

CITY COUNCIL

1520 AVENUE K



DATE: 10/25/2010
CALL TO ORDER: 7:00 p.m.
INVOCATION: Father John Szatkowski
St. Elizabeth Ann Seton Catholic Church
PLEDGE OF ALLEGIANCE: Cub Scout Pack 283
Brinker & Centennial Elementary Schools

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u></p> <p>Special Recognition: Bradley Robertson - SWANA National Truck Road-E-O Third Place in Automated</p> <p>Presentation: City of Plano Fit-Friendly Recognition</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Self Sufficiency Committee</u></p> <p>Cynthia Nye</p> <p><u>CERTIFICATES OF APPRECIATION</u></p> <p><u>Board of Adjustment</u></p> <p>Randy Hart</p> <p>Donnie Swango</p> <p><u>Building Standards Commission</u></p> <p>Richard W. Prusha</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Community Relations Commission</u></p> <p>Elias Baron</p> <p>Linda S. Hester</p> <p>Robert G. Masengill</p> <p><u>Cultural Affairs Commission</u></p> <p>Barbara Buehler</p> <p>Stephanie Ward</p> <p><u>Heritage Commission</u></p> <p>Karen Bellessa</p> <p>Brian Chaput</p> <p><u>Library Advisory Board</u></p> <p>Robert Marquardt</p> <p><u>Parks and Recreation Planning Board</u></p> <p>Mary F. Long</p> <p>Bill Neukranz</p> <p><u>Planning and Zoning Commission</u></p> <p>Craig N. Perry</p> <p><u>Retirement Security Plan Committee</u></p> <p>Mark Israelson</p> <p>Denise Tacke</p> <p><u>Self Sufficiency Committee</u></p> <p>Kellie Hanford</p> <p>Greg Huckaby</p> <p>Matt Lagos</p> <p>Prissy Wisnewski</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Senior Citizens Advisory Board</u></p> <p>William E. Gibson</p> <p>Gerald Gotcher</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u></p> <p>(a) October 11, 2010</p> <p><u>Approval of Expenditures</u></p> <p><u>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</u></p> <p>(b) Bid No. 2010-230-B for the 2009-2010 Arterial Concrete Pavement Rehab, Spring Creek Parkway - Preston Road to Custer Road to Jim Bowman Construction Company, L.P. in the amount of \$774,435 and authorizing the City Manager to execute all necessary documents</p> <p>(c) CSP No. 2010-226-B for Stadium Ground Storage Reservoir Repaint - Reservoir No. 1 and Reservoir No. 4 project to J.R. Stelzer Co. in the amount of \$886,020 and authorizing the City Manager to execute all necessary documents.</p> <p>(d) Bid No. 2010-241-B for the 2009-2010 Residential Concrete Pavement Rehabilitation Project Zone J5 North to Jerusalem Corporation in the amount of \$1,113,571 and authorizing the City Manager to execute all necessary documents.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>Purchase from an Existing Contract</p> <p>(e) To approve the purchase of seven (7) Caterpillar Backhoe Loaders to be utilized by Utility Cut Services, Utility Operations, Streets, and Drainage Operations in the amount of \$501,851 from Holt Company of Texas through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #268-07)</p> <p>(f) To approve a contract for the purchase of a Premier Support Services agreement, in the amount of \$68,310 from Microsoft Corporation, through an existing contract with the State of Texas Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR Contract No. DIR-SDD-821)</p> <p>Approval of Change Order</p> <p>(g) To Motorola, Inc., decreasing the contract by \$75,000 to reduce the number of Motorola Mesh poles to be installed. Change Order No. 5, Original Bid No. 2008-41-I, HGAC Contract No. RA01-06.</p> <p>(h) To Tiseo Paving Company, increasing the contract by \$66,304 for McDermott Road from Ohio Drive to Coit Road, Change Order No. 3. Original Bid No. 2009-143-B.</p> <p>(i) To Insituform Technologies, Inc., increasing the contract by \$111,078 for Russell Creek Sewer Main Rehab Phase 1, Change Order No. 1. Original Bid No. 2010-83-B.</p> <p>Adoption of Strategic Plan</p> <p>(j) To adopt an amendment to the Strategic Plan: 2010-2015</p> <p>Adoption of Resolutions</p> <p>(k) To approve an agreement between the City of Plano and SunGard Public Sector Inc., a sole source vendor, for the maintenance and support of H.T.E. software applications in the amount of \$126,498; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(l) To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and Denton County, Texas and providing terms and conditions for receipt of funding for Library Services in the amount of \$9,966 from Denton County, Texas; authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(m)	<p><u>Adoption of Ordinances</u></p> <p>To amend specific sections of Ordinance No. 2010-9-5 codified as Section 21-147, of Article IV, Service Charges Generally, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano to clarify the water rate schedule as provided in Section 21-147(1)(b)(3) for residential customers and Section 21-147(3)(b)(3) for customers with separately metered irrigation systems, and distinguish fees for residential and commercial customers with 1-inch metered irrigation use under Section 21-147(3)(a) effective November 1, 2010, and providing a repealer clause, a severability clause, a savings clause, and an effective date.</p>	
(n)	<p>To approve the carrying forward of certain fiscal year 2009-10 funds to fiscal year 2010-11; and providing an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>Consideration of an Ordinance to repeal Ordinance No. 2000-8-4 in order to terminate the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano and approving a new Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, providing terms and conditions upon which Allied Waste Systems, Inc. shall be granted an exclusive Private Franchise for collection and disposal of solid waste for commercial customers located within the City of Plano in accordance with Article 10-A of the City Charter and a non-exclusive Private Franchise for collection of recyclable materials from commercial customers located in the City of Plano; and authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, a penalty clause, providing for publication and an effective date. Second Reading (First Reading Approved – September 13, 2010)</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(2)	Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano as Reinvestment Zone No. 123 for a tax abatement consisting of a 14.36 acre tract of land located at the southwest corner of Shiloh Road and East Plano Parkway in the City of Plano, Texas; establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.	
(3)	Consideration of a Resolution to approve the terms and conditions of an agreement by and between the City of Plano, Texas, and Air System Components, Inc., a Delaware Corporation; providing for a real property tax abatement; authorizing its execution by the City Manager; and providing an effective date.	
(4)	Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Air System Components Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.	
(5)	<p>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2010-15 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-207-Retail on 119.9± acres located at the northwest corner of Shiloh Road and Renner Road in the City of Plano, Collin County, Texas, to modify the development standards and definitions, and to limit uses within certain areas of the district; 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: Turnpike Commons Plano, LLC</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/25/10		
Department:		City Manager's Office		
Department Head		Thomas Muehlenbeck		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Special Recognition: Bradley Robertson - SWANA National Truck Road-E-O Third Place in Automated				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/25/10		
Department:		City Manager's Office		
Department Head		Thomas Muehlenbeck		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: City of Plano Fit-Friendly Recognition				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

