase elsewhere and charge the full increase in cost and handling to the defaulting contractor.
27. **REMEDIES:** the contractor and the City of Plano agree that each party has rights, duties, and remedies available as stated in the uniform commercial code and any other available remedy, whether in law or equity.
28. **VENUE:** this agreement will be governed and constructed according to the laws of the state of Texas. This agreement is performable in Collin/Denton County, Texas. Exclusive venue shall be in Collin County, Texas.
29. **NO PROHIBITED INTEREST:** contractor acknowledges and represents that they are aware of the laws, City Charter, and City Code of Conduct regarding conflicts of interest. The City charter states that "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....."
30. **DELINQUENT TAXES:** section 2-2 of the City Code of Ordinances prohibits the payment of public funds to persons that owe delinquent taxes to the City of Plano. Therefore, payment to a contractor for goods or services provided to the City under contract or Purchase Order may be withheld in the event the contractor owes delinquent taxes to the City.
31. **EMPLOYMENT ELIGIBILITY VERIFICATION:** the immigration reform and control act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. department of justice form I-9.

The contractor warrants that contractor is in compliance with IRCA and will maintain compliance with IRCA during the term of the contract with the City. Contractor warrants that contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this contract.

SMWBE POLICY

IT IS THE POLICY OF THE CITY OF PLANO TO INVOLVE SMALL BUSINESSES AND MINORITY/WOMAN OWNED BUSINESSES TO THE GREATEST EXTENT POSSIBLE IN THE PROCUREMENT OF GOODS, EQUIPMENT, SERVICES AND CONSTRUCTION PROJECTS. TO ASSIST US WITH OUR RECORDKEEPING, VENDORS SHOULD IDENTIFY ANY SMALL/MINORITY/WOMAN-OWNED COMPANY BEING UTILIZED IN THIS BID AND NOTE THE MONETARY INVOLVEMENT.

REQUEST FOR QUALIFICATIONS (RFQ)
CITY OF PLANO
SKATEPARK FACILITY



REQUEST FOR QUALIFICATION (RFQ)

CITY OF PLANO

SKATEPARK FACILITY

INVITATION TO SUBMIT QUALIFICATIONS

The City of Plano invites the submittal of responses to this RFQ from extensively experienced, highly qualified firms or teams for planning, conceptual design, construction documents, and assist with construction administration of a Skatepark Facility in Plano, Texas.

COMMUNITY PROFILE

The City of Plano has earned a national reputation as one of the best places in the country for employers to do business and for families to live and work. Plano's Parks and Recreation Department is a nationally accredited department and has been recognized three times with the NATIONAL RECREATION AND PARKS ASSOCIATION GOLD MEDAL AWARD FOR EXCELLENCE IN THE FIELD OF PARKS AND RECREATION MANAGEMENT. Plano was incorporated in 1873 and was chartered as a home rule city in 1961. Located 20 miles north of downtown Dallas, Plano, with an estimated population of 267,000, is expected to reach its build-out population of 280,000 persons in 2025.

PROJECT INTENT

The City of Plano, "Owner," is in the process of selecting an experienced, qualified design professional for the planning, design, and construction administration of a poured-in-place Skatepark Facility to be located at an existing park site. The new facility will complement existing facilities and activities, as well as engage and challenge skateboard users of a broad range of ages and skills.

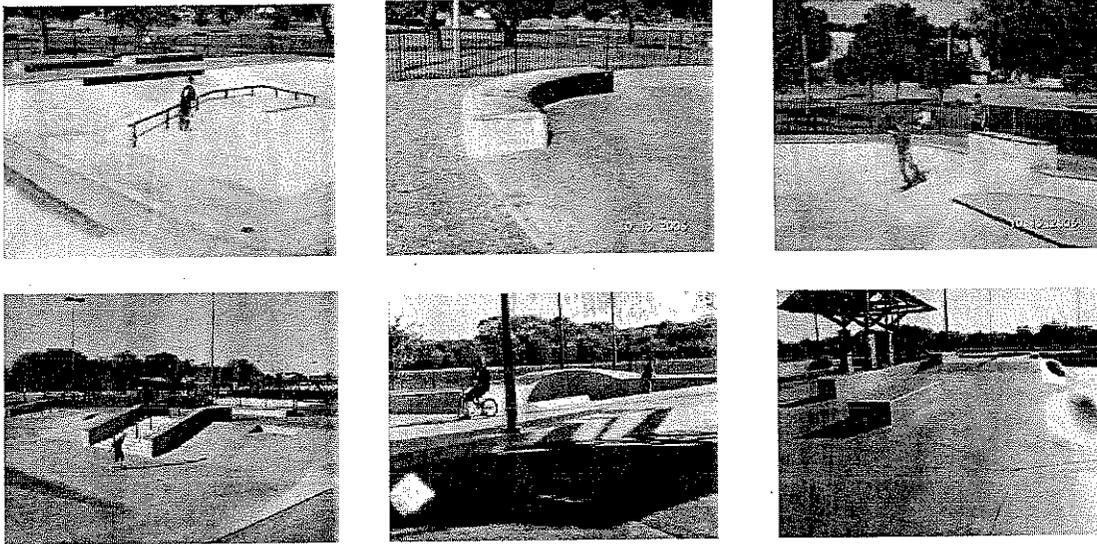
The consultant will be required to work closely with the Owner and the Community throughout the process.

Submitting firms are encouraged to consider subcontracting portions of the engagement to small, minority, and woman-owned firms where appropriate. If this is done, that fact, and the name of the proposed subcontracting firm(s), must be clearly identified in the proposal. Following award of the contract, no additional subcontracting will be allowed without the express prior written consent of the City.

PROJECT DESCRIPTION

The Skatepark Facility location has yet to be determined. The scope of work will entail determining the best location for a poured-in-place concrete skate facility, coordinating input from Parks staff and other stakeholders, determine appropriate improvements and program elements and their locations within the site, and develop a Conceptual Plan that may later be made into Construction Documents.

The location for Skatepark Facility will be based upon a range of criteria including but not limited to park size, potential for controlled access and monitoring, parking, compatible activities, noise, adjacent land use, and neighborhood demographics. The facility will connect and blend into existing park facilities, with similar features to those shown in the photos below; sizes and limits will be determined by the City and the consultant:



It is expected that there will be information gathered at two to three public meetings as well as the provision of an online forum for public comment and input for skating patrons from Plano and the surrounding area. The firm selected will be required to be at each of these meetings with Parks staff, incorporating the requests of those patrons into renderings that can be shown and discussed at subsequent meetings and in the online forum with participants.

Improvements and program elements should include the addition of appurtenances such as fencing around the skate facility, lighting, and webcam for security. Staff has developed the preliminary list of possible improvements for the park. This list is preliminary and may be modified based on input from the Public and the selected Consultant:

- A. Additional Parking
- B. Access point(s) from or within Existing Park
- C. Poured-in-place Concrete Skate Ramps, Stairs, Bowls, Plazas, Rails, etc.

- D. Drainage Structures and Other Infrastructure Improvements
- E. Decorative Fencing
- F. Perimeter Landscape Plantings
- G. Lighting
- H. Security Webcam
- I. Benches or Viewing Stands
- J. Shade Structure for Seating Areas
- K. Drinking Fountain
- L. Safety Signage, as required by State Law

Project will culminate in site-specific Conceptual Design and Estimate of Probable Cost from which Construction Documents may be derived.

SERVICES REQUIRED

The first phase will entail working with Parks staff to develop site selection. It is anticipated that the first phase will take a fresh look at potential park properties. This may include research into similar parks throughout the state and country and site analysis of potential park sites for opportunities and constraints.

The second phase of the project will be to provide a Conceptual Design including site elements and their layout for a Skatepark Facility that is specific to the location selected in Phase One. An estimate of probable cost will be necessary to this phase. Schematic plan(s) will be produced and posted for public comment. The development of the final concept plan will require 2 to 3 public input meetings and an online forum and/or surveys to determine the validity of the program elements for proposed park users. Revisions will be made in response to the comments, in collaboration with Parks staff. Although the project will not be LEED certified, environmental considerations should be taken into account and impacts minimized to every extent possible without sacrificing user safety.

In the third phase, the consultant will provide the City with construction documents, a construction cost estimate, and provide construction administration services. Construction plans and details must focus on user safety, especially as expressed by surface quality and overall fit and finish of all elements at the Skatepark Facility. Any required geotechnical investigation and engineering will be performed during this phase. Construction administration services may include but are not limited to bidding services, addenda items, bid review, preconstruction conference, submittal and/or substitution review, site review visits, plan compliance, completion certification, project close-out, and post contract evaluation.

The cost for the third phase will be negotiated separately after the Conceptual Plan is complete.

QUALIFICATION STATEMENT CONTENTS AND FORMAT

Submit one original and five copies with all supporting RFQ documents. If copies are not submitted with the original, your response may be considered nonresponsive and might not be considered for further evaluation.

The statement of qualifications should, at a minimum, include:

SECTION I—EXECUTIVE SUMMARY

Table of Contents

A table of contents of the entire response.

Executive Summary

In the executive summary, the Respondent shall provide a concise narrative summary of the entire proposal that indicates their understanding of the City of Plano's needs, their knowledge of the elements involved in the project, and the approach to be taken, including a highlight of any key or unique features, excluding cost/price. The salient features should tie in with the stated evaluation factors.

SECTION II—COMPANY PROFILE

Overview

Provide an overview of the company's structure, longevity, and relevant experience.

Company Address and Identifying Codes

Provide company/division's street address, Federal Identification Number, DUNS Code, and size of business.

Proposed Planning/Design/Project Teams

Identify the project team members and their specific roles that will be involved in each phase of the project.

Personnel Qualifications and Experience

Provide resumes, licenses, registrations or certifications for all personnel and subcontractors to be assigned to this project.

Subcontracting Plan

If the Respondent intends to use subcontractors, a Subcontracting Plan must be included in this section. The Subcontracting Plan shall include a detailed explanation of the work to be subcontracted and the percentage of that work to the total project for each proposed subcontractor. The City of Plano reserves the right to approve or disapprove of any subcontracting plan.

Respondents are encouraged to subcontract portions of the engagement to small, minority, and woman-owned firms where appropriate. However, no additional subcontracting will be allowed following award of the contract without the express prior written consent of the City

The respondent will be the sole contract holder and shall be responsible for any approved subcontractor's work. The City of Plano will not establish a contractual relationship with the subcontractor.

SECTION III—TECHNICAL RESPONSE

Project Understanding and Approach

Describe how your firm will approach this project including your firm's motivation for being involved in this project and the priority this project will be assigned relative to other commitments.

Address firm's methods of cost estimating and accuracy controls.

SECTION IV—RELEVANT PAST AND PRESENT PERFORMANCE

Performance

Provide comparable project examples where Respondent has provided services similar to those described in this RFQ along with summaries of work completed and photographs of installed facilities.

References

Provide at least five (5) references that entailed projects of similar scope. Include current contact information (address, phone, and email), a description of the projects(s) that were completed, whether the projects were on time and in budget, and if not, an explanation of the deviations.

Respondents are cautioned that the City may use data provided by each Respondent in this Section as well as data obtained from other sources in the evaluation of past and present performance.

In addition to narrative description of completed projects, photographic representation of installed, completed projects is required.

SELECTION CRITERIA

The selection of the design consultant will be based on information provided in both written and graphic form and on interviews as requested.

- A. Key Personnel and Project Manager Qualifications, and proven stability of your firm (20%)
- B. Project team experience including experience with projects of similar size and scope, experience at conducting public meetings, experience garnering public feedback online, and other relevant project experience (20%)
- C. Project Understanding and Approach (15%)
- D. Methods of Cost Estimating and Accuracy Controls (10%)
- E. Quality of work exhibited in both written and graphic form (20%)
- F. References (15%)

A review committee will judge the merit of qualifications received in accordance with the evaluation criteria published herein. After initially reviewing the responses to the RFQ, the evaluation committee will establish a shortlist of respondents to submit additional information. If the City chooses, it may interview these respondents.

The city will then rank the respondents according to the RFQ and select the firm that is best qualified based on the published selection criteria and its ranking evaluations. After selection by the review committee, City Staff will negotiate fees, schedules, and a contract with the firm recommended by the review committee.

EXHIBIT B

The Professional's Bid

Available at the Parks and Recreation Department administrative offices.

CONSTRUCTION

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 Contractor shall not start work under this Contract until the Contractor has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City; nor shall the Contractor allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by the Contractor. Approval of insurance required of the Contractor and subcontractors for the City of Plano will be granted only after submission to the Director of Public Works of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 The Contractor shall require all subcontractors to maintain during the term of this agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation and Employer's Liability insurance, in the same manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the City immediately upon request.
- 1.3 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, until ten (10) days prior written notice has been given to the Director of Public Works, City of Plano."
- 1.4 **Contractor agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Contractor shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Contractor's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement."**
- 1.5 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Contractor, or the surety, or its bond, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.

1.6 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under all coverages except Workers' Compensation and Automobile Liability, 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.

1.6.1 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, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, 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.

1.7 The Contractor 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.

1.8 The Contractor covenants to save, defend, hold harmless and indemnify the City and all of its elected or appointed officials, agents and employees (collectively the "City") from and against any and all claims, loss, damage, injury, cost (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from or arising out of or in any way connected with the Contractor's performance or non-performance of the terms of the Contract Documents or its obligations under the Contract. This indemnification shall continue in full force and effect until the Contractor completes all of the work required under the Contract, except that indemnification shall continue for all claims involving products or completed operations after final acceptance of the work by the City for which the City gives notice to the Contractor after the City's final acceptance of the work.

1.9 The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all descriptions used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in

any way whatsoever with the contracted work, until final acceptance of the work by the City.

- 1.10 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Contractor 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 Contractor, and the Contractor 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.
- 1.11 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.
- 1.12 Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 1.13 Precaution shall be exercised by the Contractor at all times for the protection of persons, (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor and its subcontractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its operation on the property.
- 1.14 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.
- 1.15 All required insurance coverage 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, in the same manner as described in 1.13 above.

1.16 The City will consider deductible amounts as part of its review of the financial stability of the bidder. Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Contractor. Contractor/Vendor may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

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

2.1 The Contractor 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. Products/Completed Operations to be maintained for one year. Final completion and acceptance of the work, with evidence of same filed with owner.
- v. Contractual Liability including protection for the Contractor from claims arising out of liability assumed under this contract.
- vi. Personal Injury Liability including coverage for offenses related to employment.
- vii. Explosion, Collapse, or Underground (XCU) hazards; if applicable. Coverage required for any and all work involving drilling, excavation, etc.

2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

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

2.2 Owner's Protective Liability Insurance:

In addition to the insurance described above, the Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under the contract, an owner's protective liability insurance policy naming the Owner and Engineer as insured for property damage and bodily injury, including death, which may arise in the prosecution of the work or Contractor's operation under this contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance.

Limits of liability shall be as follows:

Bodily Injury	\$500,000 each occurrence
Property Damage	\$500,000 each occurrence

**EXHIBIT A-1
WORKERS' COMPENSATION
INSURANCE COVERAGE**

A. Definitions:

Certificate of coverage ("certificate" - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - Includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code § 406.096) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, § 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, § 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, if any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

**WORKERS COMPENSATION
LANGUAGE TO BE IN POSTED NOTICE BY CONTRACTOR**

TWCC Rule 110.110, Section D.7

Each Contractor is required to post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text in Figure 2:28 TAC §110 (d) (7) of this section, provided by the commission on the sample notice, without any additional words or changes.

Figure 2:28 TAC §110 (d) (7)

REQUIRED WORKERS COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

Effective September 1, 1994

CONSTRUCTION

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 incident
1,000,000 occurrence |
| <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 checked="" type="checkbox"/> 8. Products | damage each occurrence with |
| <input checked="" 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 checked="" 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 type="checkbox"/> 16. Professional Liability | \$1,000,000 each claim
\$2,000,000 aggregate |
| <input type="checkbox"/> 17. Garage Liability | \$ _____ BI & PD each occurrence |
| <input type="checkbox"/> 18. Garagekeepers' Legal | \$ _____ - Comprehensive
\$ _____ - Collision |

X 19. Owners Protective Liability

\$500,000 Combined single limits

X 20. City named as additional insured on other than W/C and Auto. This coverage is primary to all other coverages the City may possess.

X 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.

X 22. Ten (10) days notice of cancellation, non-renewal, material change or coverage reduction endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).

X 24. The Certificate must state bid number and bid title or project.

 25. Other Insurance Required:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/06/2013

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 Keller-Lowry Insurance Inc 1777 S Harrison St #700 Denver, CO 80210	CONTACT NAME: Teresa Heupel	
	PHONE (A/C, No., Ext): (303) 756-9909 FAX (A/C, No.): (303) 756-8818 E-MAIL ADDRESS: icanhelp@kellerlowry.com	
INSURED La Terra Studio, Inc. 2109 Commerce Street Dallas, TX 75201	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Hartford Accident & Indemnity	22357
	INSURER B: Hartford Underwriters Ins Co	30104
	INSURER C: Landmark American Insurance Co	33138
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES CERTIFICATE NUMBER: 12-13 GL,AU,WC, E&O 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		34SBAPD2497	09/29/2012	09/29/2013	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	<input checked="" type="checkbox"/>				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> BLKT ADDITIONAL INSURED					PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> BLKT WAIVER OF SUBRO					GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					\$
A	AUTOMOBILE LIABILITY		34SBAPD2497	09/29/2012	09/29/2013	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	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR	34SBAPD2497	09/29/2012	09/29/2013	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 1,000,000
	<input type="checkbox"/> DED	<input checked="" type="checkbox"/> RETENTION \$ 10,000				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		34WE CNX1027	09/29/2012	09/29/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED?	<input type="checkbox"/> Y <input type="checkbox"/> N/A <input checked="" type="checkbox"/> X				E.L. EACH ACCIDENT \$ 1,000,000
	(Mandatory in NH)					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL LIABILITY		LHR736627	11/13/2012	11/13/2013	PER AGGREGATE \$2,000,000
						PER CLAIM \$1,000,000
						DEDUCTIBLE \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Project: Skate Facility Planning & Concept Development -2013
 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is Additional Insured on a primary and noncontributory basis for General Liability as required by written contract with the Insured subject to the terms and conditions of the policy contract. Umbrella follows form. A Waiver of Subrogation applies to the Workers' Compensation Policy.

CERTIFICATE HOLDER	CANCELLATION
City of Plano 1520 K Avenue, 3rd Floor, Suite 370 Plano, TX 75074	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of **LA TERRA STUDIOS, INC.**, a Texas corporation, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **LA TERRA STUDIOS, 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."

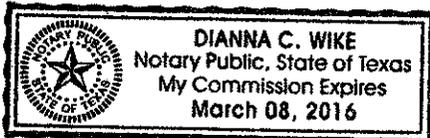
I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

LA TERRA STUDIOS, INC.

By: *Kris*
Signature
Kris Brown
Print Name
President
Title
2013/09/30
Date

STATE OF TEXAS §
COUNTY OF Collin §

SUBSCRIBED AND SWORN TO before me this 30th day of September 2013.



Dianna C Wike
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:		10/14/13		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
Approval of a Landscape Architecture Services Agreement by and between the City of Plano and David C. Baldwin, Inc. in the amount of \$129,195 for design services for McCall Plaza and Parking Lot Renovation and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2013-14	Prior Year (CIP Only)	Current Year	Future Years
				TOTALS
Budget		17,234	1,568,766	0
Encumbered/Expended Amount		-17,234	-15,060	0
This Item		0	-129,195	0
BALANCE		0	1,424,511	0
FUND(S): STREET ENHANCEMENTS CIP				
COMMENTS: Funds are included in the FY 2013-14 Street Enhancements CIP. This item, in the amount of \$129,195, will leave a current year balance of \$1,424,511 for the Downtown Enhancements project.				
STRATEGIC PLAN GOAL: Landscape designs for the renovation of McCall Plaza and Parking Lot relates to the City's goal of Exciting Urban Centers - Destination for Residents and Guests.				
SUMMARY OF ITEM				
This Landscape Architectural Services agreement is for the renovation of McCall Plaza and the J Place Parking Lot. The plaza and parking lot were built in 1985 and are in need of renovation. Improvements will include repair of existing pavement, repair/replacement of damaged limestone, relocation of the accessible walk from 15th Street to the parking lot, the addition of a covered performance stage, electrical hook-ups for a temporary sound booth, new parking lot signage, temporary event fencing, updated parking lot lighting, planter islands with shade trees, and improved sidewalk on 14th Street.				
The estimated construction cost for this project is \$950,000. The total design fee is \$129,195 and includes basic design services, surveying, geotechnical investigation, sound system design, Texas Accessibility Standards compliance and reimbursable expenses. The total design fee is 13.6 percent of the estimated construction budget for the project.				



CITY OF PLANO COUNCIL AGENDA ITEM

David C. Baldwin, Inc. is on the 2013-14 list of selected consultants.

List of Supporting Documents:

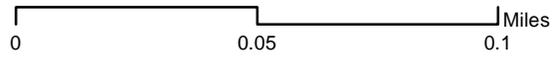
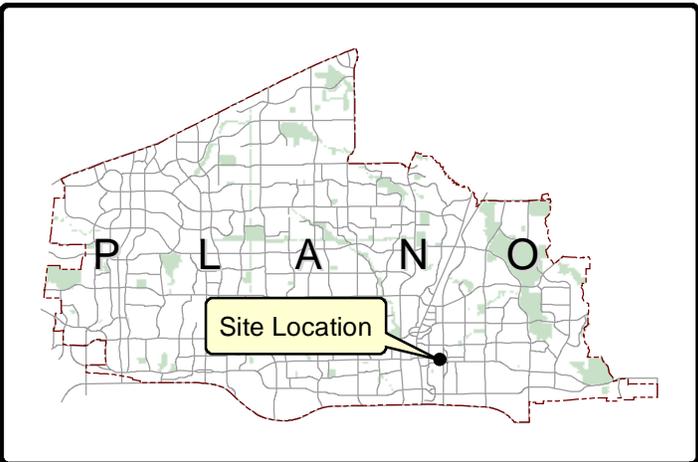
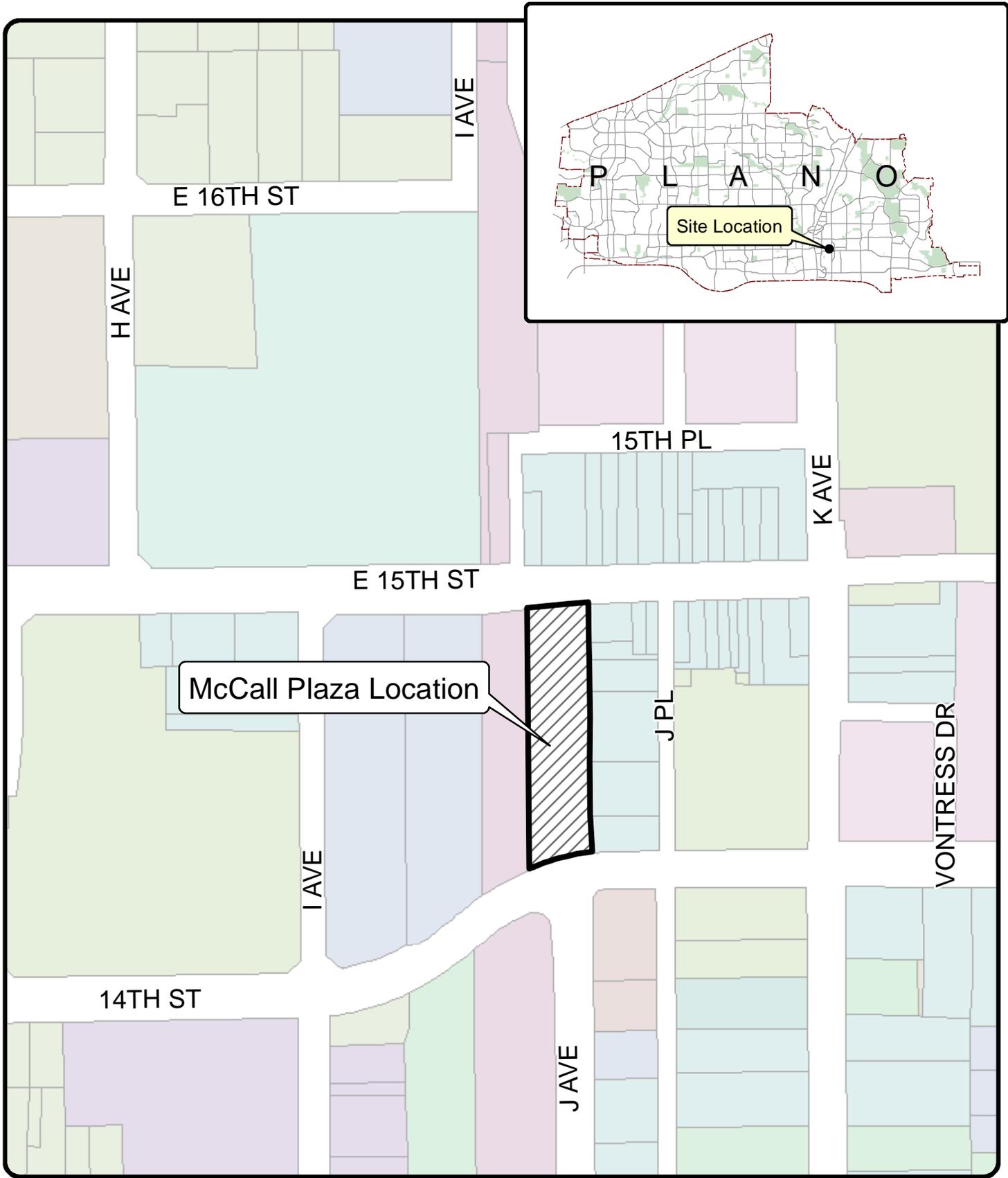
Location Map

Landscape Architect Services Agreement

Other Departments, Boards, Commissions or Agencies

Location Map

McCall Plaza Renovation



MCCALL PLAZA AND PARKING LOT RENOVATION

PROJECT NO. 6372

LANDSCAPE ARCHITECT 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 **DAVID C. BALDWIN, INC.**, a **TEXAS** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Architect to perform landscape architectural services in connection with the **MCCALL PLAZA AND PARKING LOT RENOVATION** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Architect

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

II. Scope of Services

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

III. Schedule of Work

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

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

Architect agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Architect shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Architect'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 ARCHITECT 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 ARCHITECT'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 ARCHITECT, 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 ARCHITECT 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 ARCHITECTS. 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.

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

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Architect's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Architect will revise drawings to reflect changes made

during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Architect's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

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

XV. Mailing of Notices

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

City of Plano
Parks Department
Attn: Elizabeth Del Turco
P.O. Box 860358
Plano, TX 75086-0358

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

David C. Baldwin, Inc.
Attn: David C. Baldwin
730 East Park Boulevard, Suite 100
Plano, TX 75074

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

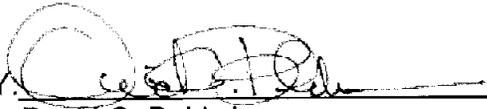
G. Authority to Sign:

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.

DAVID C. BALDWIN, INC.
A Texas Corporation

DATE: 9/18/13

BY: 
David C. Baldwin
PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

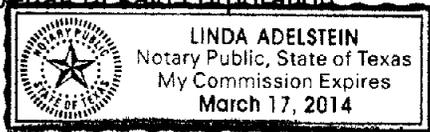
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 18th day of September, 2013, by **DAVID C. BALDWIN, PRESIDENT** of **DAVID C. BALDWIN, INC.** a **TEXAS** corporation, licensed to do business in the State of Texas, on behalf of said corporation.



Linda Adelstein
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013, 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 McCALL PLAZA AND PARKING LOT RENOVATION

This proposal/contract is for landscape architectural design and consulting services by **DAVID C. BALDWIN INC.** (the Landscape Architect) for the **CITY OF PLANO, TEXAS** (the Client). Subconsultants for the project will be:

BASIC SERVICES

- **PROFORMA ARCHITECTS** (the Architect)
- **THEATRE PROJECTS CONSULTANTS** (the Theater Consultant)
- **TLC ENGINEERING** (the Electrical Engineer)
- **BW2 ENGINEERS** (the Civil Engineer)
- **SETH HEIDMAN IRRIGATION DESIGN** (the Irrigation Designer)

ADDITIONAL SERVICES

- **BW2 ENGINEERS** (the Surveyor)
- **GME CONSULTING SERVICES, INC.** (the Geotechnical Engineer)
- **SM ARCHITECTS, PLLC** (TDLR Plan and Construction Review)

1.0 SCOPE

1.1 The Landscape Architect's physical area of work shall consist of the area defined on Attachment B and includes the existing McCall Plaza and adjacent parking lot. Specific areas of work and elements for which the Landscape Architect is providing consulting services are as follows:

- Plaza renovation
 - Repair of brick pedestrian surfaces.
 - Repair of raised planter brick veneers and limestone caps with like material, or reuse of existing where possible.
 - Removal of water wall veneer; to be replaced with brick veneer matching the other raised planters in plaza.
 - Provide accessible walk on west side of former water wall 8'-0" wide. Difference in elevation to be stepped down to match existing steps with limestone treads.
 - Modify existing L-shaped planter on west side to allow space for stage (see below).
 - Existing stone sculptures to be returned to artist.
 - Existing clock to be preserved in place.
 - Provide location for memorial plaque(s).

- Maintain existing plaza trees in place where possible. Trees removed to allow space for stage may be planted in parking lot (see below) finger islands.
 - Inside radius of vehicular driveway to be increased.
 - Update understory plantings in landscape areas.
 - Update irrigation in landscape areas.
- **Stage**
 - Provide covered, raised stage at approximate height of planter wall on east side (adjacent to the Fillmore Pub). Greater height may be necessary for visibility.
 - Stage platform dimensions should be 24'x30'
 - Stage must be accessible.
 - Stage and overhead structure should function in two directions: facing north for the smaller space of the plaza, and south for the larger space of the parking lot (see below).
 - Structure over stage should be in keeping with the downtown heritage aesthetic.
 - A removable railing around stage in keeping with structure for everyday safety; railing may be removed for performances.
 - Provide overhead infrastructure or trusses inside roof of for hanging lighting, microphones, and backdrops.
 - Structure should provide for a variety of performances and uses
 - Stage should have appropriate electrical service and hook-ups
- **Parking Lot**
 - The eastern edge, against the store fronts is another phase and is not included.
 - End-island and trees closest to the plaza, along with the diamond planters on the central axis of the lot, are to be removed for visibility purposes.
 - A sound booth connection is proposed approximately 50' from the stage.
 - A trench with removable cover is proposed for running temporary cable from the stage to power sources for lighting and sound.
 - Decorative paving is proposed for the central axis. Electrical and water utility (see below) hook-ups are proposed for vendors during special events along this axis.
 - Finger islands are proposed for the west side of the lot to provide planting space for trees. Trees may be Crape Myrtles removed from the plaza to make room for the stage, if salvageable, or to match the Cedar Elms used at the DART station platform. Tree canopy may not intrude into DART right-of-way.
 - Update plantings in landscape areas.
 - Update irrigation in landscape areas.
 - Add two lighted parking signs per City of Plano standards
 - Add temporary event fencing to enclose parking lot for events.

- Pedestrian access
 - Pedestrian access to lower level of the plaza from 15th Street is on the northwest corner near the DART tracks
 - Pedestrian access from parking lot to 15th Street is between the raised planter on the west side of the Fillmore Pub and the steps descending into the plaza

- Signage and Events Banners
 - Banner pole in front of the Interurban Railway Museum is to be moved to align with banner pole proposed in front of 15th & I development on south side of 15th.
 - Signage is proposed for the plaza at the 15th Street entrance, and on 14th Street near the DART tracks.
 - Memorial plaques, with room for additional, to be provided within the plaza; Image of old downtown to be returned to the City.
 - Vehicular directional signage to be provided as required.

- Utilities
 - Parking lot lighting, plaza lighting, clock, and 15th Street lighting (between the DART tracks and K Avenue) are currently controlled from a panel in the MCS parking lot. A new panel, adequate to service these items in addition to stage sound and lighting must be provided within the parking lot adjacent to the plaza.
 - Electrical panel at MCS parking lot also services MCS parking lot lighting and trash compactor. These functions may remain in place with the current panel.
 - Light standards in the center of the parking lot and in the plaza must conform to the Downtown standard.
 - A lighting study will be required to estimate the correct number of light standards for the parking lot; if possible, eliminate the light standards on the central axis. If this is not feasible, lights in this location must be on another circuit that may be turned off during performances.
 - Parking lot lighting must compliment and work with the lighting proposed for the 15th and I development; parking lot lighting must avoid any nuisance issues with the mixed use and residents at 15th and I.
 - Dedicated connections must be provided for both lighting and sound at the sound booth location for events and performances.
 - Electrical and potable water connections must be provided for vendors for parking lot events.

1.1 The proposed construction budget (excluding professional fees) for the project is ± \$950,000.

2.0 BASIC SERVICES

2.1. FIELD EVALUATION AND DATA COLLECTION

2.1.1. The Landscape Architect shall visit the site to verify and inventory existing conditions of the property taking special note of the following:

- Existing pedestrian circulation
- Evaluation of existing trees, hardscape, landscaping, lighting, signage, irrigation, and drainage (as applicable)
- Special conditions which may affect design

2.2 SCHEMATIC DESIGN CONCEPTS

2.2.1 The Landscape Architect shall work in coordination with the Client and other members of the design team to provide concepts consisting of drawings, sketch details, and other documents to fix and describe the size, character, and these for the project in a schematic form.

2.2.2 The Landscape Architect shall prepare a detailed "Opinion of Probable Construction Cost" based on current area or unit costs. The "Opinion of Probable Construction Cost" shall be broken down into individual items such as those defined under 1.1 above.

2.2.3 The Landscape Architect and subconsultants as required shall attend the following meetings:

- HISTORIC PRESERVATION COMMISSION - Maximum one (1) meeting
- PARKS AND PLANNING STAFF - Maximum four (4) meetings

2.2.4 The Theater Consultant shall attend one (1) meeting in Plano during this phase.

2.2.5 The Landscape Architect shall prepare one (1) professional artist rendering of the proposed design for communication of design intent and presentation purposes.

2.3 CONSTRUCTION DOCUMENTS, BIDDING SERVICES, & LIMITED CONSTRUCTION SERVICES

2.3.1 Based on the approved Schematic Design Documents and Opinion of Probable Cost, the Landscape Architect shall prepare Construction Documents for approval by the Client, consisting of:

- Overall key plan at a scale such as 1" = 20'-0"
- Detail plan views at a scale such as 1" = 10'-0"

- Plans, Elevations, Sections, etc. as required to communicate construction means and methods
- Material call-outs and specifications
- Components required for theatrical performances
- Structural Engineering
- Electrical service and engineering (sealed and signed by a licensed Texas engineer) for lighting
- Irrigation design

- 2.3.2 The Landscape Architect shall retain the services of a Registered Accessibility Specialist for plan review and filing fee.
- 2.3.3 Construction Documents shall be prepared in such a manner that the Client can receive competitive, "apples-to-apples" bids from contractors.
- 2.3.4 The Landscape Architect and subconsultants as required (excluding Theater Consultant) shall attend one (1) meeting with the Client for Construction (Bid) Document review.
- 2.3.5 The Landscape Architect shall distribute plans from the Landscape Architect's offices in Plano, Texas. Bidders will pay for their bid sets directly to the Landscape Architect.
- 2.3.6 The Landscape Architect shall answer bidder questions and prepare RFI's during the bidding process.
- 2.3.7 The Landscape Architect shall review contractor's shop drawings as requested.
- 2.3.8 The Landscape Architect and subconsultants as required shall visit the site during construction at the request of the Client only to clarify contractor questions regarding design intent or other construction related questions.
- 2.3.9 The Landscape Architect and subconsultants shall prepare a detailed on-site punch list at the contractor's substantial completion of the construction installation. The Landscape Architect and subconsultants shall make one (1) trip for this task, including one (1) trip by the Theater Consultant.
- 2.3.10 The Landscape Architect shall provide the Client with a digital file of the Construction Documents in AutoCAD r2000 (submit individual sheets by sheet name).

3.0 **ADDITIONAL SERVICES**

3.1 **Boundary and Topographic Surveying Services**

3.1.1 The Landscape Architect will perform a detailed topographic survey and a property line verification on the subject project site. The topographic survey will include features such as curb and gutter, pavement edges, street centerline, fire hydrants, driveways, transformers, power poles, guys, fences, natural ground elevations, drainage inlets, retaining walls, landscaping, etc. In addition to the normal topographic items located in the field survey, the Landscape Architect will include in this topographic survey the following:

- Property lines and owner information
- Changes in paving types
- Retaining walls, steps, and railing areas
- Crosswalk and parking stripes
- Doors and finish floor elevations of buildings adjacent to the existing plaza

3.1.1 The Landscape Architect will also research the relative DART right-of-way to the McCall Plaza. The coordinates will be based on State Plane coordinates (NAD 83), for the State of Texas, North Central Zone, at grid. The vertical datum will be based on NAVD 1988 and will be performed to the standards of the *TSPS Manual of Practice for Land Surveying in Texas, Category 6, Condition I*.

3.2 **Geotechnical Study**

3.2.1 The Geotechnical Engineer subconsultant's scope of work includes field drilling (maximum 2 bores) and sampling, laboratory testing, geotechnical analyses, and the preparation of a geotechnical report presenting their findings and recommendation.

3.3 **Texas Accessibility Standards (TAS) Plan and Construction Review**

3.3.1 The Landscape Architect shall retain the services of a Registered Accessibility Specialist for plan review and filing fee.

3.3.2 Upon completion of construction, the Landscape Architect shall retain the services of a Registered Accessibility Specialist for inspection.

4.0 LIMITATIONS

4.1 Basic Services and fees defined herein do not include:

- Design or construction document services related to the proposed pedestrian crosswalk across 14th Street (between the MCS parking lot and Urban Rio Restaurant)
- Design or construction documents related to the DART tracks and proposed pedestrian crossing improvement across the DART right-of-way at 14th Street
- Irrigation design outside of area defined on Attachment A or that which is specifically related to renovation, modifications, or limited additions to the existing irrigation system
- Professional artist perspective renderings beyond the one (1) included as part of Basic Services
- Platting Services
- Plans or services related to formal Site Plan approval as may be required by the Client
- Performance of a cultural resources survey for determining the existence of pre-historic and historic archeological resources
- Title company services to provide property title commitment and copies of pertinent deeds and easements affecting the property
- Environmental assessment services
- Legal services
- Zoning services and representation at public hearings (regarding zoning)
- Attendance at formal public presentations and meetings other than those outlined as part of Basic Services
- Assistance, coordination, or preparation of materials for replatting, zoning changes, or site plan approvals
- Capacity studies on existing water, sewer, storm drainage or other utilities, or design of off-site utility or conduit improvements
- Abandoning existing easements or right-of-way
- Preparation of metes and bounds descriptions for off-site easements, releases, loan documentations, right-of-way or easement dedications, or for real estate sales transactions
- Coordination or staking of test holes for soil or subsurface investigations
- Trench safety systems coordination, testing or design
- Construction surveying or staking for any improvements; replacing survey stakes or property corners destroyed during construction or otherwise lost
- Field as-built surveys or preparation of record drawings

5.0 GENERAL CONDITIONS (Refer to Attachment A)

6.0 STATEMENT OF JURISDICTION

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Landscape

Architects in Texas. The Board's address and phone is P. O. Box 12337, Austin, TX 78711, phone: 512-305-9000, fax: 512-305-8900. The Board's web site address is www.tbae.state.tx.us.

ATTACHMENT A
General Conditions

This agreement is subject to the "General Conditions of Agreement" as follows:

5.1 Definitions:

LANDSCAPE ARCHITECT: Wherever the term LANDSCAPE ARCHITECT is used in this agreement, those terms are understood to reference the firm of David C. Baldwin Inc. and to include all of the various design professions, registrations, disciplines, and related services which might be provided or performed under this contract for the CLIENT by David C. Baldwin Inc. or any of David C. Baldwin Inc.'s subcontractors including, but not limited to, Professional Engineering services, Land Surveying services, Land Planning services, Landscape Architecture services, Structural Engineering services, etc.

CLIENT: Wherever the term CLIENT is used in this agreement, that term is understood to refer to the City of Plano, Texas.

5.2 Asbestos/Hazardous Waste Exclusion: Hazardous materials may exist where there is no reason to believe they could or should be present. The CLIENT hereby agrees that, if CLIENT knows, becomes aware, or has any reason to assume or suspect that existing hazardous materials may exist at the project site, CLIENT will immediately inform the LANDSCAPE ARCHITECT. The LANDSCAPE ARCHITECT likewise agrees to notify the CLIENT as soon as practically possible should the LANDSCAPE ARCHITECT become aware that unanticipated hazardous materials or suspected hazardous materials may be or have been encountered. The LANDSCAPE ARCHITECT and the CLIENT agree that the identification and/or discovery of hazardous materials is not the responsibility of the LANDSCAPE ARCHITECT, but that discovery of unanticipated hazardous materials constitutes a changed condition which may mandate renegotiation of the scope of work or termination of services. Nothing in this agreement shall impose liability on the LANDSCAPE ARCHITECT for claims, lawsuits, expenses or damages arising from, or in any manner related to the presence, identification or non-identification, discovery of, exposure to injury or loss arising from any party encountering unanticipated hazardous material, or the handling, removal, manufacture, or disposal of asbestos, asbestos products, hazardous waste, or toxic material in any of its various forms, as defined by the Environmental Protection Agency.

5.3 Buried Utilities, Etc.: The CLIENT will furnish to the LANDSCAPE ARCHITECT any information CLIENT has or acquires identifying the type and/or location of onsite utility lines and other onsite manmade objects beneath the site's surface. The LANDSCAPE ARCHITECT will take reasonable precautions in interpreting available data and showing these approximate utility locations on the survey. The CLIENT recognizes that LANDSCAPE ARCHITECT must in some cases exercise professional opinion in showing on a survey the approximate location of utility lines and other man-made objects that may exist beneath the site's surface and which by their nature are generally and typically not visible. The CLIENT recognizes that the LANDSCAPE ARCHITECT'S

research may not identify all subsurface utility lines and man/made objects, and that the information upon which the LANDSCAPE ARCHITECT relies may be approximate only, may be information compiled by and/or furnished or made available to LANDSCAPE ARCHITECT by public utility companies or others, and may contain errors and/or may not be complete. CLIENT recognizes that the professional engineer, architect, or other design professional now or later engaged to design new site improvements on this site will need to verify independently during design and/or construction, through more detailed methods than are practical and feasible.

If excavation is required or desired by CLIENT or LANDSCAPE ARCHITECT in order to define precisely (both horizontally and vertically) specific locations of buried utilities at specific critical points, the expense of excavation equipment and operation shall be borne by the CLIENT if approval is requested in advance of the work. Nothing in this agreement shall impose liability on LANDSCAPE ARCHITECT for injury or loss arising from damages to or caused by underground utilities or other underground man-made objects that were not called to the LANDSCAPE ARCHITECT'S attention by others or which were not properly located on plans or through other verbal, written, or visual information furnished to the LANDSCAPE ARCHITECT by others.

- 5.4 **Client's Responsibilities:** The CLIENT shall, in a timely manner, provide full information regarding the requirements of the project, including design objectives, constraints and criteria, and any other relevant information; shall designate a representative to act on CLIENT'S behalf to examine the documents or the work as necessary and to render decisions related thereto in a timely manner so as to avoid unreasonable delays; and shall furnish all services required for the expeditious completion of the project which are not part of the LANDSCAPE ARCHITECT'S services to be provided under this agreement.
- 5.5 **LANDSCAPE ARCHITECT'S Obligation to CLIENT only:** It is noted that nothing in the performance of the LANDSCAPE ARCHITECT'S service in connection with this project implies any undertaking for the benefit of, or which may be enforced by any third party, including other owners of subject or adjacent tracts, the CONTRACTOR(S), its SUBCONTRACTOR(S), or the surety of any of them, it being understood that the LANDSCAPE ARCHITECT'S obligations are solely to the CLIENT.
- 5.6 **Environmental Health Hazards:** Nothing in the AGREEMENT shall impose liability on the LANDSCAPE ARCHITECT for claims, lawsuits, expenses, or damages arising from, or in any manner related to negative health effects (if any) resulting from the proximity of any portions of the site or the exposure at any time or times of persons to high pressure pipelines, asbestos or other hazardous waste, airport traffic, or to electromagnetic fields created by High Voltage Transmission Lines or other sources. The LANDSCAPE ARCHITECT and the CLIENT agree that the identification and/or discovery of hazardous or toxic materials in any of its various forms as defined by the Environmental Protection Agency is not the responsibility of the LANDSCAPE ARCHITECT.

- 5.7 **Jurisdiction:** This Agreement shall be governed by the law of the principal place of business of the LANDSCAPE ARCHITECT, Collin County, Texas.
- 5.8 **Notices:** Any notice given hereunder shall be deemed served when hand-delivered in writing to an officer or other duly appointed representative of the party to whom the notice is directed, or if sent by registered or certified mail to the business address identified in this AGREEMENT.
- 5.9 **Opinions of Probable Construction Cost:** LANDSCAPE ARCHITECT has no control over the cost of labor, materials, equipment or services furnished by others, or over the CONTRACTOR(S)' methods of determining prices, or over competitive bidding or market conditions. Therefore, his OPINIONS OF PROBABLE PROJECT COST AND/OR CONSTRUCTION COST, if any, provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional LANDSCAPE ARCHITECT, familiar with the construction industry. However, LANDSCAPE ARCHITECT cannot and does not guarantee that proposals, bids, or actual project cost and construction cost will not vary from OPINIONS OF PROBABLE PROJECT COST AND/OR CONSTRUCTION COST prepared by him. If, prior to the bidding or negotiating, CLIENT wishes greater assurance as to project or construction cost, he shall employ an independent cost estimator.
- 5.10 **Standard of Practice:** LANDSCAPE ARCHITECT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by members of the appropriate profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise.

EXHIBIT B

**COMPLETION SCHEDULE
McCALL PLAZA AND PARKING LOT RENOVATION**

SCHEDULE

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

Task	Work Weeks To Complete
• Boundary Survey and Topographic Surveying and Geotechnical Study	3 Weeks
• Field Evaluation and Data Collection	2 Weeks
• Schematic Design Concepts	8 Weeks *
• Construction Documents, Bidding Services, & Limited Construction Services	8 Weeks
<hr/>	
TOTAL PROJECT TIME:	21 Weeks

* City review is not included in schedule.

EXHIBIT C
PAYMENT SCHEDULE
McCALL PLAZA AND PARKING LOT RENOVATION

The fees for the scope of services outlined in Exhibit A, scope of services are to be a lump sum fee as follows:

Fees

SECTION I - BASIC SERVICES

1. Field Evaluation and Data Collection	\$ 5,320.00
2. Schematic Design Concepts	\$ 47,875.00
3. Construction Documents & Limited Construction Services	\$ 53,195.00
Total Basic Services	\$ 106,390.00

SECTION II - ADDITIONAL SERVICES

1. Survey	\$ 7,765.00
2. Geotechnical Study	\$ 4,270.00
3. TAS Plan and Construction Review	\$ 1,225.00
Total Additional Services	\$ 13,260.00

SECTION III - REIMBURSABLE EXPENSES

1. Airfare and expenses related to two (2) trips to Plano by Theater Consultant, etc. *	\$ 5,175.00
2. Printing, plotting, delivery services, mileage, etc.	\$ 4,370.00
Total Reimbursable Expenses	\$ 9,545.00

PROJECT TOTAL	\$ 129,195.00
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* Airfare reimbursable expense by Theatre Projects Consultants is based on minimum two weeks advance purchase.

HOURLY FEE SCHEDULE

<u>David C. Baldwin Inc.</u>	<u>Hourly Rate</u>
Principal/Landscape Architect	\$175.00/hr.
Senior Landscape Designer	\$120.00/hr.
Junior Landscape Designer	\$103.50/hr.
Technical	\$ 80.00/hr.
Clerical	\$ 57.50/hr.
<u>ProForma Architecture</u>	<u>Hourly Rate</u>
Principal	\$201.25/hr.
Project Manager	\$201.25/hr.
Engineer	\$172.50/hr.
Designer	\$143.75/hr.
Cad Technician	\$115.00/hr.
Clerical	\$ 86.25/hr.
<u>Theatre Projects Consultants</u>	<u>Hourly Rate</u>
Founder	\$431.25/hr.
Senior Principal Consultant	\$373.75/hr.
Principal Consultant 1	\$316.25/hr.
Principal Consultant 2	\$276.00/hr.
Senior Consultant 1	\$230.00/hr.
Senior Consultant 2	\$184.00/hr.
Consultant 1	\$155.25/hr.
Consultant 2	\$132.25/hr.
<u>Seth Heidman Irrigation Design</u>	<u>Hourly Rate</u>
Principal	\$115.00/hr.
<u>BW2 Engineers</u>	<u>Hourly Rate</u>
Principal	\$210.00/hr.
Professional Staff (P.E., R.P.L.S.)	\$170.00/hr.
Survey Crew (Three Man)	\$150.00/hr.
Project Staff	\$130.00/hr.
Survey Crew (Two Man)	\$120.00/hr.
Technical Support	\$ 80.00/hr.
Clerical Support	\$ 70.00/hr.
GPS Equipment (excludes crew)	\$ 35.00/hr.

EXHIBIT "D"

LANDSCAPE ARCHITECT

INSURANCE

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

1. General Insurance Requirements:

- 1.1 The Architect (hereinafter called "Architect") shall not start work under this contract until the Architect has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, 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 Architect from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Architect's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Architect shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.
- 1.6 Architect agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Architect fail to provide acceptable evidence of current

insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Architect, and the Architect shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.

- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

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

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

3.0 Consultant's Insurance – Claims Made

Professional Errors and Omissions

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

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

LANDSCAPE ARCHITECT

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 David C. Baldwin, Inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of David C. Baldwin, 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.

David C. Baldwin, Inc.
Name of Consultant

By: 
Signature

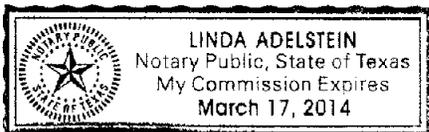
DAVID C. BALDWIN
Print Name

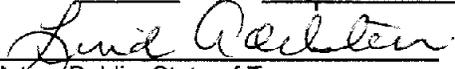
PRESIDENT
Title

9.19.13
Date

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this 19th day of September 2013.




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:		10/14/13		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
To Parkscape Construction, Inc., increasing the contract by \$139,252 for the Oak Point Park & Nature Preserve, North Trail Extension, Change Order No. 1, Bid No. 2013-26-B.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2013-14	Prior Year (CIP Only)	Current Year	Future Years
				TOTALS
Budget		1,161,526	4,216,474	0
Encumbered/Expended Amount		-1,161,526	-341,227	0
This Item		0	-139,252	0
BALANCE		0	3,735,995	0
FUND(S): PARK IMPROVEMENT CIP				
COMMENTS: Funds are included in the FY 2013-14 Park Improvement CIP. This item, in the amount of \$139,252, will leave a current year balance of \$3,735,995 for the 09 Oak Point Park Development project.				
STRATEGIC PLAN GOAL: Construction of a trail segment to create an additional trail loop within Oak Point Park & Nature Preserve relates to the City's goal of Great Neighborhoods - 1st Choice to Live.				
SUMMARY OF ITEM				
<p>Parkscape Construction, Inc. is currently contracted to construct 12 foot wide concrete trail at Oak Point Park and Nature Preserve. The trail under contract will connect from the existing trail on the east side of Jupiter Road to existing trail in Allen and then go under U.S. 75 to connect to the existing Bluebonnet Trail on the west side of U.S. 75. Work under the current contract also includes removal of old barbed wire fences existing on the property.</p> <p>Change Order No. 1 includes the construction of an additional 2,470 linear feet of 12 foot wide concrete trail and the removal of an additional 2,000 linear feet of 4-wire barbed wire fence. The additional trail will provide access to Old Morton Vale Road which will serve as a part of the park trail system. The trail and road will create an additional trail loop within the park which will serve park users throughout the year. The trail will provide access to future park improvements planned for the hillside adjacent to Los Rios Boulevard and access to the proposed music festival site. The proposed trail construction will not conflict with any future improvements planned at the park.</p>				



CITY OF PLANO COUNCIL AGENDA ITEM

The current contract amount is \$1,146,448. Change Order No. 1 in the amount of \$139,252 will result in a revised contract amount of \$1,285,700 and a 12.15% increase in the total contract amount.

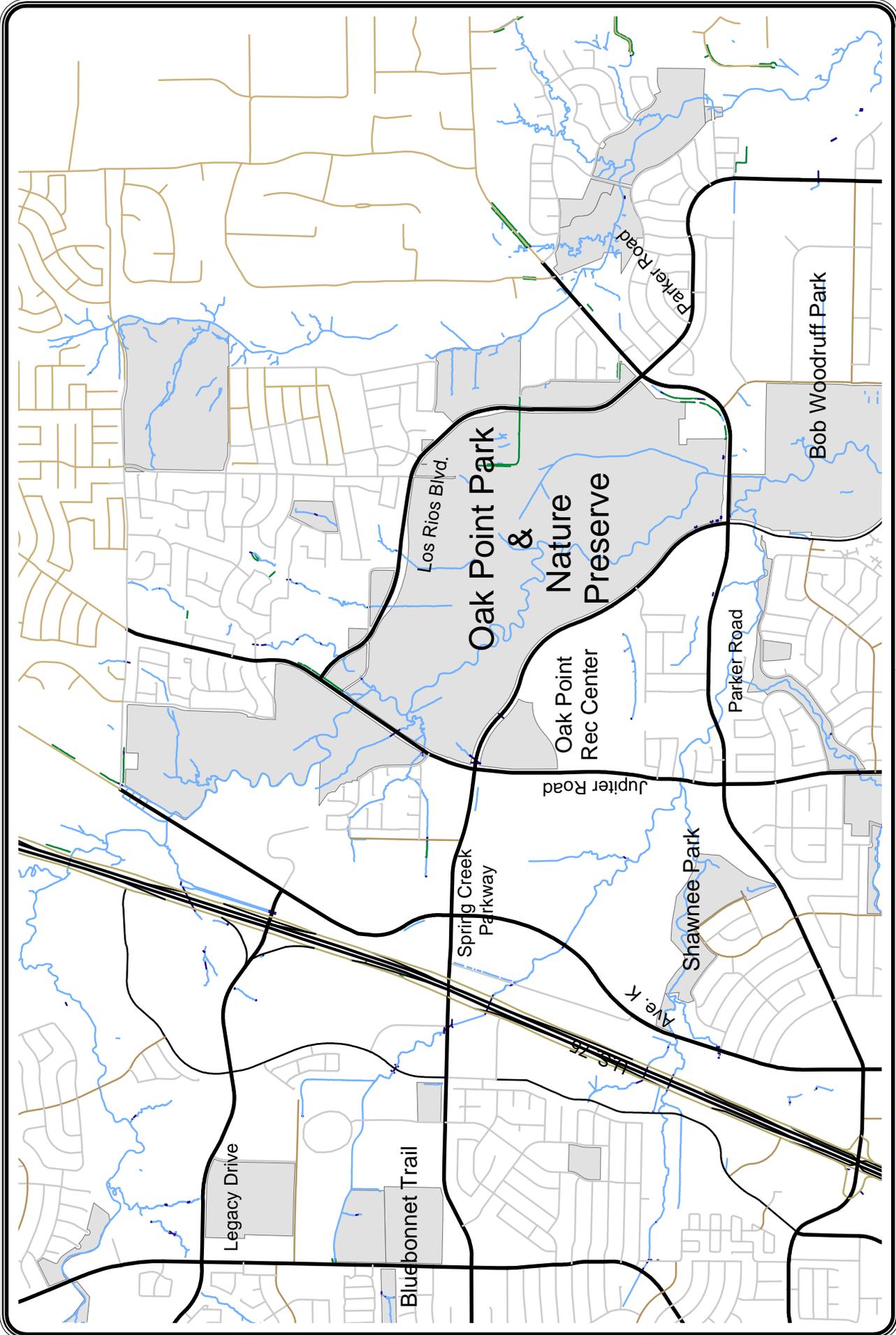
Funding is available in the 2012-13 CIP Budget for Oak Point Park Development.

List of Supporting Documents:

Location Map

Memo

Other Departments, Boards, Commissions or Agencies



Oak Point Park & Nature Preserve





Memorandum

Date: September 23, 2013

To: Bruce Glasscock, City Manager

From: Amy Fortenberry, Director of Parks and Recreation

Subject: **Oak Point Park & Nature Preserve, North Trail Extension, Project No. 6180, Change Order No. 1**

On December 18, 2012 City Council awarded a contract to Parkscape Construction, Inc. in the amount of \$1,146,448 for construction of improvements in Oak Point Park & Nature Preserve. The improvements include construction of a trail with pedestrian bridges from east of Jupiter Road under U.S. 75 to Bluebonnet Trail on the west side of U.S. 75. Improvements also include removal of existing barbed wire within the park. These improvements are nearing completion.

Explanation of Change Order

Change Order No. 1 in the amount of \$139,252 represents an increase of 12.15% in the total contract amount. This change order is for the construction of an additional 2,470 linear feet of 12 feet wide concrete trail to provide access to Old Morton Vale Road and future park improvements on the hillside adjacent to Los Rios Boulevard. The trail and old road create much needed trail loops within the park rather than just a single linear trail through the park. These trail loops will be useful for future 5k and 10k races at the park. This change order also includes the removal of old barbed wire fence located in tree lines adjacent to Old Morton Vale Road. Unit prices were included in the original bid for both of these items.

How Could This Change Order Have Been Avoided

The work included in this change order is part of the long range plan for the park. It was not included in the original bid due to uncertainty about how the proposed music festival might impact the layout of the proposed trail. The trail location has been finalized now that the preliminary planning is complete.

If This Change Order Is Not Approved

If the change order is not approved the trail can be constructed at a later date during a future phase of improvements at the park. If the trail is delayed, the trail will not be available to provide access to the music festival site on the hillside adjacent to Los Rios Boulevard for the 2014 festival. People attending the event will not have any paved walking surface from parking areas west of the park to the festival site. This could have a very negative impact on the overall experience of people attending the festival and a negative impact on the image of the City of Plano.

Funding Source for This Change Order

Funding is available in the 2012-13 Park Improvement CIP Budget in the 09 Oak Point Park Development account.

CHANGE ORDER NO. 1

**OAK POINT PARK & NATURE PRESERVE NORTH TRAIL EXTENSION
PROJECT NO. 6180
PURCHASE ORDER NO. 104274
CIP NO. 22262-8331
BID NO. 2013-26-B**

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **PARKSCAPE CONSTRUCTION, INC.** for the **OAK POINT PARK & NATURE PRESERVE NORTH TRAIL EXTENSION PROJECT**, dated January 11, 2013.

B. DESCRIPTION OF CHANGE

The change order is for the construction of additional concrete recreational trail to provide access to Old Morton Vale Road. This will allow the old road to function as part of the park trail system and create an additional trail loop within the park.

C. EFFECT OF CHANGE

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

<i>ITEM NO.</i>	<i>ITEM DESCRIPTION</i>	<i>ORIGINAL QUANTITY</i>	<i>REVISED QUANTITY</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>AMOUNT OF CHANGE</i>
1	Concrete Trail, 12' w.	Lump Sum	3293	s.y.	\$35.91	\$118,251.63
2	Remove Barb Wire fence	Lump Sum	2000	l.f.	\$10.50	\$21,000.00
						\$0.00
	TOTAL:					\$139,251.63

Original Contract Amount	\$	<u>1,146,448.00</u>
Contract Amount (Including Previous Change Orders)	\$	<u>1,146,448.00</u>
Amount, Change Order No. 1	\$	<u>139,251.63</u>
Revised Contract Amount	\$	<u><u>1,285,699.63</u></u>
Total Percent Increase Including Previous Change Orders		<u>12.15%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 60 days to this project:

Original Contract Time	150 calendar days
Amount (Including Previous Change Orders)	150 calendar days
Amount, Change Order No. 1	60 calendar days
Revised Contract Time	210 calendar days
Total Percent Increase Including Previous Change Orders	40.00%

E. AGREEMENT

In the event of any conflict or inconsistency between the provisions set forth in this Change Order No. 1 and the contract, this Change Order No. 1 shall govern and control. For and in consideration of the covenants, duties and obligations herein contained, the parties do mutually agree that except as provided above, all other terms and conditions of the Contract shall remain unchanged and in full force and effect.

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **PARKSCAPE CONSTRUCTION, INC.**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated January 11, 2013.

F. AUTHORITY TO SIGN

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

OWNER: CITY OF PLANO

**CONTRACTOR: PARKSCAPE
CONSTRUCTION, INC.**

By: _____
(signature)

By: Cindy Craig
(signature)

Print
Name: Bruce Glasscock

Print
Name: Cindy Craig

Print
Title: City Manager

Print
Title: President

Date: _____

Date: 9/18/13

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF Benton §

This instrument was acknowledged before me on the 18th day of September, 2013 by **CINDY CRAIG, PRESIDENT** of **PARKSCAPE CONSTRUCTION, INC.**, a **TEXAS** corporation, on behalf of said corporation.



Tracey Beck
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 20____, by **BRUCE 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



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:		10-14-2013			
Department:		Public Works			
Department Head		Gerald Cosgrove			
Agenda Coordinator (include phone #): Nancy Corwin X7137					
CAPTION					
To approve the purchase of replacement parts for Neptune Technology Group, Inc. brand water meters in the estimated annual amount of \$177,846 from HD Supply Waterworks, Ltd., a sole source provider; through the use of the general exemption as allowed by Local Government Code Chapter 252 Subchapter B Section 252.022(a)(7)(A) 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:	2013-14, 2014-15, 2015-16, 2016-17	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	530,135	533,538	1,063,673
Encumbered/Expended Amount		0	0	0	0
This Item		0	-177,846	-533,538	-711,384
BALANCE		0	352,289	0	352,289
FUND(S): WATER & SEWER FUND					
<p>COMMENTS: This item establishes an annual contract with three optional renewals for water meter replacement parts purchases and approves price quotes. Expenditures will be made in the Meter Services cost center based on need within the approved budget appropriations for each year of the contract. The estimated expenditure for water meter replacement parts to be purchased from this contract in FY 2013-14 is \$177,846. Future purchases will be made within annually approved budget appropriations at an estimated annual expenditure of \$177,846 per year for fiscal years 2014-15, 2015-16, and 2016-17. The remaining budget funds for FY 13-14 will be used for other meter maintenance parts and supplies.</p> <p>STRATEGIC PLAN GOAL: Contracting for water meter replacement parts relates to the City's Goals of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
Staff recommends establishing an annual contract with three (3) City optional one (1) year renewals for water meter parts with HD Supply Waterworks, Ltd., the sole-provider of Neptune Technology Group Inc. brand water meters and parts, in the estimated annual amount of \$177,846 to be utilized by Public Works, Customer and Utility Services and Inventory Control and Asset Disposal (ICAD). (Internal contract 2012-275-C)					



CITY OF PLANO COUNCIL AGENDA ITEM

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

Date: August 26, 2013
To: Nancy Corwin, Buyer
From: Gentry Strickland, Utility Operations Superintendent
Subject: Bid 2012-275-C Water Meter Parts Contract

I have completed the review and evaluation of the proposal submitted in the above mentioned bid.

It is my recommendation to award the contract to HD Supply Waterworks, Ltd, a sole source provider of Neptune Technology Group, Inc. brand water meter parts, in the estimated annual amount of \$177,846.

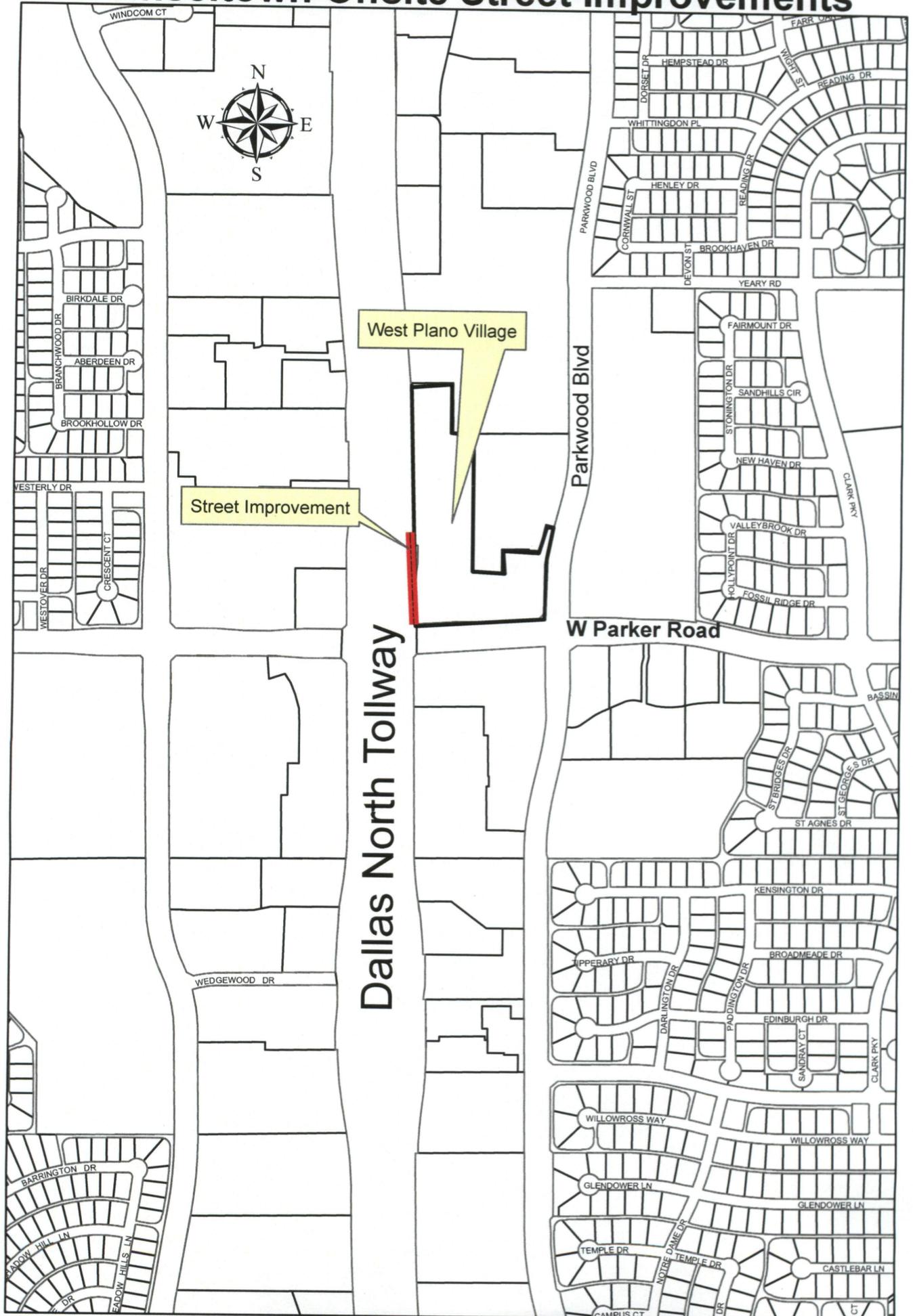
Failure to award this contract will result in the inability to purchase parts as needed for the maintenance and recalibration of existing water meters. Lack of performing maintenance through the replacement of worn or damaged parts will require complete replacement with new meters as existing ones begin to fail. This might also be more costly.



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:	10/14/2013			
Department:	Engineering			
Department Head	Gerald Cosgrove			
Project	Tinseltown Addition, Proj. #4198-2			
Agenda Coordinator (include phone #): Kathleen Schonne X-7198				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Agreement by and between West Plano Village, Ltd. 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 type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,030,000	910,000	1,940,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-217,037	0	-217,037
BALANCE	0	812,963	910,000	1,722,963
FUND(S): STREET IMPROVEMENT CIP				
<p>COMMENTS: Funds are budgeted for this item in the 2013-14 Street Improvements CIP. This item, in the amount of \$217,037 will leave a current year balance of \$812,963 for the Intersection Improvements at Park, Parker & Alma project.</p> <p>STRATEGIC PLAN GOAL: Reducing congestion at intersections and promoting economic development relate to the City's goals of Financially Strong City with Service Excellence and Strong Local Economy.</p>				
SUMMARY OF ITEM				
<p>This Agreement relates to West Plano Village, Ltd., (Company) who constructed a development project at their real property located in the City of Plano. The Company constructed offsite street improvements authorized by the City of Plano on Dallas Parkway, also known as the Dallas North Tollway service road north of Parker Road, for the purpose of easing intersection congestion and improving access to the Property. The City has determined that making an economic development grant to the Company for reimbursement for the costs of constructing the Public Improvements 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.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map				
Resolution				
Economic Development Agreement Public Improvements				

Tinseltown Offsite Street Improvements



Location Map

9/27/2013

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Agreement by and between West Plano Village, Ltd. 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 Agreement by and between West Plano Village, Ltd., a Texas limited partnership, 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 14th day of October, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**ECONOMIC DEVELOPMENT AGREEMENT
PUBLIC IMPROVEMENTS**

This Economic Development Agreement (“Agreement”) is made and entered into by and between the City of Plano, Texas, a home-rule municipal corporation (the "City") and West Plano Village, Ltd., a Texas limited partnership (the "Company").

WHEREAS, Company constructed a development project at their real property located in the City of Plano, Collin County, Texas, more particularly described on Exhibit “A” attached hereto and incorporated herein (the "Property"); and

WHEREAS, Company constructed offsite street improvements authorized by the City on the Dallas Parkway, also known as Dallas Parkway, also known as the Dallas North Tollway service road north of Parker Road, for the purpose of easing intersection congestion and improving access to the Property, more particularly shown on Company’s Engineering Plans approved by the City on January 4, 2013 a copy of which is available in the City’s Engineering Department and which are incorporated herein and made a part hereof by reference (the “Public Improvements”); 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 for reimbursement for the costs of constructing the Public Improvements 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, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I.
CONSTRUCTION OF
PUBLIC IMPROVEMENTS

The City authorized Company to construct the Public Improvements on City right-of-way for the purpose of easing intersection congestion and improving access to new development at the Property. The Company constructed the Public Improvements in accordance with the City's Standard Specifications for Public Works Construction and Company’s Engineering Plans.

ARTICLE II.
REIMBURSEMENT FOR
PUBLIC IMPROVEMENTS

Company paid the entire cost of construction of the Public Improvements in the amount of Two Hundred Seventeen Thousand Thirty Seven dollars and Twelve cents (\$217,037.12). The City agrees to reimburse Company for the entire cost of Construction of the Public Improvements within thirty (30) days of execution of this Agreement.

ARTICLE III.
MISCELLANEOUS PROVISIONS

3.01. Entire Agreement

This Agreement contains the entire agreement between the Parties and cannot be varied except by written agreement. This Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.

3.02. Recitals and Headings

Recitals contained at the beginning of this Agreement shall be construed as a part of this Agreement. However, headings used throughout this Agreement have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Agreement.

3.03. Successors and Assigns

This Agreement shall be binding upon the successors and assigns of the Parties.

3.04. Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

3.05. Severability

In case any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

3.07. No Waiver of Governmental Immunity

Nothing contained in this Agreement shall be construed as a waiver of the City's sovereign or governmental immunity.

3.08. Developer's Authority

The Developer represents and warrants to the City that it has full power and authority to enter into and fulfill the obligations of this Agreement.

3.09 Effective Date

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

CITY OF PLANO, TEXAS
a home rule municipal corporation

Date: _____

By: _____

Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

WEST PLANO VILLAGE, LTD., a Texas
limited partnership

Date: _____

By: _____

David Palmer
EXECUTIVE VICE PRESIDENT,
CENCOR REALTY SERVICES,
authorized agent of
WEST PLANO VILLAGE, LTD.

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013, 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

--- AND ---

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by David Palmer **EXECUTIVE VICE PRESIDENT, CENCOR REALTY SERVICES, authorized agent of WEST PLANO VILLAGE, LTD.**, a Texas limited partnership, for and on behalf of said limited partnership.

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:		10/14/13		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - x-7479				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving and authorizing the execution of a Special Escrow Agreement for the deposit of funds in an amount sufficient to defease and pay certain outstanding "City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2005"; providing for the redemption of certain outstanding bonds of such series and resolving other matters incident and related thereto; and authorizing its execution by the City Manager or his authorized designee and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2013-2014	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): BOND CLEARING FUND				
<p>COMMENTS: This item has a balance sheet only financial impact. Unspent bond proceeds will be used to defease outstanding debt. The amount of the unspent proceeds is \$2,445,365. STRATEGIC PLAN GOAL: Special Escrow Agreements for defeasement of bonds relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>This Agreement calls for the deposit of funds sufficient to defease and pay or provide for the redemption of outstanding City of Plano Bonds.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution Special Escrow Agreement Notice of Redemption				

A Resolution of the City Council of the City of Plano, Texas, approving and authorizing the execution of a Special Escrow Agreement for the deposit of funds in an amount sufficient to defease and pay certain outstanding “City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2005”; providing for the redemption of certain outstanding bonds of such series and resolving other matters incident and related thereto; and authorizing its execution by the City Manager or his authorized designee and providing an effective date.

WHEREAS, the City of Plano, Texas (the “City”) has issued and there is currently outstanding certain bonds more particularly described as follows: City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2005, dated May 15, 2005, being a portion of such bonds scheduled to mature on September 1, 2020, and aggregating in the principal amount referenced in the Escrow Agreement referenced below (the “Defeased Obligations”); and

WHEREAS, in accordance with the provisions of Texas Government Code, Chapter 1207, as amended, the City is authorized and empowered to deposit funds directly with the place of payment for the Defeased Obligations, or other authorized depository, and enter into an escrow or similar agreement with such place of payment for the safekeeping, investment, reinvestment, administration and disbursement of such deposit, and such deposit, when made in accordance with said statute, shall constitute the making of firm banking and financial arrangements for the discharge and full payment of the Defeased Obligations; and

WHEREAS, a Special Escrow Agreement (the “Escrow Agreement”) by and between the City and The Bank of New York Mellon Trust Company, N.A. (the “Escrow Agent”), attached hereto as **Exhibit A** and incorporated herein by reference as a part of this Resolution for all purposes, has been prepared for the deposit of funds with the Escrow Agent to provide for the full payment and discharge of the Defeased Obligations; and

WHEREAS, the City Council hereby finds and determines that the form and content of such Escrow Agreement for the payment and defeasance of the Defeased Obligations should be approved and authorization for its execution provided and the Defeased Obligations should be called for redemption in accordance with the terms hereof.

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

Section I. The Escrow Agreement attached hereto as **Exhibit A** and incorporated herein by reference as a part of this Resolution for all purposes, is hereby approved as to form and content, and such Escrow Agreement in substantially the form and substance attached hereto.

Section II. The Defeased Obligations in the principal amount as determined by the City Manager or Director of Finance and as reflected in the finalized Escrow Agreement shall be redeemed and the same are hereby called for redemption on September 1, 2015, at the price of par and accrued interest to the date of redemption. The City Secretary is hereby authorized and directed to file a copy of this Resolution, together with a suggested form of notice of redemption to be sent to bondholders, with The Bank of New York Mellon Trust Company, N.A. (successor paying agent/registrant to The Bank of New York Trust Company, N.A.), in accordance with the redemption provisions applicable to such certificates; such suggested form of notice of redemption being attached hereto as **Exhibit B** and incorporated herein by reference as a part

of this Resolution for all purposes, provided, however, that the principal amount of the Defeased Obligations to be included within the notice of redemption shall be that principal amount so specified in the Escrow Agreement.

Section III. To provide for the full payment and discharge of the Defeased Obligations in accordance with the terms of said Special Escrow Agreement, the City Manager and/or Director of Finance are hereby authorized and directed to cause an amount sufficient to provide for the payment and defeasance of the Defeased Obligations to be deposited with the Escrow Agent from funds legally available for such purpose and to provide for the payment of necessary costs and expenses associated with such defeasance and redemption.

Section IV. The Mayor, Mayor Pro Tem, City Manager and Director of Finance, any one or more of said officials, are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities to be acquired and deposited in the "Escrow Fund" pursuant to the terms of the Escrow Agreement and such other arrangements as may be necessary for the deposit of moneys in accordance with the terms of the Escrow Agreement and to make firm banking and financial arrangements for the final payment and discharge of the Defeased Obligations.

Section V. 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 VI. 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 VII. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED this the 14th day of October, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

SPECIAL ESCROW AGREEMENT

THIS SPECIAL ESCROW AGREEMENT (the "Agreement"), made and entered into by and between the City of Plano, Texas (the "City") and [The Bank of New York Mellon Trust Company, N.A.] (the "Bank"), a banking corporation organized and existing under the laws of the United States of America, or its successors or assigns hereunder.

W I T N E S S E T H :

WHEREAS, the City is required and has determined to provide for the final payment and discharge of the following described outstanding bonds totaling in principal amount \$_____ (hereinafter referred to as the "Defeased Obligations") more particularly described and identified as follows: "City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2005", dated May 15, 2005, being a portion of such bonds scheduled to mature on September 1, 2020; and

WHEREAS, in accordance with the provisions of Texas Government Code, Chapter 1207, as amended (the "Act"), and the ordinance authorizing the issuance of the Defeased Obligations, the City is authorized to deposit funds directly with the place of payment for such bonds, or other authorized depository, in an amount sufficient to provide for the full payment thereof and enter into an escrow or similar agreement with such place of payment for the safekeeping, investment, reinvestment, administration and disposition of such deposit, upon such terms and conditions as the parties may agree, provided such deposits may be invested only (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent (hereinafter called the "Escrowed Securities") that mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment of the Defeased Obligations; and

WHEREAS, such deposit, if made on or before the payment date for the Defeased Obligations, shall constitute the making of firm banking and financial arrangements for their discharge and final payment and such obligations shall cease to be outstanding obligations of the City for all purposes except for being paid from the deposit of funds placed in escrow; and

WHEREAS, the Defeased Obligations are scheduled to mature and interest thereon is payable on the dates and in the manner set forth in **Exhibit A** attached hereto and incorporated herein by reference as a part of this Agreement for all purposes; and

WHEREAS, on or before the ___ day of _____, 2013, the City will cause funds to be deposited to the credit of the Escrow Fund in an amount sufficient to purchase Escrowed Securities listed and identified in **Exhibit B** attached hereto and incorporated by reference as a part of this Agreement for all purposes; and

WHEREAS, the Escrowed Securities shall be held and deposited to the credit of the "Escrow Fund" to be established and maintained by the Bank in accordance with this Agreement; and

WHEREAS, the Escrowed Securities, together with the beginning cash balance in the Escrow Fund, shall mature and the interest thereon shall be payable at such times to insure the existence of monies sufficient to pay in full the aggregate amount of the Defeased Obligations and the accrued interest thereon, as the same shall become due in accordance with the terms of the ordinance authorizing the issuance of the Defeased Obligations and as set forth in **Exhibit A** attached hereto; and

WHEREAS, the City has completed all arrangements for the purchase of the Escrowed Securities listed in **Exhibit B** and the deposit and credit of the same to the Escrow Fund as provided herein; and

WHEREAS, the Bank is a banking corporation organized and existing under the laws of the United States of America, possessing trust powers and is fully qualified and empowered to enter into this Agreement; and

WHEREAS, pursuant to a resolution, adopted on _____, 2013 (the "Resolution"), the City Council of the City approved and authorized the execution of this Agreement; and

WHEREAS, the City and the Bank, as the case may be, shall take all action necessary to call, pay, redeem and retire the Defeased Obligations in accordance with the provisions thereof, including, without limitation, all actions required by the ordinance authorizing the Defeased Obligations, the Act and this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and to secure the payment of the principal of and the interest on the Defeased Obligations as provided in **Exhibit A** attached hereto, the City and the Bank hereby mutually undertake, promise and agree as follows:

SECTION 1: Reference to or citation herein of any provision of the ordinance pertaining to the issuance of the Defeased Obligations shall be deemed an incorporation of such provision as a part hereof in the same manner and with the same effect as if it were fully set forth herein.

SECTION 2: There is hereby created by the City with the Bank a special segregated and irrevocable trust fund designated "SPECIAL 2005 CITY OF PLANO, TEXAS, GENERAL OBLIGATION REFUNDING AND IMPROVEMENTS BOND DEFEASANCE ESCROW FUND" (hereinafter called the "Escrow Fund") for the payment of the Defeased Obligations, and the City agrees and covenants to cause to be deposited with the Bank the following:

\$ _____	For the purchase of the Escrowed Securities identified in Exhibit B to be held for the account of the Escrow Fund
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\$ _____	For deposit in the Escrow Fund as a beginning cash balance
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The Bank hereby accepts the Escrow Fund and further agrees to receive said moneys, apply the same as set forth herein, and to hold the cash and Escrowed Securities deposited and credited to the Escrow Fund for application and disbursement for the purposes and in the manner provided for in this Agreement.

SECTION 3: The City hereby represents that the cash and Escrowed Securities specified in Section 2 hereof, together with the interest to be earned thereon, deposited to the credit of the Escrow Fund will be sufficient to pay in full and in a timely manner the Defeased Obligations as shown in Exhibit A, and such Defeased Obligations shall be paid at the times and in the amounts set forth and identified in Exhibit A attached hereto.

FURTHERMORE, the Bank acknowledges receipt of a copy of the Resolution which provides for the redemption of the Defeased Obligations on September 1, 2015 at the price of par plus accrued interest to the date of redemption; all in accordance with the provisions of the notice requirements applicable to said Defeased Obligations and the notice requirements contained in the ordinance authorizing the issuance of the Defeased Obligations.

The Bank, as paying agent/registrar for the Defeased Obligations, agrees to cause a notice of redemption pertaining to such Defeased Obligations to be sent to the registered owners thereof appearing on the registration books at least thirty (30) days prior to the redemption date therefor in accordance with the ordinance authorizing the issuance of the Defeased Obligations.

All Defeased Obligations cancelled on account of payment by the Bank shall be cremated or otherwise destroyed by the Bank, and an appropriate certificate of destruction furnished to the City.

SECTION 4: The Bank agrees that all cash and Escrowed Securities, together with any income or interest earned thereon, held in the Escrow Fund shall be and is hereby irrevocably pledged to the payment of the principal of and interest on the Defeased Obligations in the amounts and timely manner shown in Exhibit A, and such funds initially deposited and to be received from maturing principal and interest on the Escrowed Securities in the Escrow Fund shall be applied solely in accordance with the provisions of this Agreement.

SECTION 5: If, for any reason, the funds on hand in the Escrow Fund shall be insufficient to make the payments set forth in Exhibit A attached hereto, as the same becomes due and payable, the City shall make timely deposits to the Escrow Fund, from lawfully available funds, of additional funds in the amounts required to make such payments. Notice of any such insufficiency shall be immediately given by the Bank to the City by the fastest means possible, but the Bank shall in no manner be responsible for the City's failure to make such deposits.

SECTION 6: The Bank shall hold said Escrowed Securities and moneys in the Escrow Fund at all times as a special and separate trust fund, wholly segregated from other moneys and securities on deposit with the Bank; shall never commingle said Escrowed Securities and moneys with other moneys or securities of the Bank; and shall hold and dispose of the assets therein only as set forth herein. Nothing herein contained shall be construed as requiring the Bank to keep the identical moneys, or any part thereof, in said Escrow Fund, if it is impractical, but moneys of an equal amount, except to the extent such are represented by the Escrowed Securities, shall always be maintained on deposit in the Escrow Fund by the Bank, as escrow agent; and a special account evidencing such facts shall at all times be maintained on the books of the Bank.

SECTION 7: The Bank shall collect and receive the principal of and interest on the Escrowed Securities as they respectively mature and become due and credit the same to the Escrow Fund. On or before each principal and/or interest payment date or redemption date, as the case may be, for the Defeased Obligations shown in Exhibit A attached hereto, the Bank, without further direction from anyone, including the City, shall cause to be withdrawn from the Escrow Fund the amounts required to pay the accrued interest due and payable on said payment date on the Defeased Obligations and the principal of the Defeased Obligations due and payable on said payment date or redemption date, as the case may be, and the amount withdrawn from the Escrow Fund shall be immediately transmitted and deposited with the paying agent for the Defeased Obligations to be paid with such amount. The paying agent for the Defeased Obligations is the Bank.

If any Defeased Obligation shall not be presented for payment when the principal amount shall have become due, and if cash shall at such times be held by the Bank in trust sufficient in amount and available to pay the principal of such Defeased Obligation, it shall be the duty of the Bank to hold said cash without any liability for additional interest thereon after such maturity date, in trust for the benefit of the party entitled to payment, which party or parties shall thereafter be restricted exclusively to said cash for any claim of whatever nature on their part on or with respect to said Defeased Obligation, including for any claim for the payment thereof. All cash required by the provisions hereof to be set aside or held in trust for the payment of the Defeased Obligations and interest thereon shall be applied to and used solely for the payment of the Defeased Obligations and accrued interest with respect to which such cash has been so set aside in trust.

Subject to the provisions of the last sentence of Section 25 hereof, cash held by the Bank in trust for the payment and discharge of any of the Defeased Obligations which remains unclaimed for a period of three (3) years after the stated maturity date of such Defeased Obligations shall be returned to the City. Notwithstanding the above and foregoing, any remittance of funds from the Bank to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 8: The escrow created hereby shall be irrevocable and an express lien shall exist on all moneys and Escrowed Securities in the Escrow Fund as security for the payment of the Defeased Obligations until such funds are paid out, used and applied in accordance with this Agreement.

SECTION 9: The Bank shall have no lien whatsoever upon any of the moneys or Escrowed Securities in the Escrow Fund for payment of services rendered hereunder, services rendered as paying agent for the Defeased Obligations, or for any costs or expenses incurred hereunder and reimbursable from the City.

SECTION 10: (a) The Bank shall be authorized to accept initially and temporarily cash and/or substituted Escrowed Securities pending the delivery of the Escrowed Securities identified in the Exhibit B attached hereto, or shall be authorized to redeem the Escrowed Securities and reinvest the proceeds thereof, together with other moneys held in the Escrow Fund in substituted Escrowed Securities provided such early redemption and reinvestment of proceeds does not change the repayment schedule for the Defeased Obligations appearing in Exhibit A and the Bank receives the following:

- (1) an opinion by an independent certified public accountant to the effect that (i) the initial and/or temporary substitution of cash and/or securities for one or

more of the Escrowed Securities identified in Exhibit B pending the receipt and delivery thereof to the Escrow Agent or (ii) the redemption of one or more of the Escrowed Securities and the reinvestment of such funds in one or more substituted Escrowed Securities, together with the interest thereon and other available moneys then held in the Escrow Fund, will, in either case, be sufficient to pay the Defeased Obligations in accordance with Exhibit A, and

(2) with respect to an early redemption of Escrowed Securities and the reinvestment of the proceeds thereof, an unqualified opinion of nationally recognized municipal bond counsel to the effect that (i) such investment will not cause interest payments with respect to the Defeased Obligations to be included in the gross income of bondholders for federal income tax purposes, under the Code and related regulations as in effect on the date of such investment, or otherwise make such interest payments subject to Federal income taxation and (ii) such reinvestment complies with the Constitution and laws of the State of Texas and with all relevant documents relating to the issuance of the Defeased Obligations.

(b) If on the date and in the amount shown in Exhibit C attached hereto there exists cash in the Escrow Fund, the Bank and the City agree at least fifteen (15) days prior to such date, to subscribe for the purchase of United States Treasury Securities - State and Local Government Series (SLGS) bearing zero interest (0%) and on such date, in the amount and scheduled to mature as provided in Exhibit C and subscription forms prepared therefor as may be then required by the United States Department of the Treasury; provided that the then existing rules and regulations and policy of United States Department of the Treasury permit and authorize such investments. Should the policy, rules and regulations of the United States Department of Treasury not permit or authorize the purchase of such SLGS at such time or times, such cash balance or balances shall remain uninvested and held in trust for the benefit of the holders of the Defeased Obligations and used for the payment of the Defeased Obligations on the dates and in the amount such moneys would have been expended had such SLGS been acquired and matured.

SECTION 11: Except as provided in Section 10 hereof, moneys in the Escrow Fund will be invested only in the Escrowed Securities listed in Exhibit B, and neither the City nor the Bank shall reinvest any moneys deposited in the Escrow Fund except as specifically provided by this Agreement.

SECTION 12: If at any time there exists or it is determined an excess of interest on or maturing principal of the Escrowed Securities in excess of the aggregate amounts needed for the payment of the Defeased Obligations, the Bank may transfer such excess amount to or on the order of the City.

SECTION 13: The Bank shall continuously secure the monies in the Escrow Fund not invested in Escrowed Securities by a pledge of direct obligations of the United States of America, in the par or face amount at least equal to the principal amount of said uninvested monies to the extent such money is not insured by the Federal Deposit Insurance Corporation.

SECTION 14: The Bank shall not be liable or responsible for any loss resulting from any investment made in the Escrowed Securities.

SECTION 15: The funds and Escrowed Securities received by the Bank under this Agreement shall not be considered as a banking deposit by the City and the Bank and the City shall have no right or title with respect thereto, except as otherwise provided herein. Such funds and Escrowed Securities shall not be subject to checks or drafts drawn by the City.

SECTION 16: The City agrees to pay the Bank for the performance of services hereunder and as reimbursement for anticipated expenses to be incurred hereunder the amount of \$_____ and, except for reimbursement of costs and expenses incurred by the Bank pursuant to Section 19 hereof, the Bank hereby agrees said amount is full and complete payment for the administration of this Agreement.

The City also agrees to deposit with the Bank on the effective date of this Agreement, the sum of \$_____, which represents the total charges due the Bank as paying agent for the Defeased Obligations.

SECTION 17: The Bank shall not be responsible for any recital herein, except with respect to its organization and its powers and authority. As to the existence or nonexistence of any fact relating to the City or as to the sufficiency or validity of any instrument, paper or proceedings relating to the City, the Bank shall be entitled to rely upon a certificate signed on behalf of the City by its City Secretary as sufficient evidence of the facts therein contained. The Bank may accept a certificate of the City Secretary under the City's seal, to the effect that a resolution or other instrument in the form therein set forth has been adopted by the City Council of the City, as conclusive evidence that such resolution or other instrument has been duly adopted and is in full force and effect.

The duties and obligations of the Bank shall be determined solely by the express provisions of this Agreement and the Bank shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Bank.

In the absence of bad faith on the part of the Bank, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Bank, conforming to the requirements of this Agreement; but notwithstanding any provision of this Agreement to the contrary, in the case of any such certificate or opinion or any evidence which by any provision hereof is specifically required to be furnished to the Bank, the Bank shall be under a duty to examine the same to determine whether it conforms to the requirements of this Agreement.

The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Bank unless it shall be proved that the Bank was negligent in ascertaining or acting upon the pertinent facts.

The Bank shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in aggregate principal amount of all said Defeased Obligations at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Bank not in conflict with the intent and purpose of this Agreement. For the purposes of determining whether the holders of the required principal amount of said Defeased Obligations have concurred in any such direction, Defeased Obligations owned by any obligor upon the Defeased Obligations, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with such obligor, shall be disregarded, except that for the purposes of

determining whether the Bank shall be protected in relying on any such direction only Defeased Obligations which the Bank knows are so owned shall be so disregarded.

The term "Responsible Officers" of the Bank, as used in this Agreement, shall mean and include the Chairman of the Board of Directors, the President, any Vice President and any Second Vice President, the Secretary and any Assistant Secretary, the Treasurer and any Assistant Treasurer, and every other officer and assistant officer of the Bank customarily performing functions similar to those performed by the persons who at the time shall be officers, respectively, or to whom any corporate trust matter is referred, because of his knowledge of and familiarity with a particular subject; and the term "Responsible Officer" of the Bank, as used in this Agreement, shall mean and include any of said officers or persons.

SECTION 18: Time shall be of the essence in the performance of obligations from time to time imposed upon the Bank by this Agreement.

SECTION 19: In the event conflicting demands or notices are made upon the Bank growing out of or relating to this Agreement or the Bank in good faith is in doubt as to what action should be taken hereunder, the Bank shall have the right at its election to:

(a) Withhold and stop all further proceedings in, and performance of, this Agreement with respect to the issue in question and of all instructions received hereunder in regard to such issue; and

(b) File a suit in interpleader and obtain an order from a court of appropriate jurisdiction in the State of Texas requiring all persons involved to interplead and litigate in such court their several claims and rights among themselves.

In the event the Bank becomes involved in litigation in connection with this Section, the City to the extent permitted by law agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses and attorney fees suffered or incurred by the Bank as a result thereof. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

The Bank may advise with legal counsel in the event of any dispute or question regarding the construction of any of the provisions hereof or its duties hereunder, and in the absence of negligence or bad faith on the part of the Bank, no liability shall be incurred by the Bank for any action taken pursuant to this Section and the Bank shall be fully protected in acting in accordance with the opinion and instructions of legal counsel that is knowledgeable and has expertise in the field of law addressed in any such legal opinion or with respect to the instructions given.

SECTION 20: On or before June 30, 2014, and on or before each June 30 that follows for so long as the Escrow Fund is maintained under this Agreement, the Bank shall forward to the City, to the attention of the Director of Finance, or other designated official of the City, a statement in detail of the Escrowed Securities and monies held, and the current income and maturities thereof, and the withdrawals of money, if any, from the Escrow Fund for the previous reporting period.

SECTION 21: Any notice, authorization, request or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid addressed as follows:

CITY OF PLANO, TEXAS
P. O. Box 860358
Plano, Texas 75086
Attention: Director of Finance

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
2001 Bryan Street, 11th Floor
Dallas, Texas 75201
Attention: Issuer Administrative Services

The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery.

Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) days prior notice thereof.

SECTION 22: Whenever under the terms of this Agreement the performance date of any provision hereof, including the payment dates for the Defeased Obligations shown in Exhibit A, shall be a Sunday or a legal holiday or a day when the Bank is authorized by law to close, then the performance thereof need not be made on such date but may be performed or paid, as the case may be, on the next succeeding business day of the Bank with the same force and effect as if made on the date of performance or payment and with respect to a payment, no interest shall accrue for the period after such date.

SECTION 23: The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement, in any and every said Defeased Obligation as executed, authenticated and delivered and in all proceedings pertaining thereto as said Defeased Obligations shall have been modified as provided in this Agreement. The City covenants that it is duly authorized under the Constitution and laws of the State of Texas to execute and deliver this Agreement, that all actions on its part for the payment of said Defeased Obligations as provided herein and the execution and delivery of this Agreement have been duly and effectively taken.

SECTION 24: If any one or more of the covenants or agreements provided in this Agreement on the part of the parties to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement. In the event any covenant or agreement contained in this Agreement is declared to be severable from the other provisions of this Agreement, written notice of such event shall immediately be given to each national rating service (Moody's Investors Service ["Moody's"], Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ["S&P"] or Fitch Investors Service ["Fitch"]) which has rated the Defeased Obligations on the basis of this Agreement.

SECTION 25: This Agreement shall terminate when the Defeased Obligations have been paid in full in accordance with the provisions of this Agreement. If any Defeased Obligation is not paid when due because of failure to satisfy a condition for payment such as

surrender and presentation to the paying agent, the nonpayment thereof shall not prevent the termination of this Agreement. Funds for the payment of such Defeased Obligations shall be held by the Bank for such purpose in accordance with Section 7 hereof. Any moneys or Escrowed Securities held in the Escrow Fund at termination and not needed for the payment of the Defeased Obligations shall be paid or transferred to the City.

SECTION 26: (a) Should the Bank not be able to legally serve or perform the duties and obligations under this Agreement, or should the Bank be declared to be insolvent or closed for any reason by federal or state regulatory authorities or a court of competent jurisdiction, the City, upon being notified or discovering the Bank's inability or disqualification to serve hereunder, shall forthwith appoint a successor to replace the Bank, and upon being notified of such appointment, the Bank shall (i) transfer all funds and securities held hereunder, together with all books, records and accounts relating to the Escrow Fund and the Defeased Obligations, to such successor and (ii) assign all rights, duties and obligations under this Agreement to such successor. If the City should fail to appoint such a successor within ninety (90) days from the date the City discovers, or is notified of, the event or circumstance causing the Bank's inability or disqualification to serve hereunder, the Bank, or a bondholder of the Defeased Obligations, may apply to a court of competent jurisdiction to appoint a successor or assigns of the Bank and such court, upon determining the Bank is unable to continue to serve, shall appoint a successor to serve under this Agreement and the amount of compensation, if any, to be paid to such successor for the remainder of the term of this Agreement for services to be rendered both for administering the Escrow Fund and for paying agent duties and responsibilities for the Defeased Obligations.

(b) Furthermore, the Bank may resign and be discharged from performing its duties and responsibilities under this Agreement upon notifying the City in writing of its intention to resign and requesting the City to appoint a successor. No such resignation shall take effect until a successor has been appointed by the City and such successor has accepted such appointment and agreed to perform all duties and obligations hereunder for a total compensation equal to the unearned proportional amount paid the Bank under Section 16 hereof for the administration of this Agreement and the unearned proportional amount of the paying agents fees for the Defeased Obligations due the Bank.

Any successor to the Bank shall be a bank, trust company or other financial institution authorized and empowered to perform the duties and obligations contemplated by this Agreement and organized and doing business under the laws of the United States or the State of Texas, having its principal office and place of business in the State of Texas, having a combined capital and surplus of at least \$50,000,000 and be subject to the supervision or examination by Federal or State authority.

Any successor or assigns to the Bank shall execute, acknowledge and deliver to the City and the Bank, or its successor or assigns, an instrument accepting such appointment hereunder, and the Bank shall execute and deliver an instrument transferring to such successor, subject to the terms of this Agreement, all the rights, powers and trusts created and established and to be performed under this Agreement. Upon the request of any such successor Bank, the City shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Bank all such rights, powers and duties. The term "Bank" as used herein shall be the Bank and its legal assigns and successor hereunder.

SECTION 27: The Bank shall not be responsible or liable to any person in any manner whatever for the sufficiency, correctness, genuineness, effectiveness, or validity of this

Agreement with respect to the City, or for the identity or authority of any person making or executing this Agreement on behalf of the City. The Bank is authorized by the City to rely upon the representations of the City with respect to this Agreement and the deposits made pursuant hereto and as to the City's right and power to execute and deliver this Agreement, and the Bank shall not be liable in any manner as a result of such reliance. The duty of the Bank hereunder shall only be to the City and the holders of the Defeased Obligations. Neither the City nor the Bank shall assign or attempt to assign or transfer any interest hereunder or any portion of any such interest. Any such assignment or attempted assignment shall be in direct conflict with this Agreement and be without effect.

SECTION 28: This Agreement shall be binding upon the City and the Bank and their respective successors and legal representatives and shall inure solely to the benefit of the holders of the Defeased Obligations, the City, the Bank and their respective successors and legal representatives. Furthermore, no alteration, amendment or modification of any provision of this Agreement (1) shall alter the firm financial arrangements made for the payment of the Defeased Obligations or (2) shall be effective unless (i) prior written consent of such alteration, amendment or modification shall have been obtained from the holders of all Defeased Obligations outstanding at the time of such alteration, amendment or modification and (ii) such alteration, amendment or modification is in writing and signed by the parties hereto; provided, however, the City and the Bank may, without the consent of either the holders of the Defeased Obligations, amend or modify the terms and provisions of this Agreement to cure any ambiguity, formal defect or omission in this Agreement. If the parties hereto agree to any amendment or modification to this Agreement, prior written notice of such amendment or proposed modification, together with the legal documents amending or modifying this Agreement, shall be furnished to each national rating service (Moody's Investors Service ["Moody's"], Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ["S&P"] or Fitch Investors Service ["Fitch"]) which has rated the Defeased Obligations on the basis of this Agreement.

SECTION 29: This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

SECTION 30: This Agreement shall be governed by the laws of the State of Texas.

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

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

Date: _____

By: _____
Bruce D. Glasscock, City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Date: _____

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Escrow Agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____ by _____, (*Authorized Representative*) _____ (*Title*) of **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a banking corporation organized and existing under the laws of the United States of America, on behalf of said banking corporation.

Notary Public, State of _____

EXHIBIT A
DEBT SERVICE REQUIREMENTS OF DEFEASED OBLIGATIONS

EXHIBIT B
LIST OF ESCROWED SECURITIES FOR ESCROW FUND

EXHIBIT C
ZERO INVESTMENTS

NOTICE OF REDEMPTION

CITY OF PLANO, TEXAS
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS
SERIES 2005
Dated May 15, 2005

NOTICE IS HEREBY GIVEN that a portion of the bonds of the above series maturing on September 1, 2020 and aggregating in principal amount \$_____ have been called for redemption on September 1, 2015 at the redemption price of par and accrued interest to the date of redemption, such bonds being identified as follows:

<u>Year of Maturity</u>	<u>Outstanding Principal Amount (\$)</u>	<u>Principal Amount Being Refunded (\$)</u>	<u>CUSIP Number</u>
2020	3,245,000		

ALL SUCH BONDS shall become due and payable on September 1, 2015, and interest thereon shall cease to accrue from and after said redemption date and payment of the redemption price of said obligations shall be paid to the registered owners thereof only upon presentation and surrender of such obligations to The Bank of New York Mellon Trust Company, N.A. (successor paying agent/registrars to The Bank of New York Trust Company, N.A.) at its designated offices at the following addresses:

<u>First Class/Registered/Certified</u>	<u>Express Delivery/Courier</u>	<u>By Hand Only</u>
The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust 111 Sanders Creek Pkwy. East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1st Floor East New York, NY 10286

THIS NOTICE is issued and given pursuant to the terms and conditions prescribed for the redemption of said bonds and pursuant to a resolution by the City Council of the City of Plano, Texas.

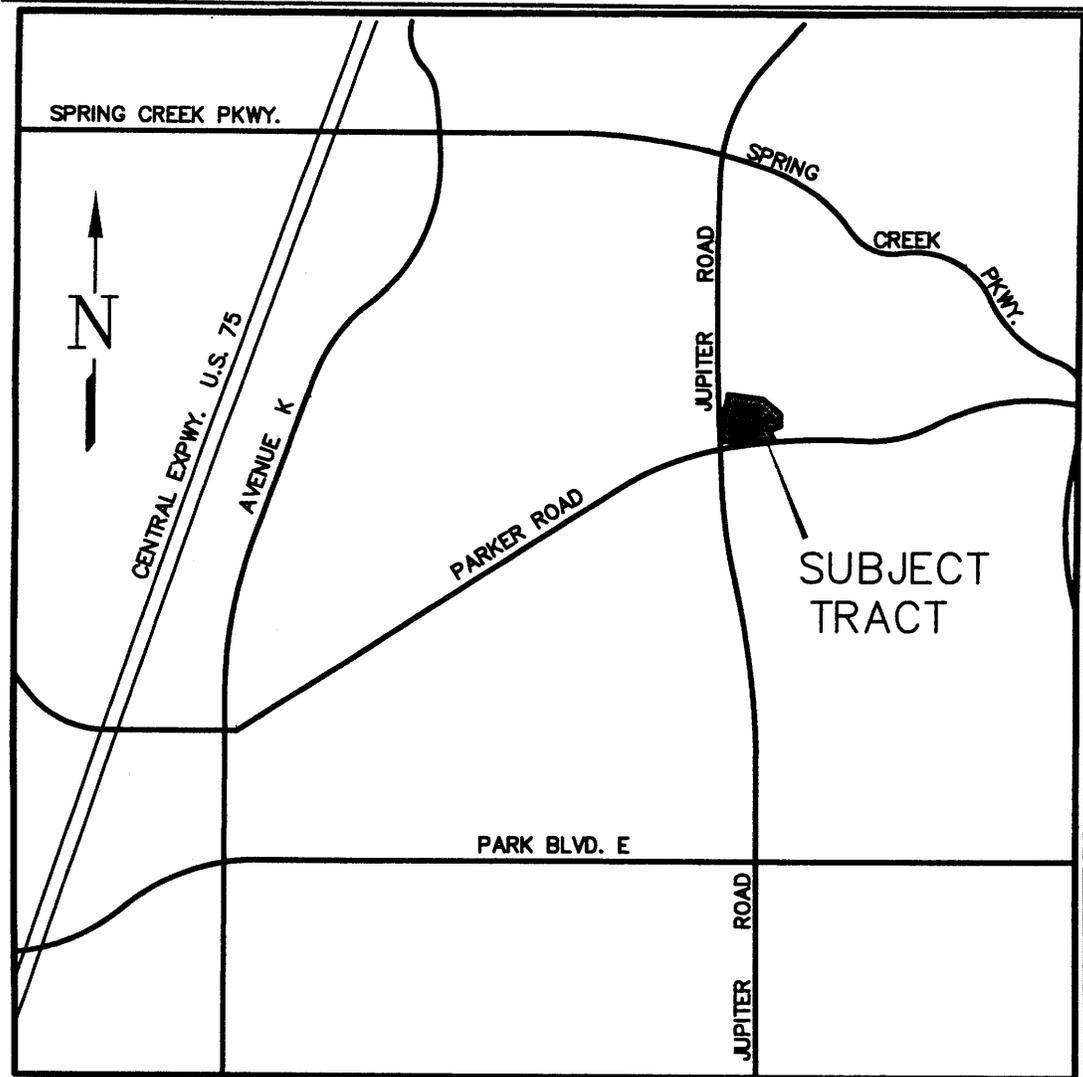
THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.
2001 Bryan Street, 11th Floor
Dallas, Texas 75201



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:	10/14/13			
Department:	Engineering			
Department Head	Gerald Cosgrove			
Project	Villas of Pecan Creek, Phase 2 - Proj. #6195-1			
Agenda Coordinator (include phone #): Kathleen Schonne X-7198				
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 20-foot Sanitary Sewer Easement within the Villas of Pecan Creek, recorded in Volume 1004, Page 410, of the Deed Records of Collin County, Texas and being situated in the J. M. Salmons Survey, Abstract No. 815, 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, Jen Texas I, LLC., 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: 2013-14	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: COMMENTS: This item has no financial impact. STRATEGIC PLAN GOAL: Abandoning all right, title and interest of the City to this easement relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
<p>This Sanitary Sewer Easement is no longer needed since the sanitary sewer line that was in this easement was relocated. The relocated sewer line is located in a new sanitary sewer easement that will be dedicated by plat. Staff supports the abandonment of this easement.</p>				
List of Supporting Documents: Location Map Ordinance Petition for Abandonment Copy of Easement	Other Departments, Boards, Commissions or Agencies N/A			

LOCATION MAP



EASEMENT

THE STATE OF TEXAS)
COUNTY OF COLLIN)

VOL 1004 PAGE 410

KNOW ALL MEN BY THESE PRESENTS:

That Abbie Lou Meaders, Et Al,

in consideration of the sum of One Dollar cash to said Grantors in hand paid by the City of Plano, the receipt of which is acknowledged, and the further consideration of the benefits to be derived by grantors on account of the construction, reconstruction and maintenance by the CITY OF PLANO of the sanitary sewer line in and through the hereinafter described premises, do hereby give and grant to the CITY OF PLANO, a municipal corporation of Collin County, Texas, the easement and right to construct, reconstruct and perpetually maintain a sanitary sewer line together with all necessary laterals in, upon and across the following described property:

BEING a strip of land twenty (20) feet in width located in the John M. Salmons Survey, Abstract No. 815, Collin County, Texas, and being over, under and across the tract of land conveyed to Abbie Lou Meaders by a deed now of record in Volume 917, Page 86 of the Deed Records of Collin County, Texas; said twenty-foot easement having a centerline more particularly described as follows:

BEGINNING at a point in the southerly boundary line of said tract of land, said point being located in the northerly right-of-way of FM 2514, said point further being located in a westerly direction a distance of 116.3 feet, more or less, from the most southerly southeast corner of said tract of land;

THENCE N 31°19'30" W a distance of 267.25 feet to a point of curvature of a curve to the right, said curve having a central angle of 22°40'00" and a radius of 500.0 feet;

THENCE around said curve to the right a distance of 197.80 feet to the point of tangency;

THENCE N 8°39'30" W a distance of 39.18 feet to an angle point;

THENCE N 85°45'00" W a distance of 240.07 feet to a point of curvature of a curve to the right, said curve having a central angle of 24°36'30" and a radius of 250.0 feet;

THENCE around said curve to the right a distance of 107.37 feet to the point of tangency of said curve;

THENCE N 61°06'30" W a distance of 11.9 feet to the point of curvature of a curve to the left, said curve having a central angle of 38°30'00" and a radius of 250.0 feet;

THENCE around said curve to the left a distance of 167.99 feet to the point of tangency of said curve;

THENCE S 80°21'30" W a distance of 6.62 feet, more or less, to a point in the western boundary line of said tract of land, said boundary line being the eastern right-of-way line of the extension of Jupiter Road.

TEMPORARY CONSTRUCTION EASEMENT

Temporary construction easement 100 feet in width with centerline as described above.

TO HAVE AND TO HOLD the same perpetually unto the CITY OF PLANO and its successors, together with the right and privilege at all times to enter said premises, or any part thereof, for the purpose of constructing, reconstructing, and maintaining said sewer, and for making connections therewith. And the grantee shall have the right to construct, reconstruct and perpetually maintain additional sewer lines at all times in the future, within the above described boundaries:

In consideration of the foregoing, grantors give to the CITY OF PLANO and its successors a temporary construction easement 100 feet in width, along the above described line; said temporary construction easement to terminate on date of each completion of said sewer line construction or reconstruction,

All upon the conditions that the CITY OF PLANO will at all times, after doing any work in connection with the construction, reconstruction or repair of said sewer, or any lateral thereof, restore said premises to the condition in which they were found before such work was undertaken, and that in the use of the rights and privileges herein granted, the CITY OF PLANO will not create a nuisance or do any act that will be detrimental to said premises.

WITNESS my hand this 18th day of May, 1976.

Abbie Lou Meador

UNOFFICIAL

COUNTY OF Collin

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Abbie Lou Meaders, whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 18th day of May, 1976.



Sumner Paul Lee
Notary Public in and for
Collin County, Texas

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____, whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the _____ day of _____, 1976.

Notary Public in and for

County, Texas

FILED FOR RECORD 14 DAY OF June A.D. 1976. at 3:10 P. M.
RECORDED 15 DAY OF June A.D. 1976.
JAS. R. WEBB, COUNTY CLERK, COLLIN COUNTY, TEXAS.
BY: Ann Bara DEPUTY.

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 20-foot Sanitary Sewer Easement within the Villas of Pecan Creek, recorded in Volume 1004, Page 410, of the Deed Records of Collin County, Texas and being situated in the J. M. Salmons Survey, Abstract No. 815, 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, Jen Texas I, LLC., 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 20-foot Sanitary Sewer Easement within the Villas of Pecan Creek, recorded in Volume 1004, Page 410, of the Deed Records of Collin County, Texas (hereinafter called "Easement") being situated in the J. M. Salmons Survey, Abstract No. 815, 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 Engineering 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.

DULY PASSED AND APPROVED this the 14th day of October, 2013.

Harry LaRosiliere, 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 20' Sanitary Sewer Easement (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 relocation of the sanitary sewer line through the subject property

2. The following public interest will be served as a result of the abandonment:

This relocation will all for the construction of new homes and will replace the older sewer lines in this area

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:

100% of the land is owned by Jen Texas 1, LLC.

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.

JEN TEXAS 1, LLC.

Typed Name of Owner

7405 Covewood Drive

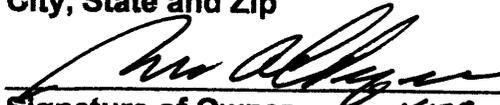
Address

Garland, Texas 75044

City, State and Zip

Dated: 10/24/15

Signature of Owner


VICE PRESIDENT

Contact Person for Property Owners:

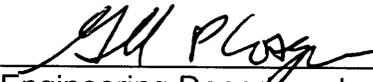
Name: Rich Alberque

Phone No: (214) 734-0360

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.



Engineering Department
City of Plano, Texas



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		October 14, 2013		
Department:		Office of Policy and Government Relations		
Department Head		Mark Israelson		
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
CAPTION				
<p>An Ordinance of the City Council of the City of Plano, Texas, approving a negotiated resolution between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2013 Annual Rate Review Mechanism filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; requiring the Company to reimburse Cities' reasonable ratemaking expenses; repealing conflicting resolutions or ordinances; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; adopting a savings clause; declaring an effective date; providing a most favored nations clause; and requiring delivery of this ordinance to the Company and the Steering Committee's legal counsel.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2013-14	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 financial impact. STRATEGIC PLAN GOAL: RRM agreements relate to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
This Ordinance approves the First Annual RRM Rate Increase under the renewed RRM Tariff.				
List of Supporting Documents: Memorandum, Ordinance, Attachment A			Other Departments, Boards, Commissions or Agencies	



Memorandum

Date: October 14, 2013

To: City Council

Through: Bruce Glasscock, City Manager

From: Mark Israelson, Director Office of Policy and Government Relations

Subject: Atmos Energy Rate Review Mechanism

The City, along with approximately 164 other cities served by Atmos Energy Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC"). On or about July 15, 2013, Atmos Mid-Tex filed with the City an application to increase natural gas rates pursuant to the Rate Review Mechanism ("RRM") tariff renewed by the City in 2013 as a continuation and refinement of the previous RRM rate review process.

The Atmos Mid-Tex RRM filing sought a \$22.7 million rate increase system-wide. The Ordinance resolves the Company's RRM filing by authorizing additional revenues to the Company of \$16.6 million system-wide. The settlement is expected to increase the average residential customer's bill by approximately \$0.74 per month. An Average Bill Comparison of base rates has been prepared for residential, commercial, industrial, and transportation customers.

The ACSC Executive Committee and ACSC legal counsel recommend that all ACSC Cities adopt the Ordinance implementing the rate change.

RRM Background:

The RRM tariff and the process implementing that tariff were created collaboratively by ACSC and Atmos Mid-Tex as an alternative to the legislatively-authorized GRIP surcharge process. ACSC has opposed GRIP because it constitutes piecemeal ratemaking, does not allow any review of the reasonableness of Atmos' expenditures, and does not allow participation by cities or recovery of cities' rate case expenses. In contrast, the RRM process has allowed for a more comprehensive rate review and annual adjustment as a substitute for GRIP filings. ACSC's consultants have calculated that had Atmos filed under the GRIP provisions, it would have received additional revenues from ratepayers in excess of \$28 million.

Purpose of the Ordinance:

Rates cannot change without the adoption of rate ordinances by cities. The purpose of the Ordinance is to approve rates (shown on "Attachment A" to the Ordinance) that reflect the negotiated rate changes pursuant to the RRM process and to ratify the recommendation of the ACSC Executive Committee.

Approval of the Ordinance will result in the implementation of new rates that increase Atmos Mid-Tex's revenues effective November 1, 2013.

Reasons Justifying Approval of the Negotiated Resolution:

The alternative to a resolution of the RRM filing would be a GRIP filing by the Company, based upon the Railroad Commission's decision in the 2012 rate case. A GRIP filing would entitle the Company to receive more than \$28 million in additional revenues, with ACSC being precluded from reviewing the reasonableness of the GRIP filing. The ACSC Executive Committee recommends that ACSC members take action to approve the Ordinance authorizing new rate tariffs.

Explanation of "Be It Ordained" Paragraphs:

1. This paragraph approves all findings in the Ordinance.
2. This section adopts the attached tariffs ("Attachment A") in all respects and finds the rates set pursuant to the attached tariffs to be just, reasonable and in the public interest. Note that only new tariffs or existing tariffs being revised are attached to the Ordinance. Existing tariffs not being changed in any way are not attached to the Ordinance.
3. This section requires the Company to reimburse ACSC for reasonable ratemaking costs associated with reviewing and processing the RRM application.
4. This section repeals any resolution or ordinance that is inconsistent with this Ordinance.
5. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.
6. This section is a savings clause, which provides that if any section(s) is later found to be unconstitutional or invalid, that finding shall not affect, impair or invalidate the remaining provisions of this Ordinance. This section further directs that the remaining provisions of the Ordinance are to be interpreted as if the offending section or clause never existed.
7. This section is a "most favored nations" clause. It provides that if the Company settles with other parties on better terms than agreed to with the ACSC Cities, the ACSC Cities (including the City) will automatically receive the benefit of those better terms.
8. This section provides for an effective date upon passage.
9. This paragraph directs that a copy of the signed Ordinance be sent to a representative of the Company and legal counsel for ACSC.

An Ordinance of the City Council of the City of Plano, Texas, approving a negotiated resolution between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2013 Annual Rate Review Mechanism filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; requiring the Company to reimburse Cities' reasonable ratemaking expenses; repealing conflicting resolutions or ordinances; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; adopting a savings clause; declaring an effective date; providing a most favored nations clause; and requiring delivery of this ordinance to the Company and the Steering Committee's legal counsel.

WHEREAS, the City of Plano, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC"), a coalition of approximately 164 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review of and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process controlled in a three-year experiment by ACSC Cities as a substitute to the current Gas Reliability Infrastructure Program ("GRIP") process instituted by the Legislature; and

WHEREAS, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company's 2007 rate case and authorizing the RRM tariff; and

WHEREAS, in 2013, ACSC and the Company negotiated a renewal of the RRM tariff process for an additional five years; and

WHEREAS, the City passed an ordinance renewing the RRM tariff process for the City for an additional five years; and

WHEREAS, the RRM renewal tariff contemplates reimbursement of ACSC Cities' reasonable expenses associated with RRM applications; and

WHEREAS, on or about July 15, 2013, the Company filed with the City its first annual RRM filing under the renewed RRM tariff, requesting to increase natural gas base rates by \$22.7 million; and

WHEREAS, ACSC coordinated its review of Atmos Mid-Tex's RRM filing through its Executive Committee, assisted by ACSC attorneys and consultants, to resolve issues identified by ACSC in the Company's RRM filing; and

WHEREAS, the ACSC Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities approve the attached rate tariffs ("Attachment A" to this Ordinance), which will increase the Company's revenues by \$16.6 million; and

WHEREAS, the attached tariffs implementing new rates are consistent with the negotiated resolution reached by ACSC Cities and are just, reasonable, and in the public interest;

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

Section I. That the findings set forth in this Ordinance are hereby in all things approved.

Section II. That the City Council finds the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs which are attached hereto and incorporated herein as Attachment A, are just and reasonable and are hereby adopted.

Section III. That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC Cities in processing the Company's RRM application.

Section IV. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

Section V. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section VI. That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

Section VII. That if ACSC determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in Atmos' 2013 RRM filing would be more beneficial to the ACSC Cities than the terms of the attached tariffs, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally and automatically accrue to the ACSC Cities, including the City, without the need for

City to take any further action. If this automatic adjustment occurs, Atmos Mid-Tex shall promptly thereafter file with the City an amended tariff documenting the adjustment to rates.

Section VIII. That this Ordinance shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after November 1, 2013.

Section IX. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Chris Felan, Manager of Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

DULY PASSED AND APPROVED this 14th day of October, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Attachment A

Atmos Mid-Tex Tariffs
Effective November 1, 2013

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	R – RESIDENTIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Application

Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 17.70 per month
Rider CEE Surcharge	\$ 0.02 per month ¹
Total Customer Charge	\$ 17.72 per month
Commodity Charge – All <u>Ccf</u>	\$0.05831 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

¹ Reference Rider CEE - Conservation And Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2013.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	C – COMMERCIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Application

Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 30,000 Ccf.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 35.75 per month
Rider CEE Surcharge	\$ 0.10 per month ¹
Total Customer Charge	\$ 35.85 per month
Commodity Charge – All Ccf	\$ 0.06893 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

¹ Reference Rider CEE - Conservation And Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2013.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Application

Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 3,500 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 3,500 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 620.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2565 per MMBtu
Next 3,500 MMBtu	\$ 0.1879 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0403 per MMBtu

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Replacement Index

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions

In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Application

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 620.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2565 per MMBtu
Next 3,500 MMBtu	\$ 0.1879 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0403 per MMBtu

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Imbalance Fees

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

Monthly Imbalance Fees

Customer shall pay Company the greater of (i) \$0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest "midpoint" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" during such month, for the MMBtu of Customer's monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer's receipt quantities for the month.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Replacement Index

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement

A transportation agreement is required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions

In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Provisions for Adjustment

The Commodity Charge per Ccf (100 cubic feet) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Ccf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(Bl_i + (HSF_i \times ADD))}$$

Where

- i = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification
- $WNAF_i$ = Weather Normalization Adjustment Factor for the i^{th} rate schedule or classification expressed in cents per Ccf
- R_i = Commodity Charge rate of temperature sensitive sales for the i^{th} schedule or classification.
- HSF_i = heat sensitive factor for the i^{th} schedule or classification divided by the average bill count in that class
- NDD = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.
- ADD = billing cycle actual heating degree days.
- Bl_i = base load sales for the i^{th} schedule or classification divided by the average bill count in that class

The Weather Normalization Adjustment for the j th customer in i th rate schedule is computed as:

$$WNA_j = WNAF_i \times q_{ij}$$

Where q_{ij} is the relevant sales quantity for the j th customer in i th rate schedule.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS AND UNINCORPORATED AREAS	
EFFECTIVE DATE:	Bills Rendered on or after 11/01/2013	

Base Use/Heat Use Factors

Weather Station	<u>Residential</u>		<u>Commercial</u>	
	Base use <u>Ccf</u>	Heat use <u>Ccf/HDD</u>	Base use <u>Ccf</u>	Heat use <u>Ccf/HDD</u>
Abilene	9.97	0.1318	96.50	0.5659
Austin	11.05	0.1262	189.59	0.7195
Dallas	13.13	0.1832	171.84	0.8797
Waco	9.78	0.1262	117.60	0.5774
Wichita Falls	10.99	0.1297	107.70	0.5041

Weather Normalization Adjustment (WNA) Report

On or before June 1 of each year, the company posts on its website at atmosenergy.com/mtx-wna, in Excel format, a *Weather Normalization Adjustment (WNA) Report* to show how the company calculated its WNAs factor during the preceding winter season. Additionally, on or before June 1 of each year, the company files one hard copy and a Excel version of the *WNA Report* with the Railroad Commission of Texas' Gas Services Division, addressed to the Director of that Division.



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:		10/14/13		
Department:		Budget & Research		
Department Head		Karen Rhodes-Whitley		
Agenda Coordinator (include phone #): Ben Petty (7146)				
CAPTION				
An Ordinance of the City of Plano, Texas, approving the carrying-forward of certain fiscal year 2012-13 funds to fiscal year 2013-14; 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:	2013-14	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	2,043,550	0
BALANCE		0	2,043,550	0
FUND(S): GENERAL FUND, WATER & SEWER FUND, SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND, LOSS FUND.				
COMMENTS: Funds are available from the FY 2012-13 approved budget in the listed funds as carry-forwards into FY 2013-14 for the completion of various projects and other purchases. STRATEGIC PLAN GOAL: Carrying-forward of available funds for the completion of projects relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
The Ordinance approves the FY 2012-13 Carry-Forward List to FY 2013-14 and sets the level of transfers for the various funds, as reviewed by City Council.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
2012-13 Carry-Forward Request Log				

An Ordinance of the City of Plano, Texas, approving the carrying-forward of certain fiscal year 2012-13 funds to fiscal year 2013-14; and providing an effective date.

WHEREAS, on September 9, 2013, the City Council approved the Budget for fiscal year 2013-14 by passing Ordinance 2013-9-8; and

WHEREAS, State law provides that cities have the authority to carry-forward funds from previous fiscal year to the current fiscal year; and

WHEREAS, the City Council, upon full consideration of the matter, is of the opinion that it is in the best interest of the City and its citizens to carry-forward remaining funds from fiscal year 2012-13 to fiscal year 2013-14.

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

Section I. Subject to the applicable provisions of State law and the City Charter, the City Council hereby approves carrying-forward the funds listed below from the fiscal year 2012-13 Budget to the fiscal year 2013-14 Budget:

A.	General Fund	\$1,651,531
B.	Water & Sewer Fund	\$45,395
C.	Sustainability & Environmental Services Fund	\$316,624
D.	Loss Fund	\$30,000

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

DULY PASSED AND APPROVED this the 14th day of October, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

**CARRY FORWARD REQUESTS
2012-13 FUNDS TO 2013-14**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
BUDGETED PROJECTS/ITEMS							
112	City Manager	Contractual	\$ 25,000	Consultant fees for staff retreats (2 each for Council and ET, with a 3rd for Council approaching).	112.6312	112.6312	\$ 25,000
115	City Secretary	Training	\$ 2,000	Due to the timing of the 2013 election, staff was unable to attend the International Institute of Municipal Clerk's annual conference and funds will be used for the 2014 event.	115.6309	115.6309	\$ 2,000
116	Marketing & Community Engagement	Contractual	\$ 25,000	To provide assistance to the Graphic Designer due to increased workload.	116.6312	116.6312	\$ 25,000
215	Non-Departmental	In-Kind Services	\$ 13,000	Grant funding for the Plano International Festival (\$3,000) and Feast-ival (\$10,000) needs to be carried forward to FY 2013-14. This amount is to be set aside to cover In-kind City services for the festivals. The funds are for personnel overtime hours (mainly Police overtime costs) who will be working at the events on October 5 and October 26.	215.6499	215.6499	\$ 13,000
215	Non-Departmental	Retirement Pay-outs	\$ 500,000	Funding available from retirements re-estimate FY 2012-13.	215.6199	215.6199	\$ 500,000
215	Non-Departmental	Contractual	\$ 30,000	City Attorney Executive Search	215.6312	215.6312	\$ 30,000
243	Economic Development	Photography/Promotional Material	\$ 10,000	Provide lifestyle/community asset photography for multi-departmental use.	243.6306	243.6306	\$ 10,000
321	Records Management	Travel	\$ 3,000	For Texas Open Records Act classes, the ARMA Annual Conference and out of state Laserfiche Conference.	321.6307	321.6307	\$ 3,000
321	Records Management	Training	\$ 1,000	For Records staff to attend local ARMA meetings and Laserfiche training sessions.	321.6309	321.6309	\$ 1,000
352	Facilities	Minor Apparatus	\$ 50,000	Funds for the planned fitness equipment. The fitness room will not be completed until January 2014.	352.6208	352.6208	\$ 50,000
352	Facilities	Utilities-Electric	\$ 100,000	In anticipation for increased electricity usage in the upcoming fiscal year.	352.6331	352.6331	\$ 100,000
352	Facilities	Utilities-Gas	\$ 50,000	It is anticipated that the gas utility company will increase gas prices to offset their increased operating expenses.	352.6332	352.6332	\$ 50,000
381	Human Resources	Training	\$ 14,400	Development of a High Performance Leadership program for Manage and next level employees. Implemented in January 2014.	381.6312	381.6312	\$ 14,400
619	Property Standards	Contractual	\$ 39,750	To fund contracted abatement services needed to secure open, unsecured residential and commercial structures, repair pool enclosures in disrepair, and to complete fence enclosures that do not function properly as pool enclosures.	619.6312	619.6312	\$ 39,750
621	Neighborhood Reinvestment	Contractual	\$ 365,512	Neighborhood study contracted through Catalyst Commercial Inc. and is currently underway costing \$134,488. The second phase will be to implement housing reinvestment programs based on the results of the study.	621.6312	621.6312	\$ 365,512
622	Planning	Contractual	\$ 9,869	Final stage of project with consultant Duncan and Associates in relation to the Zoning Ordinance.	622.6312	622.6312	\$ 9,869
622	Planning	Contractual	\$ 25,000	Sherry Sefko - The Town Planner, LLC. Contract.	622.6312	622.6312	\$ 25,000
624	Building Inspections	Reaccreditation	\$ 4,000	Reaccreditation for International Accreditation Service Evaluation.	624.6446	624.6446	\$ 4,000
634	Field Services	Maintenance	\$ 10,000	Funding is needed to purchase for off-season in-house irrigation repairs of systems due to drought related damage. Carry forward funding will be used in 2013-14 to help recover and catch up from the exceptional situation.	634.6229	634.6229	\$ 10,000
634	Field Services	Travel and Training	\$ 3,000	Budgeted funds for the superintendent, supervisor, and key personnel backflow and irrigation travel to locations where CEU training occurred or for the purpose of benchmarking operations were not used in 2012-13 due to turnover and vacancies. Carry forward funds will be used for key staff members to travel in 2013-14 to locations involved with advance municipal irrigation water management conservation.	634.6307	634.6307	\$ 3,000
634	Field Services	Travel and Training	\$ 7,500	Budgeted funds for backflow and irrigation personnel for local CEU training were not used in 2012-13 due to turnover and vacancies. Carry forward funds will be used for newly reclassified positions during 2013-14 related to municipal irrigation water management and conservation.	634.6309	634.6309	\$ 7,500
636	Athletics	Minor Apparatus	\$ 10,000	Funding to purchase a Segway was approved for \$7,000 as a supplement in the FY 2012-13 budget. The purchase was delayed since it was determined that a heavy duty model appropriate for park conditions was necessary, but would cost an additional \$3,000. The physical procurement will not occur until FY 2013-14.	636.8421	636.8421	\$ 10,000

CARRY FORWARD REQUESTS 2012-13 FUNDS TO 2013-14								
Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount	
					From	To		
638	Parks Technical Services	Advertising	\$ 15,000	Marketing material in Parks brochure.	638.6306	638.6306	\$ 15,000	
643	Park Support Services	Travel and Training	\$ 1,000	Budgeted funds for the Playground Safety Inspection Certification course for Park Support Playground Techs to travel to were not used in 2012-13 since the department was unable to locate a course within a reasonable distance. Several options have been identified and will be scheduled for 2013-14 as they come available.	643.6307	643.6307	\$ 1,000	
643	Park Support Services	Licenses/Certificates	\$ 2,500	Budgeted funds for the Playground Safety Inspection Certification course for Park Support Playground Techs to travel to were not used in 2012-13 since the department was unable to locate a course within a reasonable distance. Several options have been identified and will be scheduled for 2013-14 as they come available. Several options have been identified and will be scheduled for 2013-14.	643.6446	643.6446	\$ 2,500	
647	Sports Turf Maintenance	Chemicals	\$ 22,500	An additional round of fertilizer for athletic fields and facilities will be funded by this request if approved. Fertilization of the entire athletic site currently occurs three times annually. The extra fourth application will help catch up and promote recovery from drought related conditions and re-establish healthy grass if water restrictions ease. This application targets practice and warm-up areas that receive intensive uses by leagues, tournaments and the general public.	647.6212	647.6212	\$ 22,500	
647	Sports Turf Maintenance	Chemicals	\$ 25,000	An additional round of ant bait for athletic fields and facilities will be funded by this request if approved. Curb-to-curb ant bait is applied two times annually at 16 athletic-oriented park sites encompassing 625 acres which includes 450 acres of sports fields. The application is in response to several serious ant bite incidents and concerns. The result of an additional application will be monitored for effectiveness in mitigating ongoing ant problems that affect players, spectators and general public that frequent the City's parks. A new invasive species of ants has also been identified that is cause	647.6212	647.6212	\$ 25,000	
647	Sports Turf Maintenance	Contractual	\$ 200,000	Funds were carried over from the FY 2011-12 to the FY 2012-13 budget with the intent to contractually fix athletic field surfaces that have been severely impacted by the drought. Grading, topdressing aerifying, sodding, seeding, etc. could not be initiated (second year in a row) due to water restrictions. One time funding is requested to be carried forward again to recover athletic fields if water restrictions are lifted in FY 2013-14. Funds will be used to make turf repairs and to mitigate undulating surfaces at various sports fields.	647.6312	647.6312	\$ 200,000	
648	Ground Maintenance Service District 2	Utilities-Water	\$ 52,000	Annual fee payable per agreement with Hewlett Packard (formerly EDS) for watering city medians maintained by HP has not yet been completed and will be submitted for payment at the time an invoice from HP (Legacy Assoc.) is received. Multiple requests for the invoice have been initiated by city staff.	648.6333	648.6333	\$ 52,000	
658	Ground Maintenance Service District 3	Contractual	\$ 32,000	Budgeted funds were not used for normal seasonal overtime activities such as mowing rotations and landscape maintenance following rain delays due to the drought conditions. Additional funding will be needed in 2013-14 for landscaping rehabilitation due to 2011-12 drought damaged recovery and irrigation repairs currently on hold due to Stage 3 water restrictions.	658.6312	658.6312	\$ 32,000	
684	Schimelpfenig Library	Workstation Renovation	\$ 3,500	To update workstations for 3 librarians.	684.6312	684.6312	\$ 3,500	
01	Subtotal General Fund		\$ 1,651,531				\$ 1,651,531	
723	Utility Engineering	Consultants	\$ 19,395	The Engineering Department will be hiring Freese & Nichols to an engineering study. This was not included in next year's budget. Approximate cost is \$8,000. Additionally we plan to have NCTCOG do additional work with the aerial photography work that is normally planned.	723.6312	723.6312	\$ 19,395	
764	Pumping Facilities	Mowing Services	\$ 26,000	Re-bidding contract due to incumbent contractor going bankrupt.	764.6313	764.6313	\$ 26,000	
41	Subtotal Water & Sewer		\$ 45,395				\$ 45,395	

CARRY FORWARD REQUESTS 2012-13 FUNDS TO 2013-14								
Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount	
					From	To		
712	Environmental Education and Community Outreach	Contractual Help	\$ 14,000	Part-time assistant position to help with the responsibilities related to the rentals and upkeep of the Environmental Education Center. As the facility continues to be utilized, the time-consuming activities are taking staff members away from their primary responsibilities.	712.6312	712.6312	\$ 14,000	
714	Compost Operations & Marketing	Mulch Colorant	\$ 11,470	Delay in ordering is necessary to ensure fresh product and colorant quality due to the relatively short shelf life. Coloring for fall will begin within 3-4 weeks and these funds will be needed to stock for the fall season.	714.6212	714.6212	\$ 11,470	
714	Compost Operations & Marketing	Potting Mix	\$ 34,085	Re-bidding an eight (8) quart Texas Pure Powerful Potting Mix product bag for retail sales. Initial RFP quotes exceeded the budgeted funding for all three bag types. This small bag and new product meets market demand for smaller and lighter bags of organic mix for grocery store resale.	714.6281	714.6281	\$ 34,085	
714	Compost Operations & Marketing	Compost Hauling	\$ 40,000	Contracted hauling of Texas Pure Products were delayed to allow NTMWD to complete internal compost feasibility evaluations. The evaluations provide a better understanding and expectation of the City's role as contractor for the Regional Composting Program for the remaining two years ending September 30, 2015.	714.6312	714.6312	\$ 40,000	
714	Compost Operations & Marketing	Contractual Repairs	\$ 22,069	Contractual repairs to the two Texas Pure operational facilities were delayed to allow NTMWD to complete internal compost feasibility evaluations. The evaluations provide a better understanding and expectation of the City's role as contractor for the Regional Composting Program for the remaining two years ending September 30, 2015.	714.6314	714.6314	\$ 22,069	
714	Compost Operations & Marketing	Equipment	\$ 100,500	Various equipment to enhance operational efficiencies and improve Texas Pure product quality were delayed to allow NTMWD to complete internal compost feasibility evaluations. The evaluations provide a better understanding and expectation of the City's role as contractor for the Regional Composting Program for the remaining two years ending September 30, 2015.	714.8416	714.8416	\$ 100,500	
714	Compost Operations & Marketing	Equipment	\$ 63,000	Various equipment to enhance operational efficiencies and improve Texas Pure product quality were delayed to allow NTMWD to complete internal compost feasibility evaluations. The evaluations provide a better understanding and expectation of the City's role as contractor for the Regional Composting Program for the remaining two years ending September 30, 2015.	714.8421	714.8421	\$ 63,000	
716	Environmental Education Building	Storage Cabinets	\$ 5,000	Design, construction and installation of storage cabinets to store educational resources and demonstration pieces.	716.6319	716.6319	\$ 5,000	
748	Environmental Waste Collections	Printing	\$ 26,500	Printing the revised EWS's new homeowner informational packet which is provided throughout the year to all new homeowners moving into Plano. In addition, completing the roll-out of the Recycle Right Plano educational campaign and Gold Star Cart Program. Both projects were delayed due to the re-organizational shift of the former Sustainability & Environmental Services Department and design delays.	748.6301	748.6301	\$ 26,500	
45	Subtotal Sustainability & Environmental Services		\$ 316,624				\$ 316,624	
117	Risk Management	Office Supplies	\$ 10,000	Anticipating the move to the Municipal Center in FY 2013-14, we will need additional funding to cover the cost of the move.	117.6201	117.6201	\$ 10,000	
117	Risk Management	Software	\$ 20,000	To purchase a software system to help organize and track several thousand Certificates of Insurance received each year..	117.8451	117.8451	\$ 20,000	
65	Loss Fund		\$ 30,000				\$ 30,000	
GRAND TOTAL CARRY FORWARDS REQUESTED			\$ 2,043,550	GRAND TOTAL CARRY FORWARDS APPROVED			\$ 2,043,550	



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:		10/14/2013		
Department:		Marketing and Community Engagement		
Department Head		Mary Vail-Grube		
Agenda Coordinator (include phone #): Kimberly Simmons - 7307				
CAPTION				
<p>An Ordinance of the City of Plano, Texas amending Section 2-1(e) of the City Code of Ordinances of the City of Plano, Texas to authorize use of the City logos and/or brand by licensees of the Plano Centre for the duration of their City license agreement and by partners or sponsors of the City of Plano Convention and Visitors Bureau in conjunction with events promoting, marketing and publicizing the City upon written approval of the City Manager or his designee; providing a severability clause, a repealer clause, a savings clause, a penalty clause, a publication clause and an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2013-14	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.</p> <p>STRATEGIC PLAN GOAL: An Ordinance of the City of Plano amending Section 2-1 (e) of the City Code of Ordinances of the City of Plano, Texas to authorize use of the City logos and/or brand by licensees of the Plano Centre for the duration of their City license agreement and by partners or sponsors of the City of Plano Convention and Visitors Bureau in conjunction with events promoting, marketing and publicizing the City relates to the City's goal of a Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
<p>Staff recommends that the City Council approve an amendment to the ordinance authorizing the use of the City logo and brand in order to support the Plano Centre & Plano Convention and Visitors Bureau and enhance the ability to work with partners and sponsors of programs and events at that facility and that promote the City of Plano.</p> <p>Amendment to Section 2-1 (e) to authorize use of the city logos and/or brand by licensees of the Plano Centre for the duration of their City license agreement and by partners or sponsors of the City of Plano Convention and Visitors Bureau in conjunction with events promoting, marketing and publicizing the city upon written approval of the City Manager or his designee.</p>				



CITY OF PLANO COUNCIL AGENDA ITEM

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

An Ordinance of the City of Plano, Texas amending Section 2-1(e) of the City Code of Ordinances of the City of Plano, Texas to authorize use of the City logos and/or brand by licensees of the Plano Centre for the duration of their City license agreement and by partners or sponsors of the City of Plano Convention and Visitors Bureau in conjunction with events promoting, marketing and publicizing the City upon written approval of the City Manager or his designee; providing a severability clause, a repealer clause, a savings clause, a penalty clause, a publication clause and an effective date.

WHEREAS, the City Council adopted the official City of Plano logo by Ordinance No. 80-8-17 which was repealed and replaced by Ordinance No. 2010-10-13 which was repealed and replaced by Ordinance 2013-4-12 which adopted a new brand and official logo for the City of Plano; and

WHEREAS, the City Council wishes to authorize licensees of the Plano Centre to use the City logos and/or brand for the duration of their City license agreement upon written approval of the City Manager or his designee; and

WHEREAS, the City Council wishes to authorize partners or sponsors of the City of Plano Convention and Visitors Bureau to use the City logos and/or brand in conjunction with their participation in events promoting, marketing and publicizing the City; and

WHEREAS, the City Council finds that it is in the best interest of the City of Plano to amend Section 2-1(e) of the City of Plano, Texas Code of Ordinances to authorize use of the City logos and/or brand by licensees of the Plano Centre for the duration of their City license agreement and by partners or sponsors of the City of Plano Convention and Visitors Bureau in conjunction with events promoting, marketing and publicizing the City upon written approval of the City Manager or his designee.

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

Section I. Section 2-1(e) of the City of Plano, Texas Code of Ordinances is hereby repealed and replaced as follows:

“(e) The following persons or entities may use the official logo, prior official logo, or brand of the City with the prior written approval of the City Manager or his designee:

1. non-profit agencies receiving City grant funds for the duration of their City grant funding agreement;
2. licensees of the Plano Centre for the duration of their City license agreement in conjunction with promoting, marketing and publicizing their event at Plano Centre;
3. contractors providing goods, services or materials to the City in conjunction with City projects or official City business for the duration of their City contract; and
4. partners or sponsors of the City of Plano Convention and Visitors Bureau in conjunction with their participation in events promoting, marketing and publicizing the City.”

Section II. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of

competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

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

Section IV. 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 provisions at the time of passage of this ordinance.

Section V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

DULY PASSED AND APPROVED this the 14th day of October, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Public Hearing and Consideration of Ordinances Requested in Zoning Cases 2013-16 through 2013-20 all of which are limited to the repeal of certain Specific Use Permits for Private Clubs. The following ordinances are proposed to be repealed which, if approved, will result in the rescission of the Specific Use Permit for an additional use of a Private Club and the applicant is the City of Plano.

- (a) **Zoning Case 2013-16** - To rescind Specific Use Permit #506 for Private Club on 0.1± acre located on the west side of Bishop Road, 70± feet north of Kincaid Road. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #506 for Private Club.
- (b) **Zoning Case 2013-17** - To rescind Specific Use Permit #502 for Private Club on 0.6± acre located on the west side of Bishop Road, 345± feet south of Legacy Drive. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #502 for Private Club.
- (c) **Zoning Case 2013-18** - To rescind Specific Use Permit #509 for Private Club on 1.1± acres located on the west side of H Avenue, 250± feet north of 15th Street. Zoned Downtown Business/Government with Heritage Resource #24 Designation and Specific Use Permit #509 for Private Club.
- (d) **Zoning Case 2013-19** - To rescind Specific Use Permit #450 for Private Club on 0.1± acre located on the east side of the DART railroad tracks, 25± feet north of 15th Place. Zoned Downtown Business/Government with Specific Use Permit #450 for Private Club.
- (e) **Zoning Case 2013-20** - To rescind Specific Use Permit #533 for Private Club on 0.3± acre located at the northwest corner of K Avenue and 16th Street. Zoned Downtown Business/Government with Specific Use Permit #533 for Private Club.

All locations are located within the City of Plano, Collin County, Texas, and the repeal of each ordinance will amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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: City of Plano

DATE: September 17, 2013
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 16, 2013

**AGENDA ITEM NO. 7B - PUBLIC HEARING
ZONING CASE 2013-16
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #506 for Private Club on 0.1± acre located on the west side of Bishop Road, 70± feet north of Kincaid Road. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #506 for Private Club.

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

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

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

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

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: October 14, 2013 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

EH/dc

xc: Cliff Bormann, Permit Services Manager

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 16, 2013

Agenda Item No. 7B

Public Hearing: Zoning Case 2013-16

Applicant: City of Plano

DESCRIPTION:

Request to rescind Specific Use Permit #506 for Private Club on 0.1± acre located on the west side of Bishop Road, 70± feet north of Kincaid Road. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #506 for Private Club.

REMARKS:

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #506 for Private Club. 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 2005, voters approved the sale of alcoholic beverages for on-premise consumption through a mixed beverage permit issued by the Texas Alcoholic Beverage Commission (TABC). Prior to this time, the only option was a private club permit from TABC, with an SUP approved by the city. From 2007 to 2008, the City Council rescinded numerous Specific Use Permits for Private Clubs as restaurants switched to mixed beverage permits. However, there are still numerous SUPs in place for properties where restaurants have ceased operations and since 2008, more restaurants have switched permit types.

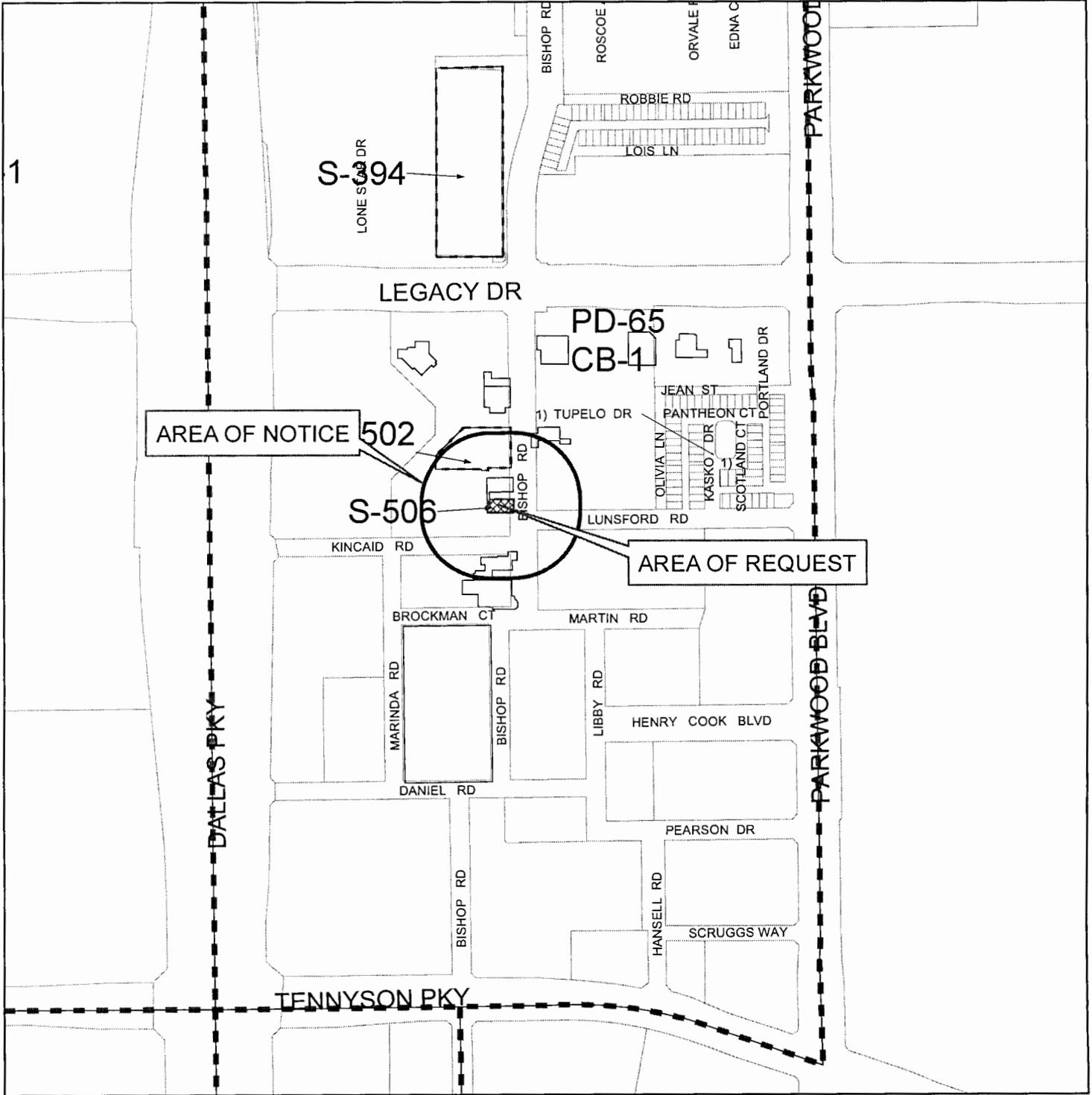
Therefore, given recent changes to city ordinances related to private clubs, per City Council's direction, the Planning & Zoning Commission called a public hearing to rescind SUPs for private clubs on properties not presently being used for on-premise alcohol sales and for properties where establishments are now operating with mixed beverage permits.

Half Shells has obtained a Mixed Beverage Permit from TABC to serve alcoholic beverages; therefore, it no longer needs the SUP for a Private Club issued by the City of Plano. Staff recommends that the Private Club SUP be rescinded, since the SUP is

not necessary for the restaurant to sell alcoholic beverages. Additionally, a SUP for Private Club is no longer required in the Central Business-1 base zoning district. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

RECOMMENDATION:

Recommended for approval as submitted.



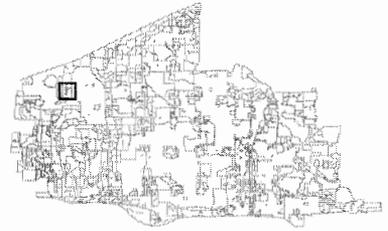
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AREA OF NOTICE 502

AREA OF REQUEST



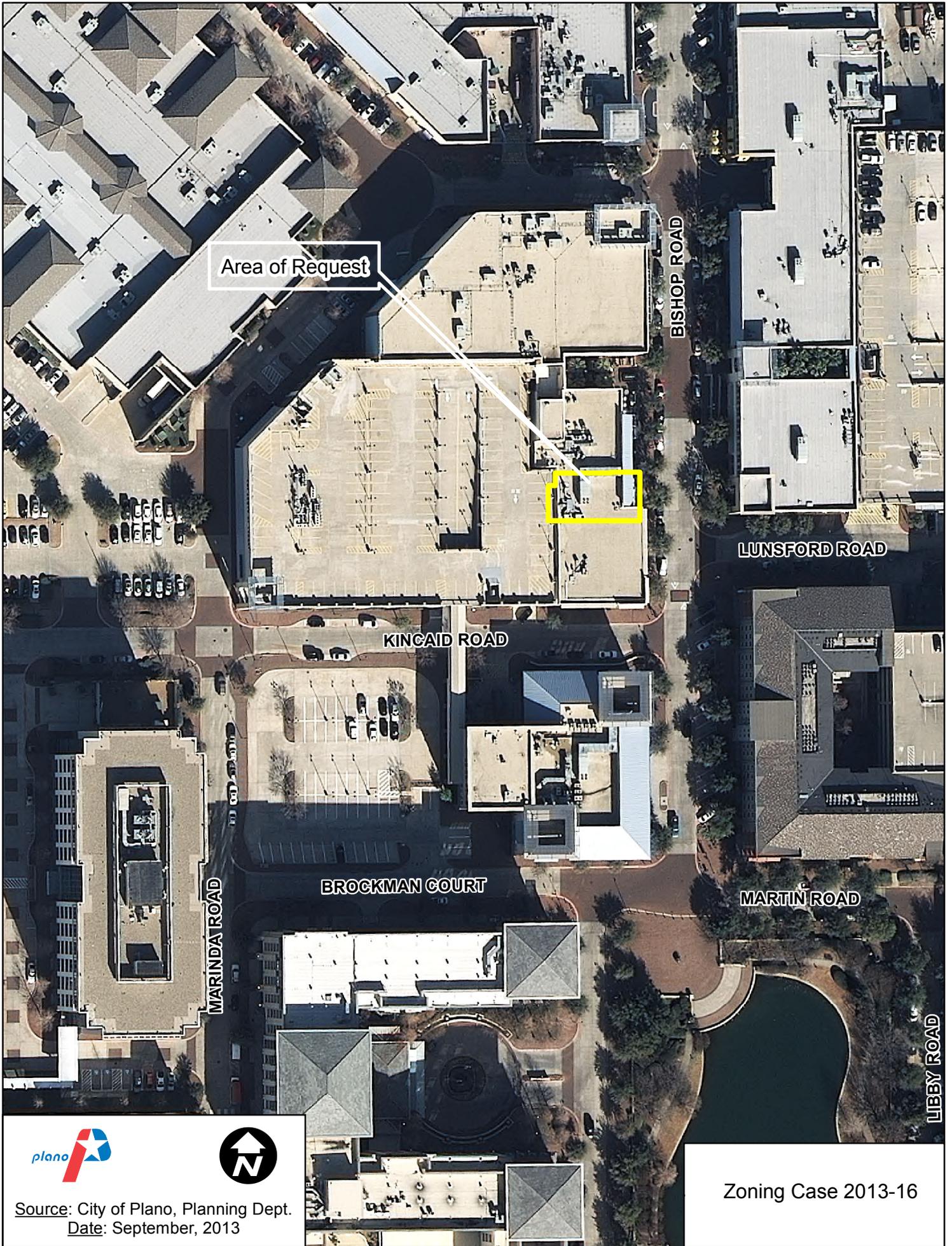
Zoning Case #: 2013-16



Existing Zoning: PLANNED DEVELOPMENT-65-CENTRAL BUSINESS-1/
 DALLAS NORTH TOLLWAY OVERLAY DISTRICT
 w/SPECIFIC USE PERMIT #506

○ 200' Notification Buffer





Area of Request

BISHOP ROAD

LUNSFORD ROAD

KINCAID ROAD

BROCKMAN COURT

MARTIN ROAD

MARINDA ROAD

LIBBY ROAD



Source: City of Plano, Planning Dept.
Date: September, 2013

Zoning Case 2013-16

Zoning Case 2013-16

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2003-9-24; thereby rescinding Specific Use Permit No. 506 for the additional use of a Private Club on 0.1± acre of land out of the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, located on the west side of Bishop Road, 70± feet north of Kincaid Road in the City of Plano, Collin County, Texas, currently zoned Planned Development-65-Central Business-1 with Specific Use Permit No. 506 for Private Club, and amending the Comprehensive Zoning Ordinance of the city, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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 14th day of October, 2013, for the purpose of considering rescinding Specific Use Permit No. 506 for the additional use of a Private Club on 0.1± acre of land out of the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, located on the west side of Bishop Road, 70± feet north of Kincaid Road in the City of Plano, Collin County, Texas; 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 14th day of October, 2013; and

WHEREAS, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 506 for the additional use of a Private Club 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. Ordinance No. 2003-9-24 duly passed and approved by the City Council of the City of Plano, Texas, on September 8, 2003, granting Specific Use Permit No. 506 for the additional use of a Private Club on 0.1± acre of land out of the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, located on the west side of Bishop Road, 70± feet north of Kincaid Road in the City of Plano, Collin County, Texas, currently zoned Planned Development-65-Central Business-1 with Specific Use Permit No. 506 for Private Club, more fully described on Exhibit "A" attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 506 is hereby rescinded.

Section II. It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

Section III. 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 IV. 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 V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and 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 VI. 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 VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 14TH DAY OF OCTOBER, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Zoning Case 2013-16

BEING a tract of land situated in the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, in the City of Plano, Collin County, Texas, and being a portion of Lot 2, Block E of Legacy Town Center (South), an addition to the City of Plano, Texas, according to the map or plat thereof recorded in Volume M at Page 47 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows (bearings based on the west right-of-way line of Bishop Road as dedicated in said Legacy Town center (South), said bearing being North);

COMMENCING at the southeast corner of said Lot 2, Block E, same being the intersection of the north right-of-way line of Kincaid Road (a 54-foot wide right-of-way) with the west right-of-way line of Bishop Road (an 82-foot wide right-of-way);

THENCE North, along the east line of said Lot 2, Block E, and the west right-of-way line of said Bishop Road, a distance of 82.98 feet to a corner, and POINT OF BEGINNING;

THENCE West, departing the east line of said Lot 2, Block E, and the west right-of-way line of said Bishop Road, a distance of 72.85 feet to a corner;

THENCE North, along the face of the western wall of an existing building, a distance of 30.25 feet to a corner;

THENCE in an easterly direction, departing the face of said westerly wall and generally along the defined lease line, the following:

East, a distance of 6.13 feet to a corner;

North, a distance of 10.75 feet to a corner;

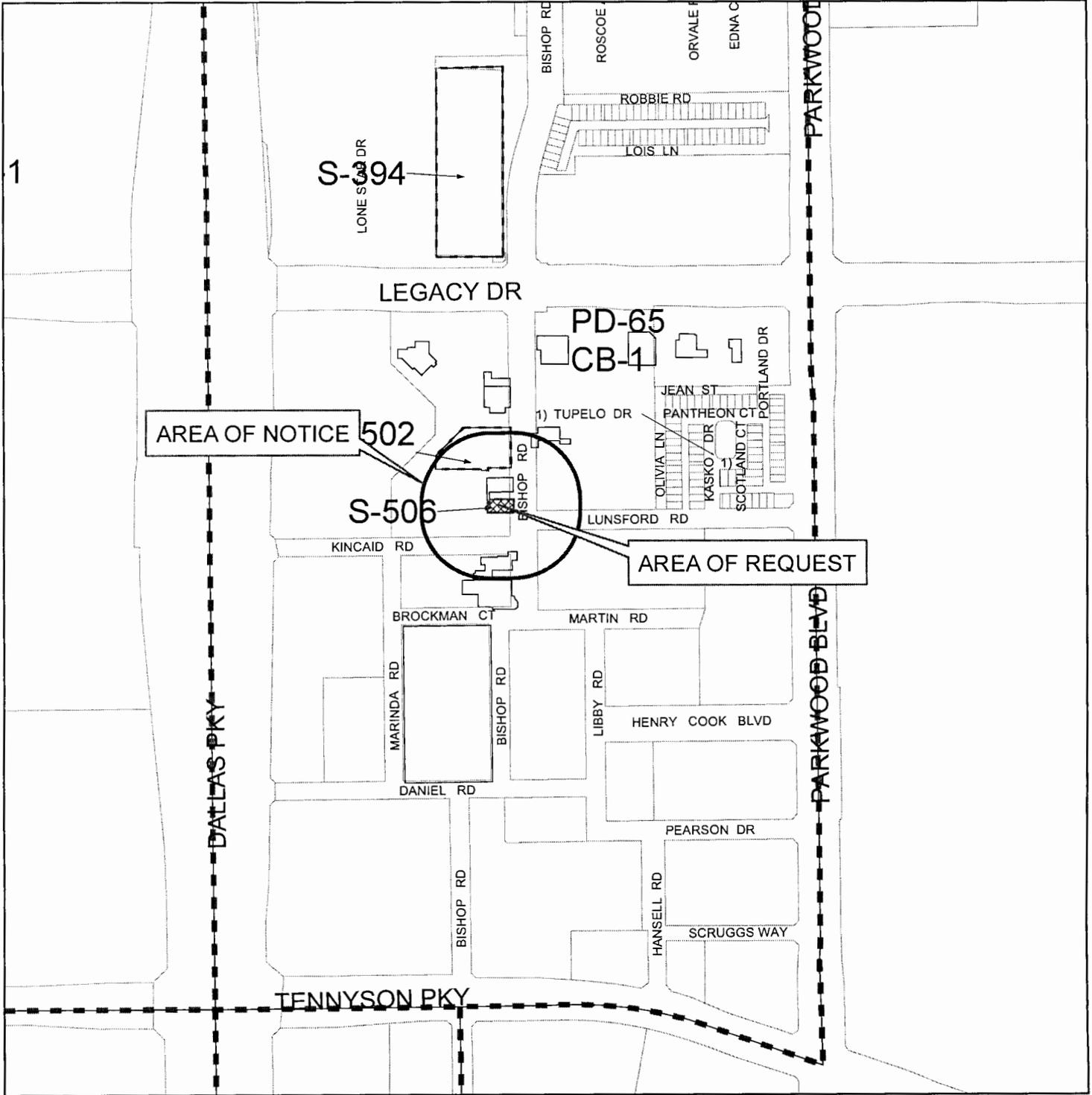
East, a distance of 47.54 feet to a corner;

North, a distance of 00.48 feet to a corner on the face of said exterior easterly wall of said building;

THENCE East, a distance of 24.99 feet to a corner;

THENCE South, a distance of 41.48 feet to a corner;

THENCE West, a distance of 5.08 feet to the POINT OF BEGINNING and CONTAINING 0.072 of an acre of land, more or less.



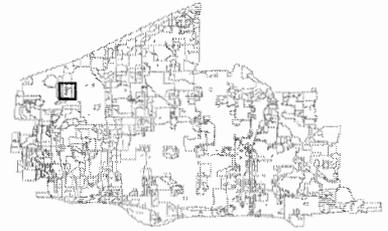
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AREA OF NOTICE 502

AREA OF REQUEST



Zoning Case #: 2013-16



Existing Zoning: PLANNED DEVELOPMENT-65-CENTRAL BUSINESS-1/
DALLAS NORTH TOLLWAY OVERLAY DISTRICT
w/SPECIFIC USE PERMIT #506

○ 200' Notification Buffer



DATE: September 17, 2013
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 16, 2013

**AGENDA ITEM NO. 7C - PUBLIC HEARING
ZONING CASE 2013-17
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #502 for Private Club on 0.6± acre located on the west side of Bishop Road, 345± feet south of Legacy Drive. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #502 for Private Club.

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

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

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

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

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: October 14, 2013 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

RA/dc

xc: Cliff Bormann, Permit Services Manager

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 16, 2013

Agenda Item No. 7C

Public Hearing: Zoning Case 2013-17

Applicant: City of Plano

DESCRIPTION:

Request to rescind Specific Use Permit #502 for Private Club on 0.6± acre located on the west side of Bishop Road, 345± feet south of Legacy Drive. Zoned Planned Development-65-Central Business-1/Dallas North Tollway Overlay District with Specific Use Permit #502 for Private Club.

REMARKS:

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #502 for Private Club. 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 2005, voters approved the sale of alcoholic beverages for on-premise consumption through a mixed beverage permit issued by the Texas Alcoholic Beverage Commission (TABC). Prior to this time, the only option was a private club permit from TABC, with an SUP approved by the city. From 2007 to 2008, the City Council rescinded numerous Specific Use Permits for Private Clubs as restaurants switched to mixed beverage permits. However, there are still numerous SUPs in place for properties where restaurants have ceased operations and since 2008, more restaurants have switched permit types.

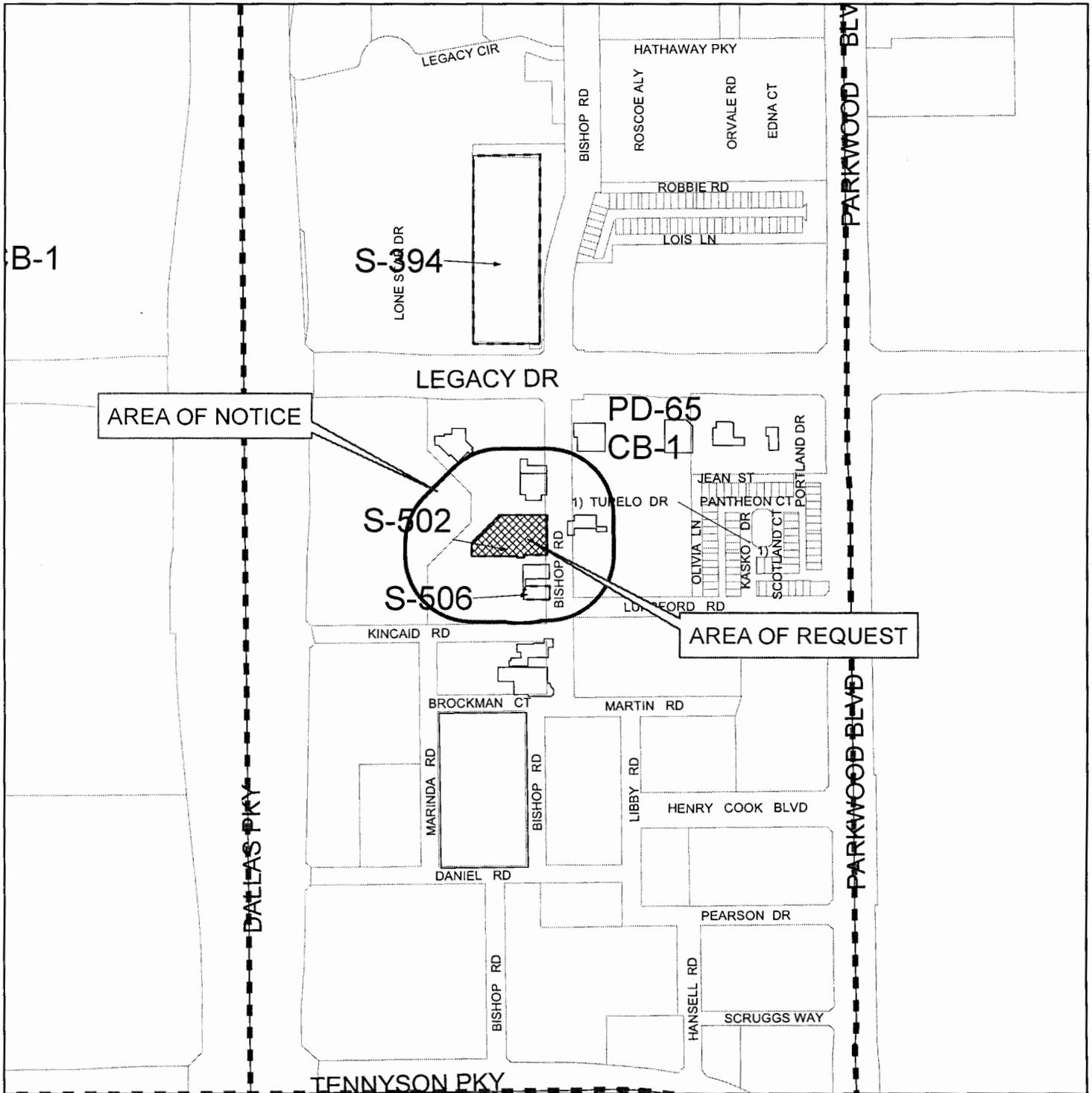
Therefore, given recent changes to city ordinances related to private clubs, per City Council's direction, the Planning & Zoning Commission called a public hearing to rescind SUPs for private clubs on properties not presently being used for on-premise alcohol sales and for properties where establishments are now operating with mixed beverage permits.

Angelika Film Center & Cafe has obtained a Mixed Beverage Permit from TABC to serve alcoholic beverages; therefore, it no longer needs the SUP for a Private Club issued by the City of Plano. Staff recommends that the Private Club SUP be rescinded,

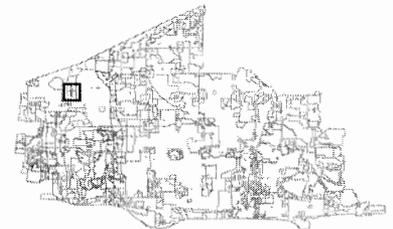
since the SUP is not necessary for the restaurant to sell alcoholic beverages. Additionally, a SUP for private club is no longer required in the Central Business-1 base zoning district. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

RECOMMENDATION:

Recommended for approval as submitted.



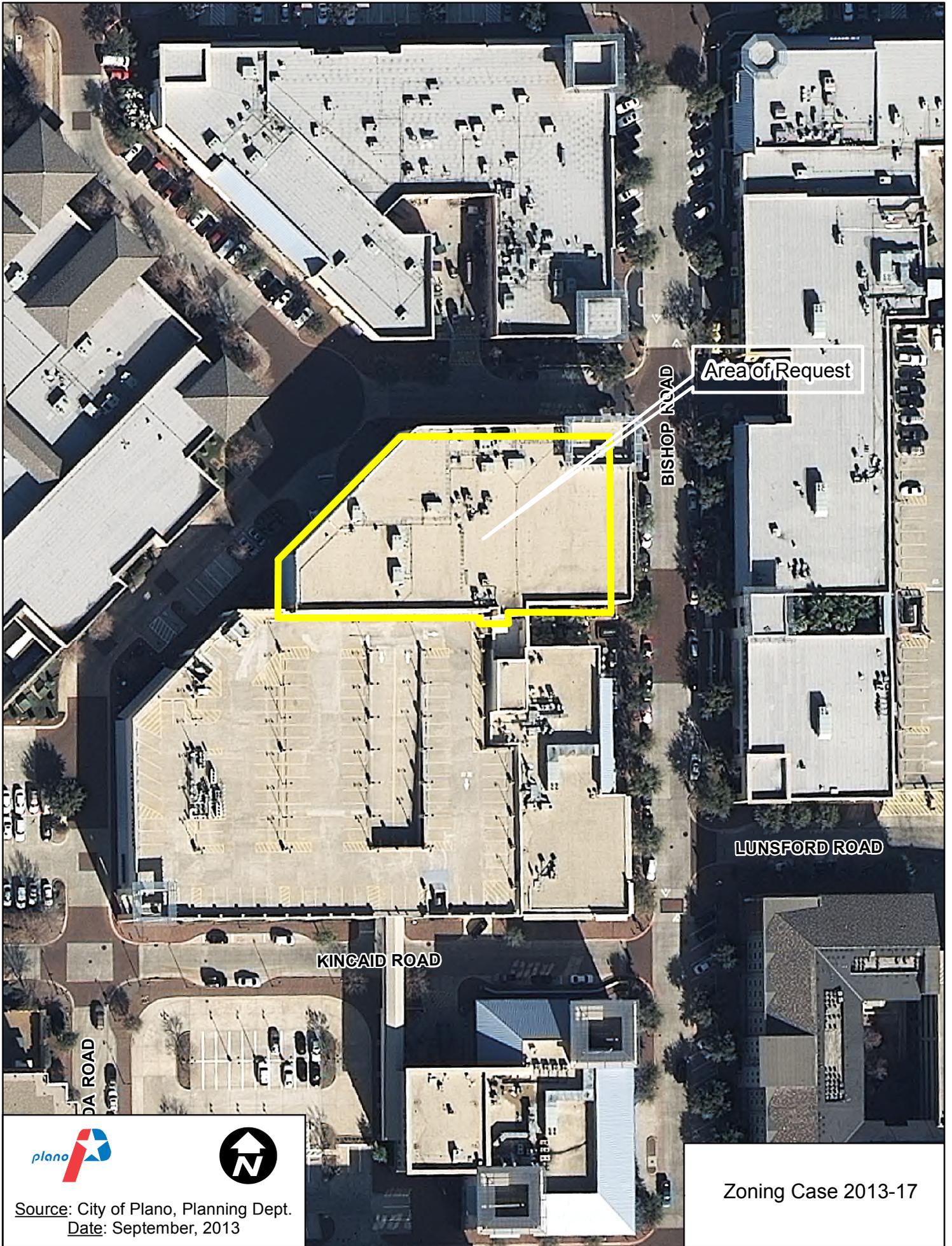
Zoning Case #: 2013-17



Existing Zoning: PLANNED DEVELOPMENT-65-CENTRAL BUSINESS-1/
 DALLAS NORTH TOLLWAY OVERLAY DISTRICT
 w/SPECIFIC USE PERMIT #502

○ 200' Notification Buffer





Area of Request

BISHOP ROAD

LUNSFORD ROAD

KINCAID ROAD

DA ROAD



Source: City of Plano, Planning Dept.
Date: September, 2013

Zoning Case 2013-17

Zoning Case 2013-17

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2003-8-20; thereby rescinding Specific Use Permit No. 502 for the additional use of a Private Club on 0.6± acre of land out of the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, located on the west side of Bishop Road, 345± feet south of Legacy Drive in the City of Plano, Collin County, Texas, currently zoned Planned Development-65-Central Business-1 with Specific Use Permit No. 502 for Private Club, and amending the Comprehensive Zoning Ordinance of the city, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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 14th day of October, 2013, for the purpose of considering rescinding Specific Use Permit No. 502 for the additional use of a Private Club on 0.6± acre of land out of the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, located on the west side of Bishop Road, 345± feet south of Legacy Drive in the City of Plano, Collin County, Texas; 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 14th day of October, 2013; and

WHEREAS, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 502 for the additional use of a Private Club 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. Ordinance No. 2003-8-20 duly passed and approved by the City Council of the City of Plano, Texas, on August 25, 2003, granting Specific Use Permit No. 502 for the additional use of a Private Club on 0.6± acre of land out of the Henry Cook Survey, Abstract No. 183 and the Maria C. Vela Survey, Abstract No. 935, located on the west side of Bishop Road, 345± feet south of Legacy Drive in the City of Plano, Collin County, Texas, currently zoned Planned Development-65-Central Business-1 with Specific Use Permit No. 502 for Private Club, more fully described on Exhibit "A" attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 502 is hereby rescinded.

Section II. It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

Section III. 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 IV. 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 V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and 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 VI. 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 VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 14TH DAY OF OCTOBER, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Zoning Case 2013-17

BEING a tract of land situated in the Henry Cook Survey, Abstract No. 183 and Maria C. Vela Survey, Abstract No. 935, in the City of Plano, Collin County, Texas, and being a portion of Lot 2, Block E of Legacy Town Center (South), an addition to the City of Plano, Texas, according to the Map or Plat thereof recorded in Volume M at Page 47 of the Plat Records of Collin County, Texas (P.R.C.C.T.) and being more particularly described by metes and bounds as follows: (bearings based on the west right-of-way line of Bishop Road as dedicated in said Legacy Town center (South), said bearing being north);

COMMENCING at the southeast corner of Lot 2, Block E of Legacy Town Center (South), Volume M at Page 47 of the Plat Records of Collin County, Texas (P.R.C.C.T.) and being the intersection of the north right-of-way line of Kincaid Road (a 54-foot wide right-of-way) with the west right-of-way line of Bishop Road (an 82-foot wide right-of-way);

THENCE North, along the west right-of-way line of Bishop Road, a distance of 214.79 feet, to a corner;

THENCE West, departing said corner, a distance of 1.15 feet to the POINT OF BEGINNING;

THENCE West, along the southern face of a proposed building, a distance of 70.88 feet to a corner;

THENCE South, along the eastern face of said building, a distance of 8.29 feet to a corner;

THENCE West, along the southern face of said building, a distance of 20.00 feet to a corner;

THENCE North, along the western face of said building, a distance of 4.26 feet to a corner;

THENCE West, along southern face of said building, a distance of 137.87 feet to a corner;

THENCE North, along western face of said building, a distance of 40.20 feet to a corner;

THENCE North, 136° 00' 00" West, a distance of 119.00 feet to a corner;

THENCE East, along northern face of said building, a distance of 94.78 feet to a corner;

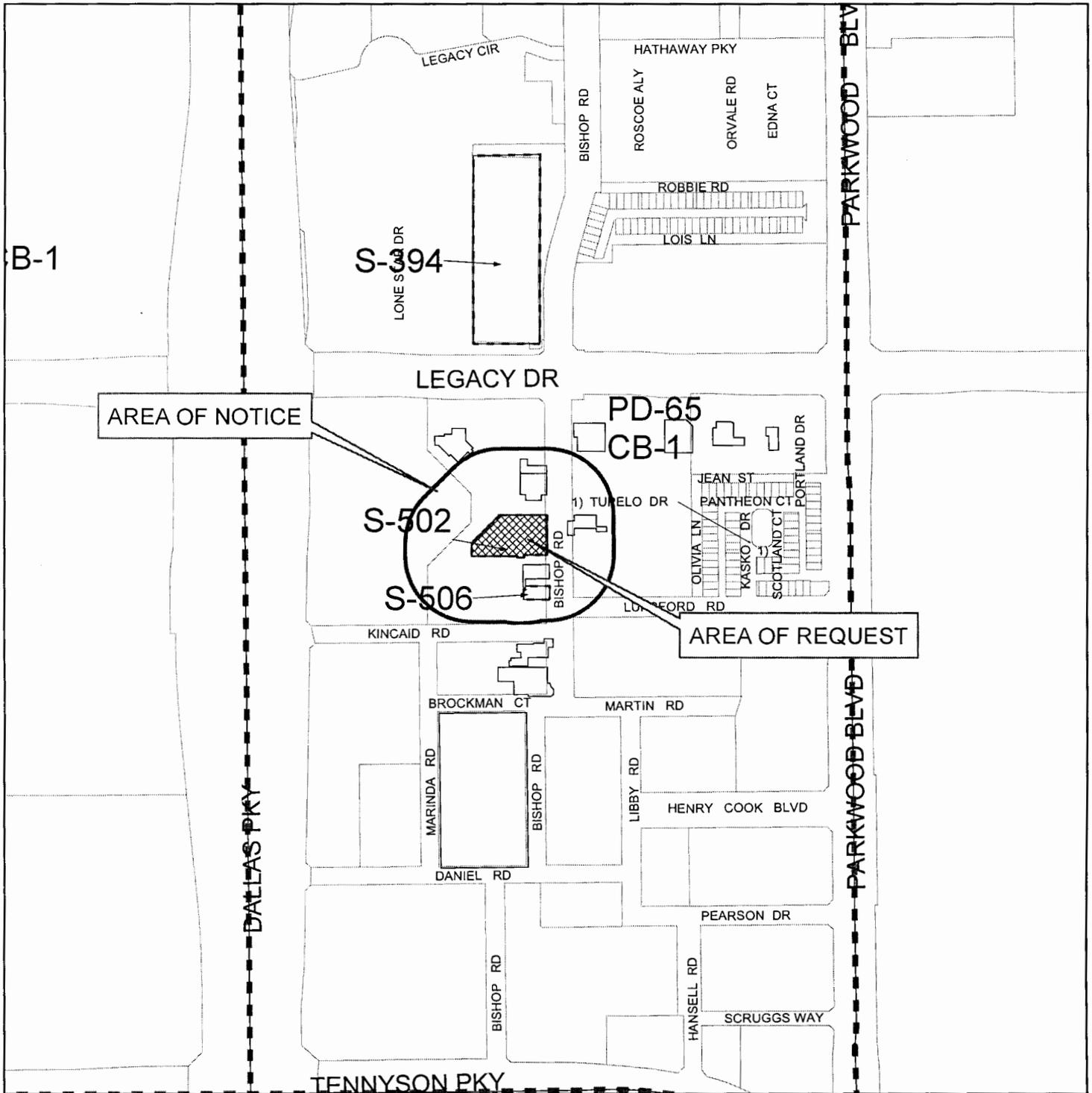
THENCE North, along western face of said building, a distance of 1.00 foot a corner;

THENCE East, along northern face of said building, a distance of 50.75 feet to a corner;

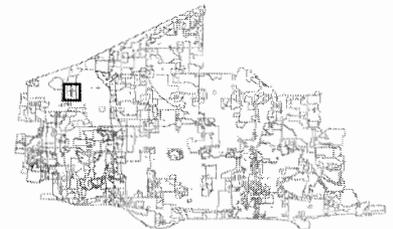
THENCE South, along eastern face of said building, a distance of 42.17 feet to a corner;

THENCE West, along southern face of said building, a distance of 1.00 foot to a corner;

THENCE South, along eastern face of said building, a distance of 79.58 feet to the POINT OF BEGINNING and CONTAINING (24,838.36 square feet), 0.57 of an acre of land, more or less.



Zoning Case #: 2013-17



Existing Zoning: PLANNED DEVELOPMENT-65-CENTRAL BUSINESS-1/
 DALLAS NORTH TOLLWAY OVERLAY DISTRICT
 w/SPECIFIC USE PERMIT #502

○ 200' Notification Buffer



DATE: September 17, 2013
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 16, 2013

**AGENDA ITEM NO. 7D - PUBLIC HEARING
ZONING CASE 2013-18
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #509 for Private Club on 1.1± acres located on the west side of H Avenue, 250± feet north of 15th Street. Zoned Downtown Business/Government with Heritage Resource #24 Designation and Specific Use Permit #509 for Private Club.

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

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 3 **OPPOSE:** 1

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

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

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: October 14, 2013 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

RA/dc

xc: Cliff Bormann, Permit Services Manager

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 16, 2013

Agenda Item No. 7D

Public Hearing: Zoning Case 2013-18

Applicant: City of Plano

DESCRIPTION:

Request to rescind Specific Use Permit #509 for Private Club on 1.1± acres located on the west side of H Avenue, 250± feet north of 15th Street. Zoned Downtown Business/Government with Heritage Resource #24 Designation and Specific Use Permit #509 for Private Club.

REMARKS:

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #509 for Private Club. 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 2005, voters approved the sale of alcoholic beverages for on-premise consumption through a mixed beverage permit issued by the Texas Alcoholic Beverage Commission (TABC). Prior to this time, the only option was a private club permit from TABC, with an SUP approved by the city. From 2007 to 2008, the City Council rescinded numerous Specific Use Permits for Private Clubs as restaurants switched to mixed beverage permits. However, there are still numerous SUPs in place for properties where restaurants have ceased operations and since 2008, more restaurants have switched permit types.

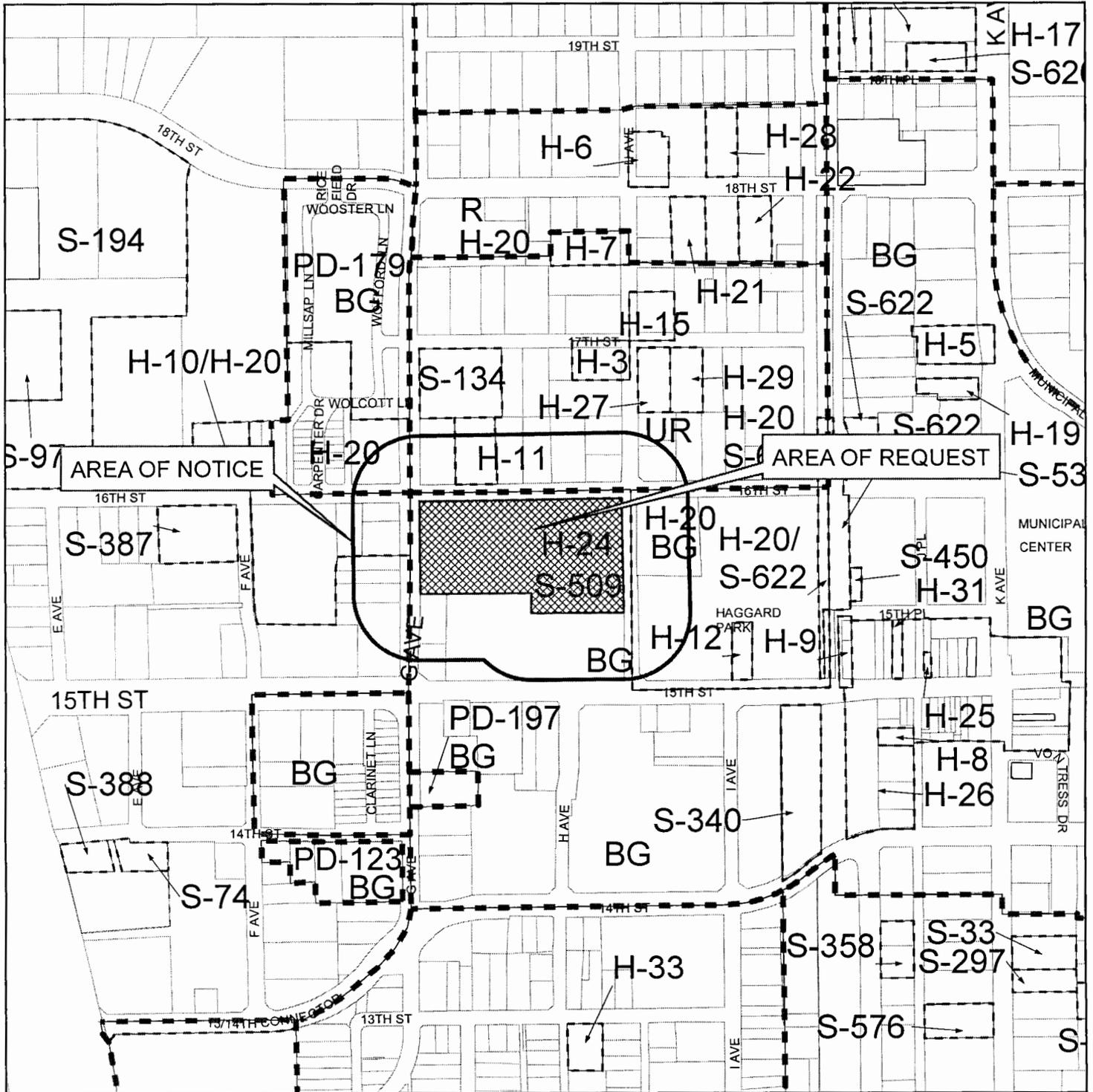
Therefore, given recent changes to city ordinances related to private clubs, per City Council's direction, the Planning & Zoning Commission called a public hearing to rescind SUPs for private clubs on properties not presently being used for on-premise alcohol sales and for properties where establishments are now operating with mixed beverage permits.

Courtyard Theater is no longer operating with a Mixed Beverage Permit nor a Private Club Permit from TABC to serve alcoholic beverages; therefore, it no longer needs the SUP for a Private Club issued by the City of Plano. Staff recommends that the Private

Club SUP be rescinded. Additionally, a SUP for Private Club is no longer required in the Downtown Business/Government zoning district. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

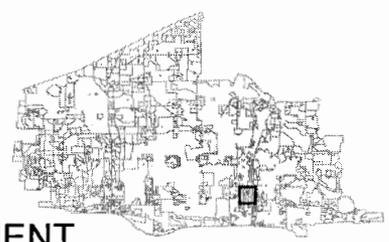
RECOMMENDATION:

Recommended for approval as submitted.



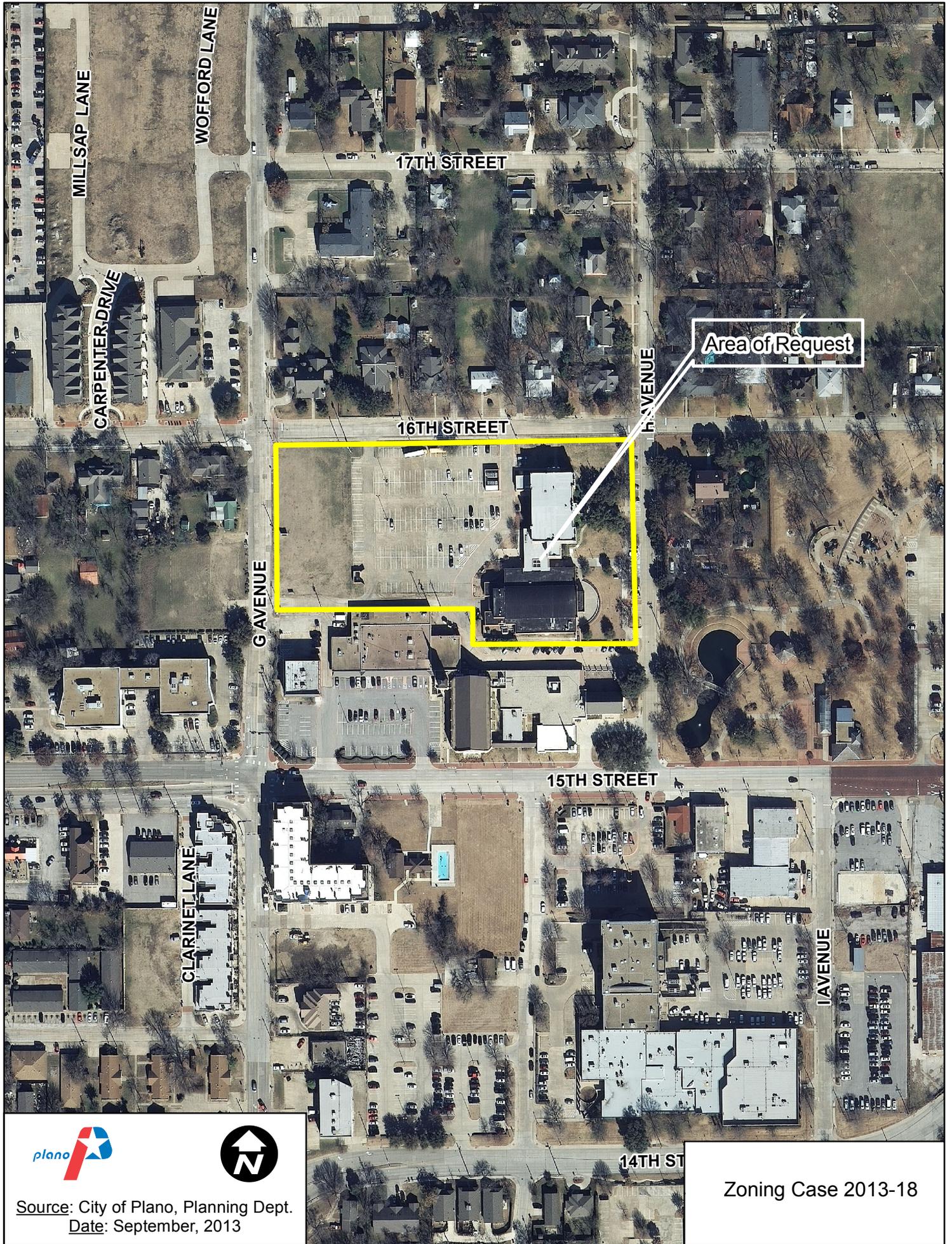
Zoning Case #: 2013-18

Existing Zoning: DOWNTOWN BUSINESS/GOVERNMENT
 w/SPECIFIC USE PERMIT #509 &
 HERITAGE RESOURCE DESIGNATION #24



○ 200' Notification Buffer





Area of Request



Source: City of Plano, Planning Dept.
Date: September, 2013

Zoning Case 2013-18

Zoning Case 2013-18

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2003-10-20; thereby rescinding Specific Use Permit No. 509 for the additional use of a Private Club on 1.1± acres of land out of the Joseph Klepper Survey, Abstract No. 213, located on the west side of H Avenue, 250± feet north of 15th Street in the City of Plano, Collin County, Texas, currently zoned Downtown Business/Government with Heritage Resource #24 Designation and Specific Use Permit No. 509 for Private Club, and amending the Comprehensive Zoning Ordinance of the city, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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 14th day of October, 2013, for the purpose of considering rescinding Specific Use Permit No. 509 for the additional use of a Private Club on 1.1± acres of land out of the Joseph Klepper Survey, Abstract No. 213, located on the west side of H Avenue, 250± feet north of 15th Street in the City of Plano, Collin County, Texas; 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 14th day of October, 2013; and

WHEREAS, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 509 for the additional use of a Private Club 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. Ordinance No. 2003-10-20 duly passed and approved by the City Council of the City of Plano, Texas, on October 14, 2003, granting Specific Use Permit No. 509 for the additional use of a Private Club on 1.1± acres of land out of the Joseph Klepper Survey, Abstract No. 213, located on the west side of H Avenue, 250± feet north of 15th Street in the City of Plano, Collin County, Texas, currently zoned Downtown Business/Government with Heritage Resource #24 Designation and Specific Use Permit No. 509 for Private Club, more fully described on Exhibit "A" attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 509 is hereby rescinded.

Section II. It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

Section III. 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 IV. 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 V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and 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 VI. 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 VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 14TH DAY OF OCTOBER, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Zoning Case 2013-18

BEING a tract of land out of the Joseph Klepper Survey, Abstract No. 213 located in the City of Plano, Collin County, Texas, and being a portion of Lots 1 and 8B, Block 22, Original Donation to the City of Plano, and being more particularly described as follows:

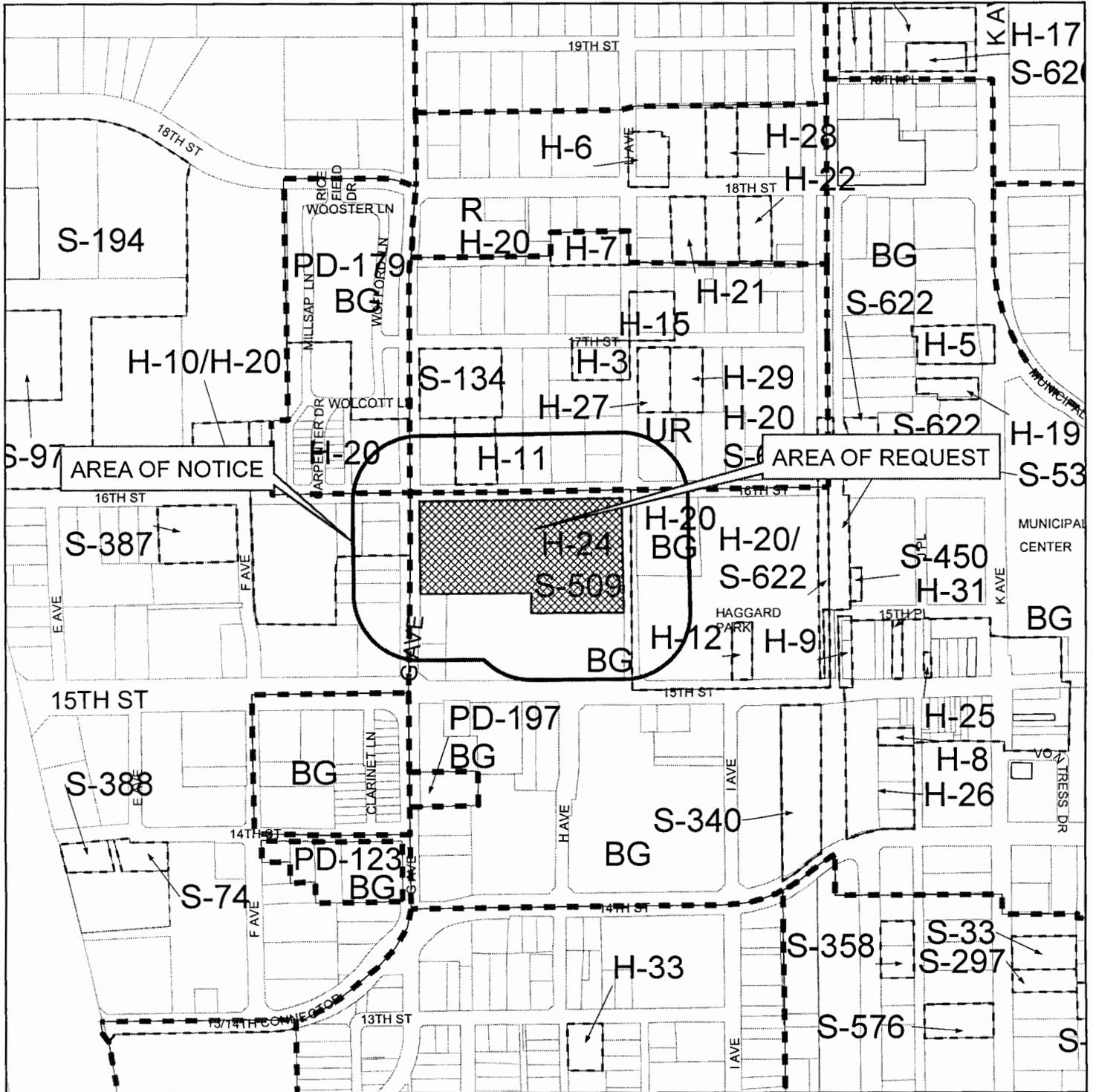
BEGINNING at the southeast corner of said Lots 1 and 8A, Block 22, Original Donation, also being the most easterly northeast corner of Lot 1, Block 1, First Christian Church Addition as recorded in Cabinet F, Page 728, Collin County Plat Records, said corner being in the westerly right-of-way line of H Avenue;

THENCE South, 69° 56' 00" West, 284.70 feet along the southern line of said Lots 1 and 8B to a point for a corner;

THENCE North, 00° 09' 23" East, 161.88 feet to a point for a corner;

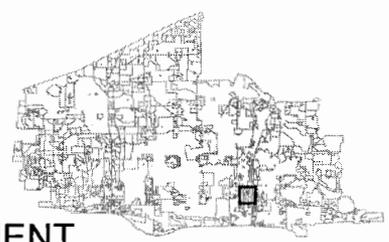
THENCE North, 89° 38' 21" East, 284.71 feet to a point for a corner, said point being in the westerly right-of-way line for H Avenue;

THENCE South, 00° 09' 23" West, 163.34 feet along the westerly right-of-way line for H Avenue to the POINT OF BEGINNING and CONTAINING 46,154 square feet of land, more or less.



Zoning Case #: 2013-18

Existing Zoning: DOWNTOWN BUSINESS/GOVERNMENT
 w/SPECIFIC USE PERMIT #509 &
 HERITAGE RESOURCE DESIGNATION #24



○ 200' Notification Buffer



DATE: September 17, 2013
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 16, 2013

**AGENDA ITEM NO. 7E - PUBLIC HEARING
ZONING CASE 2013-19
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #450 for Private Club on 0.1± acre located on the east side of the DART railroad tracks, 25± feet north of 15th Place. Zoned Downtown Business/Government with Specific Use Permit #450 for Private Club.

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

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

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

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

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: October 14, 2013 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

JH/dc

xc: Cliff Bormann, Permit Services Manager

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 16, 2013

Agenda Item No. 7E

Public Hearing: Zoning Case 2013-19

Applicant: City of Plano

DESCRIPTION:

Request to rescind Specific Use Permit #450 for Private Club on 0.1± acre located on the east side of the DART railroad tracks, 25± feet north of 15th Place. Zoned Downtown Business/Government with Specific Use Permit #450 for Private Club.

REMARKS:

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #450 for Private Club. 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 2005, voters approved the sale of alcoholic beverages for on-premise consumption through a mixed beverage permit issued by the Texas Alcoholic Beverage Commission (TABC). Prior to this time, the only option was a private club permit from TABC, with an SUP approved by the city. From 2007 to 2008, the City Council rescinded numerous Specific Use Permits for Private Clubs as restaurants switched to mixed beverage permits. However, there are still numerous SUPs in place for properties where restaurants have ceased operations and since 2008, more restaurants have switched permit types.

Therefore, given recent changes to city ordinances related to private clubs, per City Council's direction, the Planning & Zoning Commission called a public hearing to rescind SUPs for private clubs on properties not presently being used for on-premise alcohol sales and for properties where establishments are now operating with mixed beverage permits.

Plano Station is no longer operating and the owner has not obtained a Mixed Beverage Permit from TABC to serve alcoholic beverages; therefore, it no longer needs the SUP for a Private Club issued by the City of Plano. Staff recommends that the Private Club SUP be rescinded, since the SUP is not necessary for the restaurant to sell alcoholic

beverages. Additionally, a SUP for private club is no longer required in the Downtown Business/Government base zoning district. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

RECOMMENDATION:

Recommended for approval as submitted.



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Source: City of Plano, Planning Dept.
Date: September, 2013

Zoning Case 2013-19

Zoning Case 2013-19

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2001-7-19; thereby rescinding Specific Use Permit No. 450 for the additional use of a Private Club on 0.1± acre of land out of the Joseph Klepper Survey, Abstract No. 213, located on the east side of the DART railroad tracks, 25± feet north of 15th Place in the City of Plano, Collin County, Texas, currently zoned Downtown Business/Government with Specific Use Permit No. 450 for Private Club, and amending the Comprehensive Zoning Ordinance of the city, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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 14th day of October, 2013, for the purpose of considering rescinding Specific Use Permit No. 450 for the additional use of a Private Club on 0.1± acre of land out of the Joseph Klepper Survey, Abstract No. 213, located on the east side of the DART railroad tracks, 25± feet north of 15th Place in the City of Plano, Collin County, Texas; 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 14th day of October, 2013; and

WHEREAS, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 450 for the additional use of a Private Club 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. Ordinance No. 2001-7-19 duly passed and approved by the City Council of the City of Plano, Texas, on July 25, 2001, granting Specific Use Permit No. 450 for the additional use of a Private Club on 0.1± acre of land out of the Joseph Klepper Survey, Abstract No. 213, located on the east side of the DART railroad tracks, 25± feet north of 15th Place in the City of Plano, Collin County, Texas, currently zoned Downtown Business/Government with Specific Use Permit No. 450 for Private Club, more fully described on Exhibit "A" attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 450 is hereby rescinded.

Section II. It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

Section III. 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 IV. 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 V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and 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 VI. 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 VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 14TH DAY OF OCTOBER, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Zoning Ordinance 2013-19

BEING a 0.0789 acre tract of land situated in the Joseph Klepper Survey, Abstract No. 213, also being part of Lot 1, Block A of the Plano Transit Village, a platted addition to the City of Plano, Collin County, Texas and being more particularly described as follows:

COMMENCING at a point at the southwest corner of Lot 1, Block A of the Plano Transit Village Addition, said point also being on the north right-of-way of 15th Place;

THENCE along the west boundary line of Lot 1, Block A, with a bearing of North, 00° 33' 68" East, 50.45 feet to the PLACE OF BEGINNING;

THENCE North, 00° 33' 58" West, 102.89 feet to a point for corner;

THENCE South, 89° 53' 21" East, 33.38 feet to a point for corner;

THENCE South, 00° 36' 08" East, 102.89 feet to a point for corner;

THENCE North, 89° 53' 21" West, a distance of 33.44 feet to a POINT OF BEGINNING and CONTAINING 3,437.35 square feet of land more or less.

DATE: September 17, 2013
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 16, 2013

**AGENDA ITEM NO. 7F - PUBLIC HEARING
ZONING CASE 2013-20
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #533 for Private Club on 0.3± acre located at the northwest corner of K Avenue and 16th Street. Zoned Downtown Business/Government with Specific Use Permit #533 for Private Club.

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

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

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

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: October 14, 2013 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

JH/dc

xc: Cliff Bormann, Permit Services Manager

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 16, 2013

Agenda Item No. 7F

Public Hearing: Zoning Case 2013-20

Applicant: City of Plano

DESCRIPTION:

Request to rescind Specific Use Permit #533 for Private Club on 0.3± acre located at the northwest corner of K Avenue and 16th Street. Zoned Downtown Business/Government with Specific Use Permit #533 for Private Club.

REMARKS:

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #533 for Private Club. 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 2005, voters approved the sale of alcoholic beverages for on-premise consumption through a mixed beverage permit issued by the Texas Alcoholic Beverage Commission (TABC). Prior to this time, the only option was a private club permit from TABC, with an SUP approved by the city. From 2007 to 2008, the City Council rescinded numerous Specific Use Permits for Private Clubs as restaurants switched to mixed beverage permits. However, there are still numerous SUPs in place for properties where restaurants have ceased operations and since 2008, more restaurants have switched permit types.

Therefore, given recent changes to city ordinances related to private clubs, per City Council's direction, the Planning & Zoning Commission called a public hearing to rescind SUPs for private clubs on properties not presently being used for on-premise alcohol sales and for properties where establishments are now operating with mixed beverage permits.

Santa Cruz Bakery has not obtained a Mixed Beverage Permit from TABC to serve alcoholic beverages; therefore, it no longer needs the SUP for a Private Club issued by the City of Plano. Staff recommends that the Private Club SUP be rescinded, since the SUP is not necessary for the restaurant to sell alcoholic beverages. Additionally, a SUP

for private club is no longer required in the Downtown Business/Government base zoning district. Staff has not received a response from the property owner as to whether or not they concur with the removal of the SUP.

RECOMMENDATION:

Recommended for approval as submitted.



MUNICIPAL AVENUE

K AVENUE

Area of Request

16TH STREET

J PLACE



Source: City of Plano, Planning Dept.
Date: September, 2013

Zoning Case 2013-20

Zoning Case 2013-20

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2004-1-26; thereby rescinding Specific Use Permit No. 533 for the additional use of a Private Club on 0.3± acre of land out of the Joseph Klepper Survey, Abstract No. 213, located at the northwest corner of K Avenue and 16th Street in the City of Plano, Collin County, Texas, currently zoned Downtown Business/Government with Specific Use Permit No. 533 for Private Club, and amending the Comprehensive Zoning Ordinance of the city, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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 14th day of October, 2013, for the purpose of considering rescinding Specific Use Permit No. 533 for the additional use of a Private Club on 0.3± acre of land out of the Joseph Klepper Survey, Abstract No. 213, located at the northwest corner of K Avenue and 16th Street in the City of Plano, Collin County, Texas; 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 14th day of October, 2013; and

WHEREAS, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 533 for the additional use of a Private Club 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. Ordinance No. 2004-1-26 duly passed and approved by the City Council of the City of Plano, Texas, on January 26, 2004, granting Specific Use Permit No. 533 for the additional use of a Private Club on 0.3± acre of land out of the Joseph Klepper Survey, Abstract No. 213, located at the northwest corner of K Avenue and 16th Street in the City of Plano, Collin County, Texas, currently zoned Downtown Business/Government with Specific Use Permit No. 533 for Private Club, more fully described on Exhibit "A" attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 533 is hereby rescinded.

Section II. It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

Section III. 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 IV. 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 V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and 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 VI. 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 VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 14TH DAY OF OCTOBER, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Zoning Case 2013-20

SITUATED in the State of Texas, County of Collin, and the City of Plano, being a 0.313 acre tract of land, part of the Joseph Klepper Survey, Abstract No. 213, being Lot 1, Block 1 of Duncan Addition, an addition to the City of Plano as recorded in Volume B, Page 274 of the Collin County Map Records with said premises; being more particularly described as follows:

BEGINNING at the northwest corner of Lot 1 and the southwest corner of Lot 2 of said addition;

THENCE South, $89^{\circ} 00' 31''$ East, 135.90 feet to the northeast corner of Lot 1 and the southeast corner of Lot 2 in the west right-of-way line of K Avenue;

THENCE with the east line of Lot 1 and the west right-of-way line of K Avenue, South, 97.00 feet to a corner clip at the intersection of the west right-of-way line of K Avenue with the north right-of-way line of 16th Street;

THENCE along said corner clip, South, $45^{\circ} 29' 45''$ West, 11.22 feet to the most southerly southeast corner of Lot 1 in the north right-of-way line of 16th Street;

THENCE with the south line of Lot 1 and the north right-of-way line of 16th Street as follows:

North, $89^{\circ} 00' 31''$ West, 27.54 feet to the beginning of a curve to the right;

Northwesterly along said curve having a central angle of $06^{\circ} 37' 40''$ with a radius of 478.32 feet for an arc distance of 55.33 feet (chord = North, $84^{\circ} 22' 21''$ West, 55.30 feet) end of said curve;

North, $85^{\circ} 15' 31''$ West, 45.75 feet to the southwest corner of Lot 1;

THENCE with the west line of Lot 1 North, 95.21 feet to the POINT OF BEGINNING and CONTAINING 13,641 square feet or 0.313 acre of land.

DATE: September 17, 2013
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 16, 2013

**AGENDA ITEM NO. 7A - PUBLIC HEARING
ZONING CASE 2013-15
APPLICANT: CITY OF PLANO**

Request to rescind Specific Use Permit #188 for Private Club on 1.0± acre located on the west side of U.S. Highway 75, 130± feet south of Chisholm Place. Zoned Corridor Commercial with Specific Use Permit #187 for Restaurant and #188 for Private Club.

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

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

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

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: October 14, 2013 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

EH/dc

xc: Cliff Bormann, Permit Services Manager



Memorandum

Date: September 23, 2013

To: Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager

From: Eric Hill, Senior Planner

Subject: Zoning Case 2013-15

Staff received a letter of opposition to Zoning Case 2013-15 from a representative of the property owner. Because the property owner's tract comprises more than 20% of the land area being rezoned, Chapter 211 of the Local Government Code requires that a three-quarter majority vote (6 of 8 Council members), rather than a simple majority vote, will be necessary for City Council to approve Zoning Case 2013-15. This zoning case is a request to rescind Specific Use Permit #188 for Private Club. The property in question is the former Spageddies restaurant which is now out of business. The SUP was granted to Spageddies specifically, and therefore any future restaurant will have to apply for a new private club SUP or obtain a mixed-beverage permit through TABC.

Phyllis Jarrell, Director of Planning, will be present at the City Council meeting to address any questions regarding this item.

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 16, 2013

Agenda Item No. 7A

Public Hearing: Zoning Case 2013-15

Applicant: City of Plano

DESCRIPTION:

Request to rescind Specific Use Permit #188 for Private Club on 1.0± acre located on the west side of U.S. Highway 75, 130± feet south of Chisholm Place. Zoned Corridor Commercial with Specific Use Permit #187 for Restaurant and #188 for Private Club.

REMARKS:

This is a city-initiated zoning request to rescind Specific Use Permit (SUP) #188 for Private Club. 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.

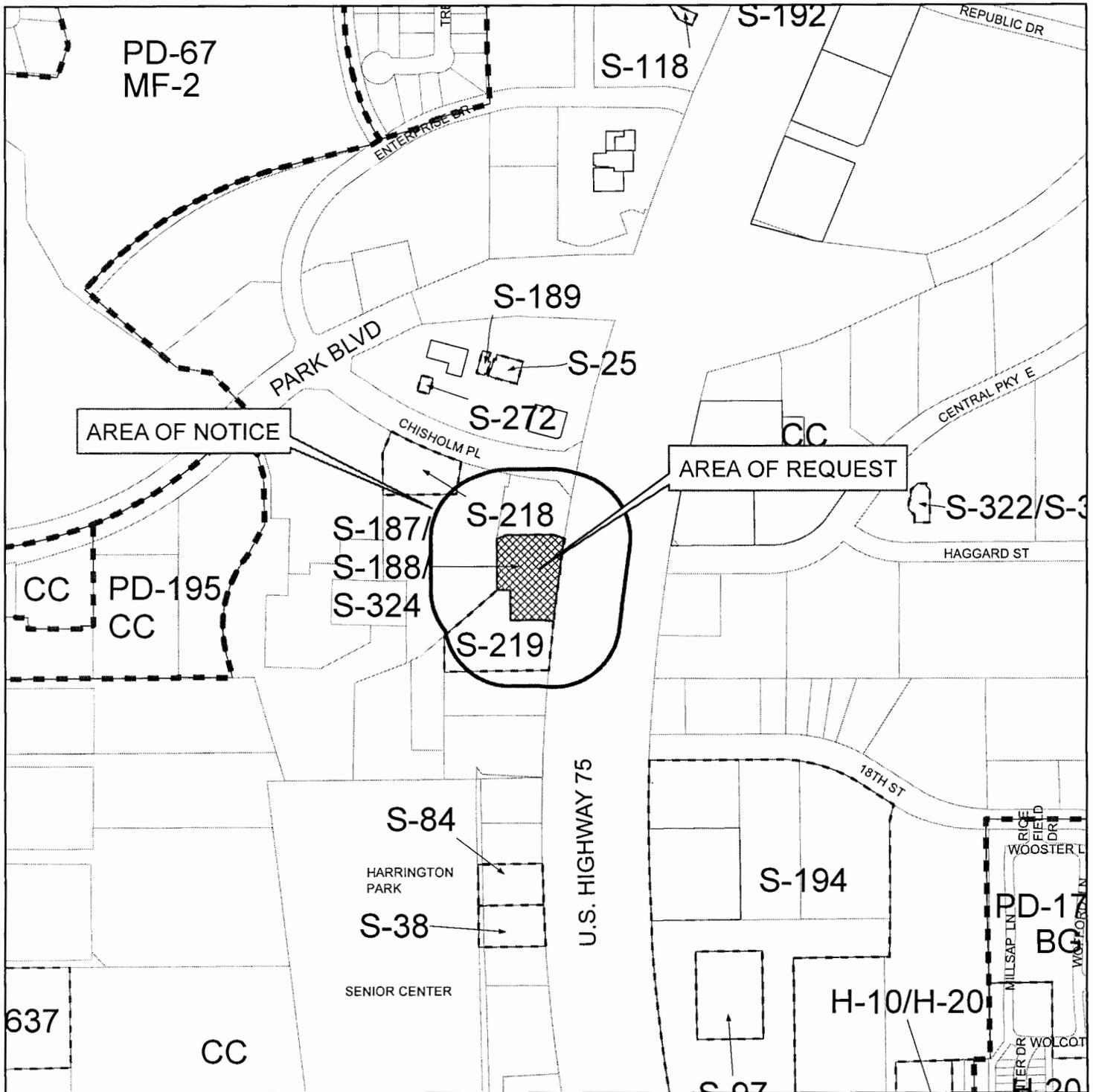
In 2005, voters approved the sale of alcoholic beverages for on-premise consumption through a mixed beverage permit issued by the Texas Alcoholic Beverage Commission (TABC). Prior to this time, the only option was a private club permit from TABC, with an SUP approved by the city. From 2007 to 2008, the City Council rescinded numerous Specific Use Permits for Private Clubs as restaurants switched to mixed beverage permits. However, there are still numerous SUPs in place for properties where restaurants have ceased operations and since 2008, more restaurants have switched permit types.

Therefore, given recent changes to city ordinances related to private clubs, per City Council's direction, the Planning & Zoning Commission called a public hearing to rescind SUPs for private clubs on properties not presently being used for on-premise alcohol sales and for properties where establishments are now operating with mixed beverage permits.

Spageddies is no longer in operation; therefore, it no longer needs the SUP for a Private Club issued by the City of Plano. Staff received a letter from the property owner stating that they are not in favor of the removal of the SUP. However, this SUP was granted specifically to Spageddies and is not able to be used by another restaurant. Any future establishment in this location would have to obtain a new SUP for Private Club, or apply for a mixed beverage permit.

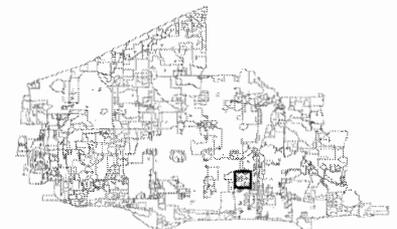
RECOMMENDATION:

Recommended for approval as submitted.



Zoning Case #: 2013-15

Existing Zoning: CORRIDOR COMMERCIAL
w/SPECIFIC USE PERMITS #187 & #188



○ 200' Notification Buffer





Area of Request

CHISHOLM PLACE

CENTRAL EXPRESSWAY

18TH STREET



Source: City of Plano, Planning Dept.
Date: September, 2013

Zoning Case 2013-15

Zoning Case 2013-15

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 91-11-19; thereby rescinding Specific Use Permit No. 188 for the additional use of a Private Club on 1.0± acre of land out of the J.A. Salmons Survey, Abstract No. 814, located on the west side of U.S. Highway 75, 130± feet south of Chisholm Place in the City of Plano, Collin County, Texas, currently zoned Corridor Commercial with Specific Use Permit No. 187 for Restaurant and Specific Use Permit No. 188 for Private Club, and amending the Comprehensive Zoning Ordinance of the city, Ordinance No. 2006-4-24, as heretofore amended, to reflect such action; 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 14th day of October, 2013, for the purpose of considering rescinding Specific Use Permit No. 188 for the additional use of a Private Club on 1.0± acre of land out of the J.A. Salmons Survey, Abstract No. 814, located on the west side of U.S. Highway 75, 130± feet south of Chisholm Place in the City of Plano, Collin County, Texas; 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 14th day of October, 2013; and

WHEREAS, the City Council is of the opinion and finds that the rescinding of Specific Use Permit No. 188 for the additional use of a Private Club 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. Ordinance No. 91-11-19 duly passed and approved by the City Council of the City of Plano, Texas, on November 25, 1991, granting Specific Use Permit No. 188 for the additional use of a Private Club on 1.0± acre of land out of the J.A. Salmons Survey, Abstract No. 814, located on the west side of U.S. Highway 75, 130± feet south of Chisholm Place in the City of Plano, Collin County, Texas, currently zoned Corridor Commercial with Specific Use Permit No. 187 for Restaurant and Specific Use Permit No. 188 for Private Club, more fully described on Exhibit "A" attached hereto, is hereby repealed in its entirety. Consequently, Specific Use Permit No. 188 is hereby rescinded.

Section II. It is hereby directed that the Comprehensive Zoning Ordinance, No. 2006-4-24, as heretofore amended, be revised and amended (which is retained in electronic record format), to reflect the action and zoning classification established by this Ordinance.

Section III. 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 IV. 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 V. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and 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 VI. 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 VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 14TH DAY OF OCTOBER, 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Zoning Case 2013-15

BEING a 1.03 acre tract of land situated in the J.A. Salmons Survey, Abstract No. 814, Collin County, Texas, and being more particularly described as follows:

BEGINNING at an iron rod found for corner situated in the curving west line of U.S. Highway No. 75 (300-foot right-of-way), said iron rod being the most easterly southwest corner of Lot 1, Block A of Chisholm Place Addition No. 1, an addition to the City of Plano, Collin County, Texas, said iron rod further being an arc length of 120.83 feet in a southwesterly direction from the southerly corner clip line of Chisholm Place (80-foot right-of-way);

THENCE continuing along said curve to the left with the west line of said U.S. Highway 75 in a southwesterly direction having a central angle of $02^{\circ} 34' 37''$, a radius of 5,889.58 feet, an arc length of 265.16 feet, and a chord bearing of South, $07^{\circ} 54' 43''$ West to an iron rod set for corner;

THENCE North, $83^{\circ} 19' 36''$ West, departing the curving west line of said U.S. Highway No. 75 a distance of 34.38 feet to an iron rod set for corner;

THENCE West, a distance of 94.92 feet to an iron rod set for corner;

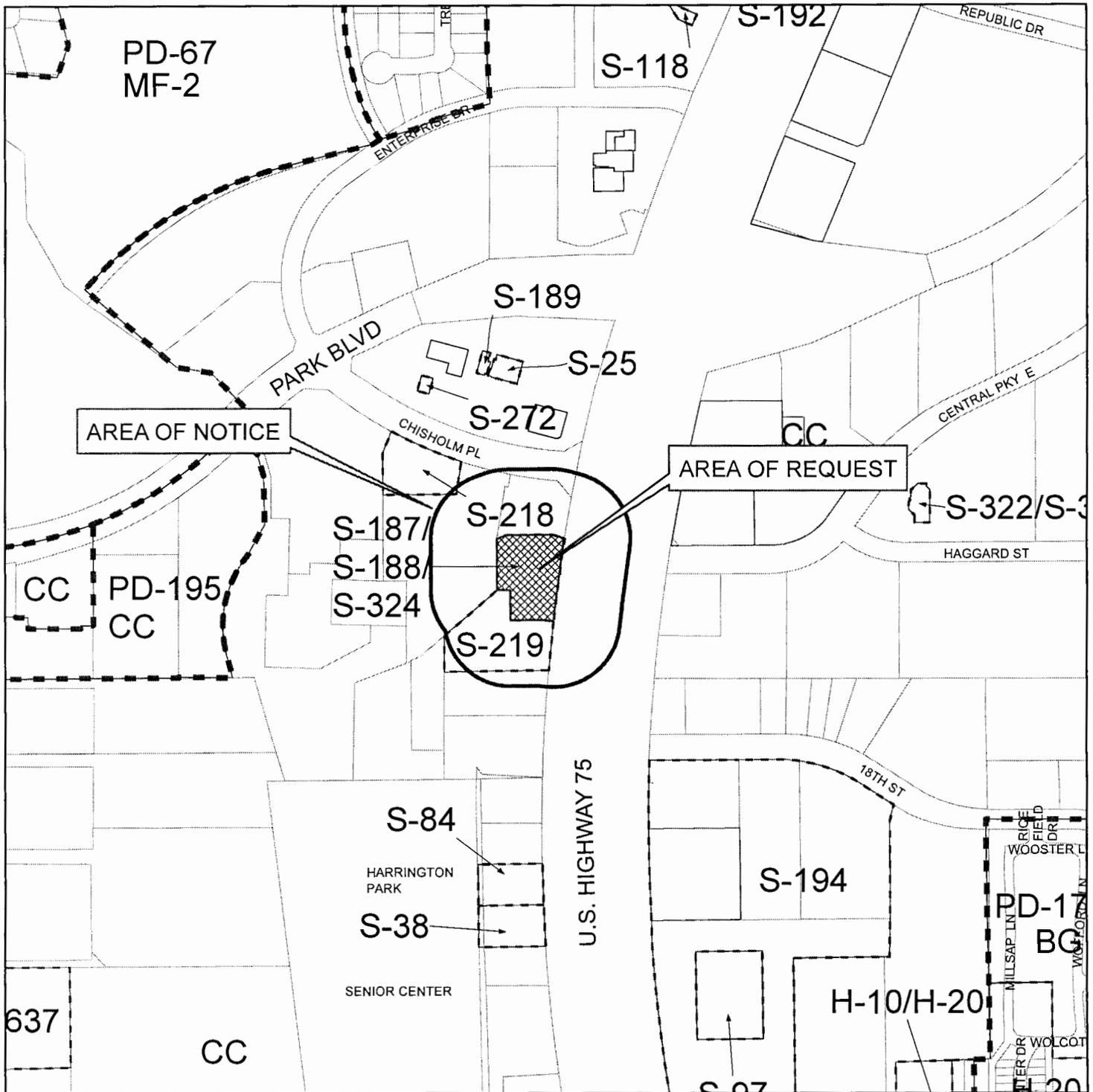
THENCE North, a distance of 92.43 feet to an iron rod set for corner;

THENCE West, a distance of 39.91 feet to an iron rod set in the easterly line of said Lot 1, Block A;

THENCE along the easterly and south line of said Lot 1, Block A the following:

North, a distance of 165.74 feet to an 'x' cut found for corner;

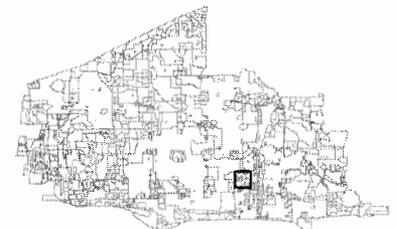
East, a distance of 205.69 feet to the POINT OF BEGINNING and CONTAINING 44,835 square feet or 1.03 acres of land.



Zoning Case #: 2013-15

Existing Zoning: CORRIDOR COMMERCIAL
w/SPECIFIC USE PERMITS #187 & #188

○ 200' Notification Buffer





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:		10/14/13		
Department:		Legal		
Department Head		Diane Wetherbee		
Agenda Coordinator (include phone #): Betsy Allen # 7545				
CAPTION				
An Ordinance of the City of Plano, Texas, repealing Chapter 17.5, Sexually Oriented Businesses, of the City of Plano Code of Ordinances and adopting a new Chapter 17.5, Sexually Oriented Businesses of the City of Plano Code of Ordinances; providing definitions, licensing and regulations for Sexually Oriented Businesses, providing a penalty clause, a severability clause, a repealer clause, a savings clause, a publication clause, and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2013-14	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: This Ordinance relates to the City's goal of a Safe Large City.				
SUMMARY OF ITEM				
SEE ATTACHED				
List of Supporting Documents: Memorandum			Other Departments, Boards, Commissions or Agencies	

MEMORANDUM

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: DIANE WETHERBEE, CITY ATTORNEY
SUBJECT: SEXUALLY ORIENTED BUSINESS ORDINANCE
DATE: SEPTEMBER 23, 2013

I recommend the existing Sexually Oriented Business Ordinance be replaced with a new ordinance that includes regulations that are more aligned with current standards regarding these types of adult businesses. These changes include certain separation requirements from patrons and dancers/performers, regulations restricting access by minors, revisions to the appeal processes, changes to the list of uses for which a sexually oriented business must maintain a 3000' distance, and other matters.

The original ordinance was adopted in 1993. As case law and studies emerged since that time, there are new means to address the negative effects from these businesses. The adoption of this new ordinance captures those acceptable standards and will further the City's interest in promoting the safety and health of the community as well as preserve the values of nearby properties that would otherwise be adversely affected if the adult businesses were located near such properties. Below is a summary of the key changes:

1. The definition of a sexually oriented business includes adult tanning salons. The sexual encounter center was deleted but those types of activities are covered under the general definition of a sexually oriented business. The escort agency is deleted and should be considered as a separate regulation. Adult novelty/book/video store definition has been revised to a specific percentage of the inventory (25%) devoted to items used for sexual stimulation or gratification and/or items that show sexual activity or specified anatomical areas. Items used for birth control or to prevent the spread of sexually transmitted disease are not included in this definition.
2. The application must include a list of employees and that list must be kept current. If the Chief of Police denies an application, or suspends or revokes a current licensee, that appeal is now to the City Manager instead of the Board of Adjustment. The Board of Adjustment will only consider an appeal of the distance limitation. Seventy-five percent (75%) percent of the qualified Board membership must approve of the exemption request. Thus, at least six must approve unless there are legally disqualified members. An approval is only valid for one year.
3. The current and recommended ordinance contains a 3000' distance limitation from certain uses. These uses are deemed to be ones that likely face a greater

degree of harm from the negative secondary effects caused by a close location to a sexually oriented business. Negative secondary effects include increased crime and decreased property values. The uses that are recommended to be changed are: church to religious facility, add property designated as a historic resource district, park facility, hospital, day care, and public library. School zone is omitted from this ordinance.

4. The exterior of an adult business is prohibited from displaying merchandise that depicts sexual activities or specified anatomical areas. Signage is limited and no display of any flashing lights and/or pictorial illustrations. Building must be a single achromatic color, more akin to beige. The building must have a sign posted that it is a sexually oriented business and no one under 18 may enter. No person inside the business who is in a state of nudity may be visible to the exterior of the premises.
5. Minors are prohibited from being employed or to have access to a sexually oriented business.
6. No fondling, caressing, or engaging in any sexual activity with a person who is in a state of nudity. This is an offense for the customer and/or the employee.
7. Any employee that dances or performs must be on a platform at least two feet from the level of the floor and at least ten feet from the customers. No customer may give a gratuity directly to a performer, nor may the performer solicit gratuities. Signage regarding this restriction is required.
8. Hours of operation are prohibited between 2 am and 10 am.
9. The penalty is recommended to be revised to a Class C misdemeanor so that the prosecution of cases remains local.

cc: Bruce Glasscock, City Manager

An Ordinance of the City of Plano, Texas, repealing Chapter 17.5, Sexually Oriented Businesses, of the City of Plano Code of Ordinances and adopting a new Chapter 17.5, Sexually Oriented Businesses of the City of Plano Code of Ordinances; providing definitions, licensing and regulations for Sexually Oriented Businesses, providing a penalty clause, a severability clause, a repealer clause, a savings clause, a publication clause, and an effective date.

WHEREAS, based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *LLEH, Inc. v. Wichita County, Texas* 289 F.3d 358 (5th Cir. 2002); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir 2000); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *2300, Inc. v. City of Arlington*, 888 S.W.2d 123 (Tex App. – Fort Worth, 1994); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), cert denied, 529 U.S. 1053 (2000); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *DLS, Inc. v. Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Jake's, Ltd., Inc. v. Coates*, 384 F.3d 884 (8th Cir 2002); and on studies, reports and/or testimony in other communities including, but not limited to: Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Dallas, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; St. Croix County, Wisconsin; Kitsap County, Washington; Los Angeles, California Police Department (dated August 12, 2003); Arlington, Texas, License and Amortization Appeal Board hearings, 2001 and 2002; Arlington Community Health Profile (dated July 2003); a summary of land use studies compiled by the National Law Center for Children and Families; and also on findings from the report of the Attorney General's Working Group On The Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and the study entitled Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values by Cooper and Kelley and Crime-Related Secondary Effects – Secondary Effects of "Off-Site" Sexually-Oriented Businesses by McCleary, June 2008, the Council finds:

1. Sexually Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, absent municipal regulation aimed at reducing secondary effects, there is no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
2. Certain employees of Sexually Oriented Businesses, defined in this Ordinance as Adult Theater/Movie Theater, Adult Cabaret, Nude Modeling

Studio, and Adult Dance Hall engage in higher incidence of certain types of illicit sexually behavior than employees of other establishments.

3. Sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, occur at Sexually Oriented Businesses, especially those which provide private or semi-private booths or cubicles, or rooms for viewing films, videos, or live sex shows.

4. Offering and providing private or semi-private areas in Sexually Oriented Businesses encourages such sexual activities, which creates unhealthy conditions.

5. Persons frequent certain Sexually Oriented Businesses for the purpose of engaging in sex within the premises of such Sexually Oriented Businesses.

6. At least 50 communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

7. According the Texas Department of State Health services, in 2011, there were approximately 70,000 people in Texas living with HIV, and it is estimated that there are an additional 17,000 HIV infected persons who are unaware of their status. From 2005 to 2011, the number of persons known to have HIV in Texas increased 34%.

8. In his report of October 22, 1986, the Surgeon General of the United States advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

9. According to available scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

10. There are unsanitary conditions in some Sexually Oriented Businesses because: the activities conducted there are unhealthy; the lack of regulations for their activities; and the failure of the owners and/or operators of the facilities to self-regulate those activities and maintain those facilities in a sanitary condition.

11. Studies and reports from other jurisdictions have determined that semen is found in the areas of Sexually Oriented Businesses where persons view "sexually oriented" films.

12. Sexually Oriented Businesses have operational characteristics which should be reasonably regulated in order to protect substantial governmental concerns.

13. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the Sexually Oriented Businesses. Further, such a licensing procedure will place an incentive on the operators to see that the Sexually Oriented Business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurance that the licensee is the actual operator of the Sexually Oriented Business, fully in possession and control of the premises and activities occurring therein.

14. Requiring licensees of Sexually Oriented Businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

15. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the Sexually Oriented Business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

16. In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct that this Ordinance is designed to prevent, or who are likely to be witnesses to such conduct.

17. The fact that an applicant for a Sexually Oriented Business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance. There is a correlation between Sexually Oriented Businesses, specifically their hours of operation and the type of people which such businesses attract, and higher crime rates. [*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F3d 471 (5th Cir. 2002)].

18. The barring of such individuals from the management of Sexually Oriented Businesses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.

19. It is reasonably believed that partially nude performances should be included within the purview of the regulations because they have the same harmful secondary effects on the surrounding community as Sexually Oriented Businesses that allow nudity. [*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F3d 471 (5th Cir. 2002)].

20. There is no Constitutional right for Sexually Oriented Businesses employees in a state of nudity to touch customers. [Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995)].

21. One court has characterized the acts of Sexually Oriented Business employees in a state of nudity and being paid to touch or be touched by customers as prostitution. [People v. Hill, 2002 Ill. App. LEXIS 792 (Ill. App 2 Dist. Sept 4, 2002); See also, Tex. Penal Code Sections 43.01 ("sexual conduct" and "sexual contact") and 43.02 ("prostitution")].

22. According to the City of Arlington, requiring Sexually Oriented Businesses to advise customers and employees in a state of nudity to refrain from intentionally touching and fondling each other through signage posted at the business entrance had not been effective.

23. Provocative touching between customers and employees in a Sexually Oriented Business where at least one is in a state of nudity frequently is likely to lead to the commission of sex crimes, illegal drug, use, and increased health risks due to sexually transmitted diseases.

24. Compelling signage at the entrances of Sexually Oriented Businesses in other communities has not been effective in halting "no touch" violations.

25. The City Council reasonably believes that requiring employees in a state of nudity to be physically separated from customers by the use of elevated states and buffer zones is necessary to better ensure ordinance compliance while still not inhibiting constitutionally protected expressive conduct or speech. [LLEH, Inc. v. Wichita County, Texas, 289 F.3d 358 (5th Cir. 2002)].

26. The City Council reasonably believes that sexual activity occurring in private viewing booths or like facilities at Sexually Oriented Businesses leads to unhealthy and unsanitary conditions and to the transmission of sexually transmitted and other communicable diseases. [Matney v. County of Kenosha, 86 F.3d 692, 695 (7th Cir. 1996)].

27. The City Council reasonably believes that certain negative secondary effects, including prostitution, drug trafficking and assaultive offenses are associated with nude or semi-nude dancing in environments where alcohol is served or allowed. [J.L. Spoons, Inc. v. Dragani, 538 F.3d 379, 382 (6th Cir. 2008)].

28. The City Council reasonably believes that licensing and permit requirements imposed on Sexually Oriented Businesses comport with the prompt judicial review and preservation of the status quo requirements enunciated by the United States Supreme Court, and thus do not constitute an unconstitutional prior

restraint. [Richland Bookmart, Inc. v. Knox County, Tenn., 555 F 3rd 512 (6th Cir. 2009).

29. It is reasonably believed by the City Council that the general welfare, health, and safety of the citizens of the City will be promoted by the enactment of this Ordinance.

30. It is reasonably believed by the City Council that adequate sites are reasonably available for Sexually Oriented Businesses that meet licensing and otherwise applicable requirements to locate and operate in the City of Plano.

31. The Council finds that the current Sexually Oriented Business Ordinance, which was adopted as Ordinance No. 93-2-18, later amended by Ordinance No. 2004-6-8, does not sufficiently address the concerns that may result by the operations of such businesses including types of land uses from which a Sexually Oriented Business must maintain a specified distance requirement, and thus, the Ordinance should be replaced with a new ordinance addressing those concerns.

32. The findings noted in Subsections (1) through (31) raise substantial governmental concerns.

WHEREAS, the findings contained in the preamble of this ordinance are determined to be true and correct and are adopted as part of this ordinance.

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

Section I. The existing Chapter 17.5, Sexually Oriented Businesses, of the Code of Ordinances of the City of Plano, is hereby repealed and a new Chapter 17.5, Sexually Oriented Businesses is adopted in its entirety as follows:

**"Chapter 17.5
SEXUALLY ORIENTED BUSINESSES**

Section 17.5-1. Purpose and Intent.

It is the purpose of this Chapter to regulate Sexually Oriented Businesses to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the concentration of Sexually Oriented Businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended markets.

Section 17.5-2. Definitions.

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning.

Achromatic means colorless or lacking in saturation or hue. The term includes, but is not limited to, grays, tans, and light earth tones. The term does not include white, black, or any bold coloration that attracts attention.

Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by regularly depicting or describing specified sexual activities or specified anatomical areas.

Adult Bookstore, Adult Novelty Store or Adult Video Store means a commercial establishment that sells, displays, or rents items that are intended to provide sexual stimulation or sexual gratification and such items constitute twenty-five percent (25%) or more of all the items for sale, display or rental in the area of the commercial establishment that is open to the public, including:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVD's, video cassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items used for birth control or for the prevention of sexually transmitted diseases.

Adult Cabaret means a commercial establishment that regularly features:

- (1) Persons who appear live in a state of nudity; or
- (2) Live performances which are characterized by exposure of specified anatomical areas or specified sexual activities.

Adult Motel means a motel, hotel or similar commercial establishment which offers accommodations for any form of consideration and:

- (1) Rents a room for a period of time less than ten (10) hours; or
- (2) Allows a tenant or occupant to sub-rent a room for a time period of less than ten (10) hours.

Adult Movie Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult Theater means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Adult Dance Hall means any place:

- (1) Where dancing is permitted one (1) day a week or more by a person in a state of nudity; or
- (2) That is advertised either on or off the premises:
 - a. As topless;
 - b. As a gentlemen's club, bar, or saloon;
 - c. As adult entertainment;
 - d. As X-rated; or
 - e. By any other term calculated to attract patrons by offering entertainment that includes nudity or simulated nudity.

Adult Tanning Salon means a commercial establishment which provides facilities for tanning the human skin, such as tanning beds, suntan lights, or other similar facilities, and regularly features for the entertainment of its clientele:

- (1) Persons who appear in a state of nudity; or
- (2) Live performances or style shows of lingerie performed by persons who appear in a state of nudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Applicant means:

- (1) A person or entity in whose name a license to operate a Sexually Oriented Business will be issued;
- (2) Each individual who signs an application for a Sexually Oriented Business license as required by Section 17.5-4; or
- (3) Each individual who is an officer of a Sexually Oriented Business for which a license application is made under Section 17.5-5 regardless of whether the individual's name or signature appears on the application.

Board of Adjustment means the Board of Adjustment of the City of Plano.

Chief of Police means the Chief of Police of the City of Plano or the Chief's designee.

Child Care Facility means a facility licensed by the State of Texas, that provides care, training, education, custody treatment or supervision for more than six (6) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers. This definition shall not include a child care facility that is an accessory use on the property.

Employee means any individual who:

- (1) Is listed as part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or Sexually Oriented Business; or
- (2) Performs or provides entertainment on the Sexually Oriented Business premises for any form of compensation or consideration.

Establishment means and includes any of the following:

- (1) The opening or commencement of any Sexually Oriented Business as a new business;
- (2) The conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;
- (3) The addition of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
- (4) The relocation of any Sexually Oriented Business.

Heritage Resource Designation means a property that has been designated as a Heritage Resource as provided for in Article 4.400 Heritage Resource Designation in the Zoning Ordinance and Article VI of Chapter 16 of the Code of Ordinances of the City of Plano, as amended.

Heritage Resource District means that term as defined as "Heritage resource district" in section 16-103, Definitions., of Article VI. Heritage Resource Preservation of Chapter 16 of the City of Plano Code of Ordinance, as amended.

Hospital means an institution that falls within the definition of "Hospital" contained in Article I General Regulations of the City of Plano Zoning Ordinance, as amended.

Licensee means:

- (1) A person in whose name a license to operate a Sexually Oriented Business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) Each individual who is an officer of a Sexually Oriented Business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application; or
- (4) Each individual who has a 20 percent or greater ownership interest in a Sexually Oriented Business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application.

Nude Modeling Studio means any place where a person appears in a state of nudity or displays specified anatomical areas to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other person(s) who pays money or any form of consideration except as authorized under (4)(d) of the Sexually Oriented Business definition of this Chapter.

Nudity or State of Nudity means:

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals or female breast; or
- (2) A state of dress which fails to completely and opaquely cover a human buttock, anus, male genitals, female genitals or female breast or below a point immediately above the top of the areola of the female breast, or the use of any device, costume or covering that gives the realistic appearance of or simulates the post puberty female nipple or areola, female or male genitals, buttock or anus. For purposes of this definition, body paint, dyes, tattoos, liquid latex, (whether wet or dried) and other similar substances shall not be considered an opaque covering.
- (3) The definition shall not apply to an individual exposing a post puberty female nipple or areola in the process of breastfeeding a child under that person's care.

Operates or Causes to be Operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a Sexually

Oriented Business whether or not that person is an owner, part owner, or licensee of the business.

Park or Park Facility means any and all land, area, building, and facilities that are owned, leased, or otherwise operated and controlled by the City of Plano for park and recreation purposes including, but not limited to: parks, recreation facilities, athletic fields, tennis courts, golf courses, swimming pools, playgrounds, pavilions, and recreation trails.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Religious Facility means a building used primarily for religious assembly in which persons regularly assemble for religious worship and the building is intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Residential District means each and all of the residential zoning districts set forth under 2.100 Establishment of Zoning Districts, Article 2. Zoning Districts and Uses in the Zoning Ordinance of the City of Plano.

Residential Use means a single family, duplex, multiple family, mobile home, and mobile home/trailer park use as defined in Zoning Ordinance of the City of Plano.

Sexually Oriented Business means:

- (1) Those businesses classified in Section 17.5-3 of this Ordinance; or
- (2) Any establishment of which the principal business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or
- (3) A business whose employees or customers appear in a state of nudity.
- (4) The term Sexually Oriented Business shall not be construed to include:
 - (a) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held;

- (b) Any business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts;
 - (c) Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and does not exhibit merchandise on live models; or
 - (d) In a structure that has no sign or other advertising visible from the exterior of the structure indicating a nude person is available for viewing and that activity is conducted or sponsored by: :
 - (i) A proprietary school licensed by the state or a college, junior college or university supported entirely or partly by taxation; or
 - (ii) A private college or university that maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
- And
- (iii) A student must enroll at least three (3) days in advance of the class in order to participate; and
 - (iv) No more than one (1) nude model is on the premises at any one time.

Sign means any display, design, pictorial, or other representation that is constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever so that it is visible from the outside of a Sexually Oriented Business and used to seek the attraction of the public to any goods, services, or merchandise available at the Sexually Oriented Business.

Specified Anatomical Areas means:

- (1) Any of the following, or any combination of the following, when less than completely and opaquely covered:
 - (a) Any human genitals, pubic region, or pubic hair;
 - (b) Any buttock; or
 - (c) Any portion of the post puberty female breast that is situated below a point immediately above the top of the areola.
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified Sexual Activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in Paragraphs (1) through (3) of this definition.

Transfer of Ownership or Control of a Sexually Oriented Business means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Section 17.5-3. Classification.

Sexually Oriented Businesses are classified as follows:

- (1) Adult arcade;
- (2) Adult bookstore, adult novelty store or adult video store;
- (3) Adult cabaret;
- (4) Adult dance hall;
- (5) Adult motel;
- (6) Adult movie theater;
- (7) Adult tanning salon;
- (8) Adult theatre;
- (9) Nude modeling studio; or

(10) A business meeting the definition of a Sexually Oriented Business as defined in Section 17.5-2.

Section 17.5-4. License Required.

(1) *License requirement.* A person commits an offense if he operates or causes to be operated a Sexually Oriented Business without a valid license as required by this Chapter.

(2) *Other permits or licenses.* The fact that a person possesses other types of state or city permits or licenses does not exempt the person from the requirement of obtaining a license for a Sexually Oriented Business.

Section 17.5-5. License Application.

(1) *Form of application.* Any person desiring to obtain a Sexually Oriented Business license shall make application on a form provided by the Chief of Police. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(2) *Individual applicants.* If a person who wishes to operate a Sexually Oriented Business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a Sexually Oriented Business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. The application must be sworn to be true and correct by each applicant. Each applicant must be qualified under Section 17.5-6 and each applicant shall be considered a licensee if a license is granted.

(3) *Corporate applicants.* In addition to identifying those persons required to sign an application under Subsection (2), the application must identify all parent and related corporations or entities of any person who will own or operate the Sexually Oriented Business and include the names of the officers of each parent or related corporation or entity.

(4) *Application.* The application must include a current official Texas criminal history report with a fingerprint card (issued within the preceding 12 months) for the applicant and the applicant's spouse showing they are not disqualified to operate a Sexually Oriented Business under this chapter.

(5) *Application fee.* All applications for a license under this article shall be accompanied by a nonrefundable application fee. An application shall not be considered

to have been filed until the fee is paid and all information required by the application form has been submitted.

Section 17.5-6. License Issuance/Grounds for Denial.

(1) *Issuance generally.* The Chief of Police shall approve the issuance of a license to an applicant within 30 days after filing of an application unless the Chief of Police finds one or more of the following to be true:

- (a) The location of the Sexually Oriented Business is or would be in violation of Section 17.5-13.
- (b) The applicant failed to supply all of the information requested on the application.
- (c) The applicant gave false, fraudulent, or untruthful information on the application.
- (d) An applicant is under 18 years of age.
- (e) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a Sexually Oriented Business.
- (f) An applicant or an applicant's spouse has been convicted or placed on deferred adjudication for a violation of a provision of this article, other than the offense of operating a Sexually Oriented Business without a license, within two years immediately preceding the application.
- (g) The application or renewal fee required by this article has not been paid.
- (h) The applicant has not demonstrated that the owner of the Sexually Oriented Business owns or holds a lease for the property or the applicable portion thereof within which the Sexually Oriented Business will be situated or has a legally enforceable right to acquire the same.
- (i) An applicant or the proposed establishment is in violation of or is not in compliance with this chapter.
- (j) An applicant or an applicant's spouse has been convicted or placed on deferred adjudication for a crime involving:

- (i) Any of the following offenses as described in Chapter 43 of the Penal Code: prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution, or display of harmful material to a minor, sexual performance by a child, or possession of child pornography;
 - (ii) Any of the following offenses as described in Chapter 21 of the Penal Code: continuous sexual abuse of young child or children, public lewdness, indecent exposure, indecency with a child, improper relationship between educator and student, or improper photography or visual recording;
 - (iii) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Penal Code;
 - (iv) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Penal Code;
 - (v) Trafficking of persons or continuous trafficking of persons as described in Chapter 20A of the Penal Code;
 - (vi) Possession or distribution of a controlled substance;
or
 - (vii) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses.
- (k) An applicant or an applicant's spouse has been convicted or placed on deferred adjudication for a crime listed in (j) above and for which:
- (i) Less than two years have elapsed since the date of conviction, or the date of release from the terms of probation, parole, or deferred adjudication, or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - (ii) Less than five years have elapsed since the date of conviction, or the date of release from the terms of probation, parole, or deferred adjudication, or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - (iii) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two

or more misdemeanor offenses or combination of misdemeanor offenses occurring within any two-year period.

(1) The applicant or the applicant's spouse is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure.

(2) *Appeal of conviction or deferred adjudication to have no effect on disqualification.* The fact that a conviction or a deferred adjudication of the applicant or applicant's spouse is being appealed shall have no effect on the disqualification.

(3) *Qualification by person convicted or placed on deferred adjudication for certain offenses.* An applicant who has been convicted or placed on deferred adjudication or whose spouse has been convicted or placed on deferred adjudication for an offense listed in Subsection (1)(j) of this section may qualify for a Sexually Oriented Business license only when the time period required by Subsection (1)(j) of this Section has elapsed.

(4) *License information.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the Sexually Oriented Business.

(5) *Posting of license.* The license shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it may be easily read at any time.

Section 17.5-7. Inspection and Maintenance of Records.

(1) *Inspection generally.* An applicant or licensee shall permit representatives of the police department or a department otherwise designated by the city manager to inspect the premises of a Sexually Oriented Business for the purpose of insuring compliance with the law, at any time during the 30-day application period or after it is occupied or open for business and at any other reasonable times upon request. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

(2) *Refusal to permit inspection.* A person who operates a Sexually Oriented Business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police department, or a department otherwise designated by the city manager at any time during the 30-day application period or after it is occupied or open for business.

(3) *List of employees; application.* A person who operates a Sexually Oriented Business or his agent or employee commits an offense if he operates the establishment without maintaining a current list of all employees employed by the business, along with

a complete updated employment application. Each employment application shall include a copy of a valid driver's license, state identification card, or passport, all with a photo.

Section 17.5-8. Expiration of License.

(1) *Generally.* Each license shall expire one year from the date of issuance.

(2) *Renewal; fee.* A license may be renewed by submission to the Chief of Police of an application on the form prescribed by the Chief of Police and payment of a nonrefundable renewal processing fee.

(3) *Application for renewal.* Application for renewal shall be made at least 30 days before the expiration date of the license.

Section 17.5-9. Suspension.

(1) *Factors for suspension.* The Chief of Police shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee:

(a) Has violated or is not in compliance with Sections 17.5-7 or 17.5-12;

(b) Is in a state of public intoxication while on the Sexually Oriented Business premises;

(c) Refuses to allow an inspection of the Sexually Oriented Business premises as authorized by this article;

(d) Knowingly permits gambling by any person on the Sexually Oriented Business premises; or

(e) Is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the Sexually Oriented Business.

(2) *Reinstatement fee.* When the Chief of Police or a person otherwise designated by the city manager is authorized to suspend a license under this section, he shall give the licensee the opportunity to pay a reinstatement fee rather than have the license suspended.

(a) Payment of this reinstatement fee shall be considered an administrative admission of the violation. However, this shall not be used as an admission of guilt in a criminal prosecution under this article.

(b) If the licensee does not pay the reinstatement fee before the expiration of the third working day after notification, the Chief of Police shall impose the suspension.

(c) Each day in which a violation is permitted to continue shall constitute a separate cause for suspension.

Section 17.5-10. Revocation.

(1) *Revocation generally.* The Chief of Police shall revoke a license if a cause of suspension in Section 17.5-9(1) occurs and the license has been suspended or a reinstatement fee paid within the preceding 12 months.

(2) *Factors for revocation.* The Chief of Police shall revoke a license if he determines that:

(a) A licensee gave false or misleading information in the material submitted to the Chief of Police during the application process;

(b) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the Sexually Oriented Business premises;

(c) A licensee or an employee has knowingly allowed prostitution on the Sexually Oriented Business premises;

(d) A licensee or an employee knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;

(e) A licensee has been convicted or placed on deferred adjudication for an offense listed in Section 17.5-6(1)(j) for which the time period required has not elapsed;

(f) On two or more occasions within a 12-month period, an employee of the establishment committed in or on the licensed premises an offense listed in Section 17.5-6(1)(j) for which a conviction has been obtained or deferred adjudication has been granted; or

(g) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the Sexually Oriented Business premises. The term "sexual contact" shall have the same meaning as it is defined in § 21.01 of the Penal Code.

(3) *Appeal of conviction or deferred adjudication to have no effect on disqualification.* The fact that a conviction or deferred adjudication is being appealed shall have no effect on the revocation of the license.

(4) *Application to adult motels.* Section 17.5-10 does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(5) *Term of revocation.* When the Chief of Police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a Sexually Oriented Business license for one year from the date revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

Section 17.5-11. Appeal.

(1) *Notice of intention to suspend or revoke license.* If the Chief of Police is authorized to deny the issuance of a license, or suspend or revoke a license as provided in this article, the Chief of Police shall give written notice to the applicant or licensee of such intention.

(a) The notice shall provide that the denial of issuance, suspension, or revocation shall take effect at the expiration of the third working day after notification unless the licensee provides a written response to the Chief of Police before the expiration of the third working day.

(b) If a written response from the applicant or licensee is received by the Chief of Police before the expiration of the third working day, the suspension, denial of issuance or revocation will be stayed pending a decision by the Chief of Police. The Chief of Police shall review the response before the rendering of a decision.

(c) The Chief of Police shall give written notice of this decision to the applicant or licensee.

(d) The decision by the Chief of Police is effective immediately and final pending any appeal.

(e) Notice shall be deemed delivered by hand delivery to a licensee, owner, or employee of the establishment or by a posting of the notice at the usual business entrance of the establishment. Notice may also be sent by certified mail, return receipt requested. Such notice shall be mailed to the address listed in the license application for receipt of notice.

(2) *Appeal from denial or revocation of permit.* Should an applicant be denied a license or have a license suspended or revoked, the applicant may appeal that action to the city manager or his designee by submitting a letter requesting a hearing to the city secretary within ten (10) days after receiving notice. A hearing on the denial will then be scheduled before the city manager, or his designee. The city manager, or his designee, shall schedule a hearing and render a decision on the appeal within forty-five (45) days of the date of the request. The decision of the city manager, or his designee, shall be final.

Section 17.5-12. Transfer of License.

A person commits an offense if he transfers his license to another person or operates a Sexually Oriented Business under the authority of a license at any place other than the address designated in the application.

Section 17.5-13. Location Regulations.

(1) A person commits an offense if he establishes, operates or causes to operated, or expands a Sexually Oriented Business within three thousand (3000) feet of:

- (a) A religious facility;
- (b) A public or private elementary or secondary school;
- (c) A boundary of a residential or a heritage resource district;
- (d) Property devoted to residential use;
- (e) Property that has received a historic resource designation;
- (f) A public park or park facility;
- (g) A public library;
- (h) A hospital; or
- (i) A child care facility.

(2) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a Sexually Oriented Business within three thousand (3000) feet of another Sexually Oriented Business.

(3) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one Sexually Oriented Business in the same building, structure, or portion of a building or structure, or increases the floor area of any Sexually Oriented Business in any building, structure, or portion of a building or structure containing another Sexually Oriented Business.

(4) For the purposes of Subsection (1), measurement must be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted, to the nearest property line of the premises of a religious facility, public or private elementary or secondary school, hospital, property devoted to residential

use, historic resource designated property, a child-care facility, or to the nearest boundary of a park, public library, or residential or heritage resource district.

(5) For purposes of Subsection (2) of this section, the distance between any two Sexually Oriented Businesses must be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(6) A Sexually Oriented Business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the Sexually Oriented Business license, of a religious facility, public or private elementary or secondary school, public park, public library, historic resource designated property, residential district, property devoted to residential use, hospital, or child care facility within three thousand (3000) feet of the Sexually Oriented Business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has been expired or has been revoked.

Section 17.5-14. Exemption from Location Restrictions.

(1) If the Chief of Police denies the issuance of a license to an applicant because the location of Sexually Oriented Business establishment is in violation of Section 17.5-13 of this chapter, then the applicant may, not later than ten (10) calendar days after notice of the denial, file with the Chief Building Official a written request for an exemption from the locational restrictions of Section 17.5-13.

(2) If the written request is filed with the Chief Building Official within the ten-day limit, the Board of Adjustment shall consider the request. A date for the hearing shall be set within sixty (60) days from the date the written request is received.

(3) The Board of Adjustment may, in its discretion, grant an exemption from the locational restrictions of Section 17.5-13 if it makes the following findings:

(a) That the location of the proposed Sexually Oriented Business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

(b) That the granting of the exemption will not violate the spirit and intent of this chapter of the City Code;

(c) That the location of the proposed Sexually Oriented Business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(d) That the location of an additional Sexually Oriented Business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(e) That all other applicable provisions of this chapter will be observed.

(4) The concurring vote of seventy-five percent (75%) of the qualified membership of the Board must vote in favor of the applicant.

(5) If the Board of Adjustment grants the exemption, the exemption is valid for one (1) year from the date of the Board's action. Upon the expiration of an exemption, the Sexually Oriented Business is in violation of the locational restrictions of Section 17.5-13 until the applicant applies for and receives another exemption.

(6) If the Board of Adjustment denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the Board's action.

(7) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Section 17.5-13.

Section 17.5-15. Nonconforming Sexually Oriented Business; Amortization Schedule.

(1) Any Sexually Oriented Business lawfully operating on the effective date of ordinance must file an application with the Chief of Police for a Sexually Oriented Business license within thirty (30) days of the effective date of the Ordinance.

(2) Any Sexually Oriented Business lawfully operating on the effective date of ordinance that is in violation of section 17.5-13 is a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed twelve (12) months, unless sooner terminated for any reason or voluntarily discontinued for a period of 60 days or more.

(3) The nonconforming use may not be increased, enlarged, extended, or altered, except that the use may be changed to a conforming use. If two or more Sexually Oriented Businesses are within three thousand (3000) feet of one another and are, otherwise, in a permissible location, the Sexually Oriented Business that was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

(4) Notwithstanding anything contained herein to the contrary, the Board of Adjustment may extend the amortization period hereinabove provided to a reasonable period of time for any nonconforming Sexually Oriented Business upon a showing by a particular business that without an extension it will be unable to recoup its investment in the nonconforming structure. The concurring vote of four (4) members of the Board of Adjustment is necessary before the amortization period can be extended.

(5) Any nonconforming Sexually Oriented Business which desires an extension of the amortization period must file an application with the Building Inspections Department no later than ninety (90) days prior to the expiration of the license. Requests for an extension of the amortization period shall be limited to one (1) application with the Board of Adjustment.

Section 17.5-16. Exterior Portions of Sexually Oriented Businesses.

(1) It is an offense if a Licensee, or its agents or employees, of a Sexually Oriented Business allows merchandise that is intended for sexual stimulation or gratification and is distinguished by or characterized by an emphasis on depicting, describing or relating to specified sexual activities or specified anatomical areas to be viewed from the exterior of the premises.

(2) It is an offense if a Licensee, or its agents or employees, of a Sexually Oriented Business allows the exterior portions of the Sexually Oriented Business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this article.

(3) It is an offense if a Licensee, or its agents or employees, of a Sexually Oriented Business allows exterior portions of the enterprise to be painted any color other than a single achromatic color. This provision shall not apply to a Sexually Oriented Business if the following conditions are met:

(a) The Sexually Oriented Business is a part of a commercial multi-unit center; and

(b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the Sexually Oriented Business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

This section shall not apply to a Sexually Oriented Business that meets Sec. 17.5-15 of this article.

Section 17.5-17. Signage.

(1) Notwithstanding any sign regulations in Chapter 6, Article XII of the City Code of Ordinances or Article 3, Section 3.1600 of the City Zoning Ordinance, or any other regulations to the contrary, on-premise exterior signs for any Sexually Oriented Business shall comply with the following requirements:

(a) Flashing lights, reader boards, electronic or digital messages, or changeable copy are prohibited;

(b) Photographs, silhouettes, drawings or pictorial representations of any specified anatomical areas and/or specified sexual activities are prohibited; and

(c) Signs shall be a flat plane excluding the lettering.

(2) It is an offense for a Licensee, including agents and employees, of any Sexually Oriented Business to erect, construct or maintain any on-premise exterior sign for the Sexually Oriented Business in violation of this ordinance.

Section 17.5-18. Minors prohibited.

(1) It is an offense for a person who is younger than 18 years of age to enter or be on the premises of a Sexually Oriented Business at any time.

(2) It is an offense for a Licensee or its employee to allow a person under the age of 18 years to enter the Sexually Oriented Business. It shall be an affirmative defense issued pursuant to this section if an employee of the Licensee asked the minor to provide and the minor furnished:

(a) A valid driver's license showing the person was at least 18 years of age; or

(b) A valid personal identification certificate issued by the Texas Department of Public Safety reflecting that such person is 18 years of age or older.

(3) Notwithstanding any other City sign regulation to the contrary, the Licensee of the Sexually Oriented Business shall maintain at least one visible and legible permanently mounted sign, printed in both English and Spanish, at each public entrance which contains a statement to the effect:

“THIS IS A SEXUALLY ORIENTED BUSINESS ESTABLISHMENT. NO PERSON UNDER 18 YEARS OF AGE ALLOWED ENTRY.”; and

[If alcoholic beverages are sold on the premises] –
"NO PERSON UNDER 21 YEARS OF AGE ALLOWED ENTRY.”

It is an offense if the Licensee fails to post the sign and maintain the sign.

Section 17.5-19. Additional Violations – Conduct of Employees and Patrons.

(1) It is an offense for a person to appear in a state of nudity in a Sexually Oriented Business and the person or any part thereof can be viewed from the exterior of the premises.

(2) It is an offense for an employee or contractor of a Sexually Oriented Business who appears in a state of nudity to fondle, caress, or engage in specified sexual activities with any patron or clientele of the Sexually Oriented Business.

(3) It is an offense for any patron or clientele of any Sexually Oriented Business to fondle, caress, or engage in specified sexual activities with any employee of a Sexually Oriented Business who appears in a state of nudity.

Section 17.5-20. Additional Regulations.

It is an offense for a person to:

(1) Allow a bed, sofa, or mattress in any room on the Sexually Oriented Business; except that a sofa may be placed in a reception room open to the public. This prohibition shall not apply to Adult Motels.

(2) Dance, perform, exhibit or show an employee in a state of nudity unless the dance, performance or exhibition is on a platform raised at least two feet from the level of the floor.

(3) Dance, perform, exhibit or show an employee in a state of nudity within ten feet to any patron or clientele.

(4) Directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity.

(5) Solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity.

(6) Fail to post a minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW.
(Cite Code of Ordinances Chap. 17.5 Sexually Oriented Businesses
Sec. 17.5.20.)"

Section 17.5-21. Hours of Operation.

(1) It is an offense for an employee of a Sexually Oriented Business to allow it to be open to the public or allow customers or patrons to enter or remain within the premises of a Sexually Oriented Business on any day between the hours of 2:00 a.m. and 10:00 a.m.

(2) Notwithstanding Section 17.5-21(1) above, hours of operation of a Sexually Oriented Business may not conflict with any other federal, state, or city laws, rules or regulations.

(3) This regulation shall not apply to adult motels.

Section 17.5-22. Penalty.

(1) Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and 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.

(2) A person, firm, or corporation who operates or causes to be operated a Sexually Oriented Business in violation of this ordinance is subject to a civil lawsuit, including injunctive relief, in addition to and exclusive of any other available legal remedies."

Section II. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

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

Section V. 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 provisions at the time of passage of this Ordinance.

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

DULY PASSED AND APPROVED this the 14th day of October 2013.

Harry LaRosiliere, 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:		10/14/2013		
Department:		Police		
Department Head		Gregory W. Rushin		
Agenda Coordinator (include phone #): Pam Haines, ext 2538				
CAPTION				
A Resolution authorizing the establishment of fees for application and licensing of Sexually Oriented Businesses pursuant to Chapter 17.5, Sexually Oriented Businesses, of the City Code of Ordinances for the City of Plano, Texas; 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:	2013-14	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): N/A				
COMMENTS: This item will establish the amount of application and licensing fees for Sexually Oriented Businesses in the City of Plano; however, at this time, the amount of application and licensing fees to be collected is undeterminable. STRATEGIC PLAN GOAL: Changes to the ordinances relate to the City's Goal of Financially Strong City with Service Excellence and Safe Large City.				
SUMMARY OF ITEM				
The ordinance regulating Sexually Oriented Businesses provides for licensing procedures and charges. This Resolution will establish reasonable fees for those associated charges that are incurred as part of the annual licensing requirements, including renewals and reinstatement fees.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memo and Resolution				

Date: October 1, 2013

To: LaShon Ross, Deputy City Manager

From: Gregory W. Rushin, Chief of Police *grush*

Subject: Proposed Change to the Fee Structure of the Sexually Oriented Business Ordinance

The change to this fee structure is being proposed in conjunction with the proposed adoption of the new Chapter 17.5, Sexually Oriented Business Ordinance. Currently, the Sexually Oriented Business Ordinance provides for an annual business license fee of \$500.00. This structure does not provide fees for additional administrative functions related to the regulation of sexually oriented businesses. The changes to the sexually oriented business fee structure will eliminate the \$500.00 annual business license fee and propose the following:

- | | |
|------------------------|----------|
| 1. Application Fee | \$500.00 |
| 2. License Renewal Fee | \$50.00 |
| 3. Reinstatement Fee | \$50.00 |

The nonrefundable application fee will accompany the application for a sexually oriented business license. The application will be submitted to the Chief of Police and includes information regarding the proposed premises and identification information of the individuals or corporations who have an interest in the business.

The license renewal fee is an annual processing fee required to accompany the application to renew the sexually oriented business license.

If a sexually oriented business license is authorized to be suspended based on a violation of the ordinance, the licensee is given the opportunity to pay a reinstatement fee in lieu of having the license suspended. The payment of this reinstatement fee will be considered an administrative admission of the violation.

I recommend the existing fee structure be replaced with this proposed fee structure that corresponds with the new proposed Sexually Oriented Business Ordinance.

A Resolution authorizing the establishment of fees for application and licensing of Sexually Oriented Businesses pursuant to Chapter 17.5, Sexually Oriented Businesses, of the City Code of Ordinances for the City of Plano, Texas; and providing an effective date.

WHEREAS, Chapter 17.5. Sexually Oriented Businesses of the Code of Ordinances requires fees for application, licensing and reinstatement of a license for a Sexually Oriented Business; and

WHEREAS, upon review of the proposed fees for application, licensing and reinstatement of a license for a Sexually Oriented Business, the Council finds such fees are reasonable for the associated resources needed to administer the license requirements of that ordinance.

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

Section I. The City Council finds that the proposed fees relating to applications, licenses and related matters for Sexual Oriented Businesses are reasonable and in the best interest of the City of Plano and its citizens, hereby approves the establishment of fees as follows:

1. Application Fee-\$500.00 [Section 17.5-5 (5)]
2. License Renewal-Fee-\$50.00 [Section 17.5-8 (2)]
3. Reinstatement Fee-\$50.00 [Section 17.5-9 (2)]

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

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

DULY PASSED AND APPROVED this the 14th day of October, 2013.

Harry LaRosiliere, 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:		10/14/13		
Department:		Legal		
Department Head		Diane Wetherbee		
Agenda Coordinator (include phone #): Betsy Allen # 7545				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, amending Section 6-487, Prohibited signs, and Section 6-491, Political signs/noncommercial purpose signs, of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano, and adding Article XII, Prohibited Signs on Public Property, to Chapter 14, Offenses – Miscellaneous, of the Code of Ordinances of the City of Plano, to provide sign regulations on public property; and providing repealer, severability, savings, penalty, and publication clauses and setting 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: 2013-14	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 sign Ordinance relates to the City's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
<p>The Texas Legislature passed a bill that allows electioneering on public property used as a voting location. Cities may adopt reasonable regulations to address any concerns as a result of electioneering at those locations. Currently, political signs are not permitted on any public property and those ordinances must be amended to accommodate the new law. This ordinance includes those amendments and also establishes regulations for City property used for voting. These regulations address safety concerns, need to preserve parking spaces for the users of the facilities, prevent destruction of public property, and places reasonable time limits for leaving signs on the public property.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas, amending Section 6-487, Prohibited signs, and Section 6-491, Political signs/noncommercial purpose signs, of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano, and adding Article XII, Prohibited Signs on Public Property, to Chapter 14, Offenses – Miscellaneous, of the Code of Ordinances of the City of Plano, to provide sign regulations on public property; and providing repealer, severability, savings, penalty, and publication clauses and setting an effective date.

WHEREAS, on June 14, 2013, the Texas Legislature passed H.B. 259, modifying the Texas Election Code and requiring a public entity that controls or owns a building used as a polling place, to allow electioneering on the premises subject to reasonable regulations; and

WHEREAS, according to this new law, “electioneering” includes the posting, use, or distribution of political signs or literature; and

WHEREAS, the polling places in the City include facilities that are simultaneously used for various other purposes and for which adequate and safe parking and access thereto must be maintained in order for those facilities to operate in a safe and effective manner; and

WHEREAS, electioneering includes posting of signs and, and in order to further the general health, safety and welfare of the community, electioneering signs and literature should not be present outside of the time for voting except for a limited period to erect and remove the signs, and not be attached to improvements and landscaping; and

WHEREAS, the City Council further finds that the size of electioneering signs shall be limited and they should be set back from the public roadway in order to further traffic safety and remove visual clutter; and

WHEREAS, current City of Plano regulations prohibit signs, including political signs, on public property, therefore, those regulations must be amended to comply with the new law; and

WHEREAS, the City Council deems it is in the best interest of the citizens of the City of Plano that the current sign regulations be amended and additional regulations be adopted to address concerns that may result from electioneering on public property, including damage to property, traffic safety concerns, and blight; and

WHEREAS, the City Council finds that the adoption of regulations is needed and that they further the public health, safety and welfare of the community.

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

Section I. Subsection (7) of Section 6-487, Prohibited signs, of Chapter 6, of the Code of Ordinances of the City of Plano, is hereby amended to read in its entirety as follows:

“Sec. 6-487. Prohibited signs.

(7) Signs located on public property including, but not limited to, signs attached to any public utility pole or structure, street light, tree, fence, fire hydrant, bridge, curb, sidewalk, park bench, or other location on public property, except as allowed in Chapter 14, Article XII.”

Section II. Section 6-491, Political signs/noncommercial purpose signs, of Chapter 6, of the Code of Ordinances of the City of Plano, is hereby amended to read in its entirety as follows:

“Sec. 6-491. Political signs/noncommercial purpose signs.

Political and noncommercial purpose signs thirty-six (36) square feet or less are allowed on private property with the consent of the property owner, but are prohibited on public property, including the rights-of-way, except as allowed in Chapter 14, Article XII.

Political signs may be placed on private property no earlier than one hundred twenty (120) days prior to the election for which the sign is applicable and must be removed no later than the 15th day following the election. City personnel may remove and dispose of any sign placed on public property or within the rights-of-way.”

Section III. Chapter 14, Offenses - Miscellaneous, of the Code of Ordinances of the City of Plano, is hereby amended by adding new Article XII to read in its entirety as follows:

“ARTICLE XII. ELECTIONEERING AT POLLING LOCATIONS

Sec. 14-130. Purpose.

The purpose of this Article is to provide reasonable regulations for electioneering on City owned or controlled public property when such property is used as an election polling place. The regulations contained herein are to mitigate against any safety concerns, prevent damage to public property, and ensure that the property is sufficiently available for its patrons who use the facilities other than for election purposes.

Sec. 14-131. Definitions.

The following words and phrases as used in this article shall have the meanings as set forth in this section:

Electioneering shall mean the posting, use, or distribution of political signs or literature, including the use of tents, chairs, booths, tables or other furniture or devices to post, use or distribute political signs or literature.

Voting period shall mean the period each day beginning the hour the polls are open for voting and ending when the polls close or the last voter has voted, whichever is later on election day and early voting days.

Sec. 14-132. Regulations and Exceptions.

(a) The following regulations apply to electioneering on the premises of public property during the voting period.

(1) It is an offense for any person to leave any electioneering sign or literature on public property that is used as a polling place other than during the voting period and for thirty minutes before and after the voting period.

(2) It is an offense for any person to engage in electioneering on driveways, parking areas, on medians within parking areas, or driveways on the premises of a polling location. This restriction shall not apply to electioneering signs that are attached to vehicles that are lawfully parked at the premises of a polling location.

(3) It is an offense for any person to attach, place or otherwise affix any electioneering sign, literature or material to any building, tree, shrub, pole or other improvement on public property used as a polling location.

(4) It is an offense for any person to place any electioneering sign or literature within twenty-five (25) feet of the public road way adjacent to the public property where a polling location is located.

(5) It is an offense for any person to place an electioneering sign on the premises that exceeds thirty six square feet and is more than eight feet in height, including any supporting poles.

(6) In addition to imposing any criminal penalty, electioneering sign(s) located in violation of this section may be removed and disposed of by the entity in control of the public property.

(7) The authority to conduct electioneering on public property under this Article is limited to the property on the premises where the voting is conducted and only for the voting period.

(b) The regulations set forth in (a) above shall not apply to any City of Plano authorized signs, materials or other messages on its property.”

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

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

Section VI. 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 provisions at the time of passage of this ordinance.

Section VII. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

DULY PASSED AND APPROVED this the 14th day of October, 2013.

Harry LaRosiliere, 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:		10/14/13		
Department:		City Secretary		
Department Head		Diane Zucco		
Agenda Coordinator (include phone #): Alice D.Snyder, Ext. 7515				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, nominating an individual for election to the Collin County Central Appraisal District Board of Directors; 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:	2013-14	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(s): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Nominating a candidate for the Collin County Central Appraisal District Board of Directors relates to the City's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
Nomination for election to the Collin County Central Appraisal District Board of Directors.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution				

A Resolution of the City Council of the City of Plano, Texas, nominating an individual for election to the Collin County Central Appraisal District Board of Directors; and providing an effective date.

WHEREAS, the Property Tax Code provides that a taxing jurisdiction may cast its ballot for members to the Collin County Central Appraisal District Board of Directors under certain terms and conditions as provided by law; and

WHEREAS, each voting unit may nominate from one to five candidates in an open meeting for the position of member on the Collin County Central Appraisal District Board of Directors; and

WHEREAS, the City Council desires to nominate _____ to be placed on the ballot for election to the Collin County Central Appraisal District Board of Directors;

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

Section I. The City Council of the City of Plano, Texas, nominates the following person to be placed on the ballot for election to the Collin County Central Appraisal District Board of Directors:

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

DULY PASSED AND APPROVED this the 14th day of October, 2013.

Harry LaRosiliere, MAYOR

Diane Zucco, CITY SECRETARY

Approved as to form:

Diane C. Wetherbee, CITY ATTORNEY