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

COUNCIL MEMBERS

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

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager
Bruce Glasscock, Deputy City Manager
LaShon Ross, Deputy City Manager
Mark Israelson, Assistant City Manager
Diane C. Wetherbee, City Attorney
John Gilliam, First Assistant City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:05 p.m., Monday, October 11, 2010, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice; to receive information regarding Economic Development, Section 551.087; and Personnel, Section 551.074; for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:50 p.m.

Consideration and Action Resulting From Executive Session: Personnel Appointments

Planning and Zoning Commission

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Davidson, the Council voted 8-0 to appoint Fred Balda as a member. Upon a motion made by Council Member LaRosiliere and seconded by Council Member Davidson, the Council voted 8-0 to appoint Christopher Caso as Chair.

Heritage Commission

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Smith, the Council voted 8-0 to appoint Sheila H. Huckaby as an interim member with a term expiring October 2011.

Personnel Appointments

Animal Shelter Advisory Committee

Upon a motion made by Council Member Harris and seconded by Council Member Davidson, the Council voted 8-0 to reappoint Sunny Ruth as Chair.

Community Relations Commission

Upon a motion made by Council Member Smith and seconded by Council Member Callison, the Council voted 8-0 to reappoint Richard Grady as Chair.

Library Advisory Board

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Harris, the Council voted 8-0 to appoint Shelly Bracken as an interim member with a term expiring October 2011 and reaffirmed the appointment of Deborah Conway Benton as Chair.

Parks and Recreation Planning Board

Upon a motion made by Council Member Davidson and seconded by Council Member Harris, the Council voted 8-0 to appoint Kayci Brooks Prince as Chair.

Photographic Traffic Signal Advisory Committee

Upon a motion made by Council Member LaRosiliere and seconded by Mayor Pro Tem Dunlap, the Council voted 8-0 to reappoint Doug A. Bender as Chair and Joseph Celso as Vice Chair.

Self Sufficiency Committee

A motion was made by Council Member Davidson to appoint Cynthia Marie Nye as a member serving a two-year term; establish the terms for Janet Denney and Emmanuel Umoh at one year; and establish the term for Casey Mueller at two years. Council Member Smith added the appointment of Stephen E. Vitasek as Chair to the motion which Deputy Mayor Pro Tem Miner seconded. The Council voted 8-0 and the motion carried.

Senior Citizens Advisory Board

Upon a motion made by Council Member Davidson and seconded by Council Member Callison, the Council voted 8-0 to appoint Robert D. Albrecht as Chair.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agendas

No items were discussed.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:54 p.m.

Phil Dyer, Mayor

ATTEST:

Diane Zucco, City Secretary

PLANO CITY COUNCIL
October 11, 2010

COUNCIL MEMBERS

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Mark Israelson, Assistant City Manager
Diane C. Wetherbee, City Attorney
John Gilliam, First Assistant City Attorney
Diane Zucco, City Secretary

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

The invocation was led by Mayor Pro Tem Dunlap and the Pledge of Allegiance was led by Boy Scout Troop 285 of St. Mark Catholic Church.

Mayor Dyer administered oaths of office to incoming members of the City's Boards and Commissions.

Comments of Public Interest

No one appeared to speak.

Consent Agenda

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison, 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 27, 2010 Approved

Approval of Expenditures

Purchase from an Existing Contract

To approve the purchase of Energy Management System Maintenance with an estimated annual amount of \$62,595 the first year with an increase of approximately \$1,300 each year thereafter from Johnson Controls, Inc. through an existing contract/agreement with Texas Multiple Award Schedule (TXMAS) and authorizing the City Manager to execute all necessary documents. (TXMAS-5-03FAC020) (Consent Agenda Item "B")

To approve the purchase of one (1) Cues CCTV Sewer Inspection Trailer to be utilized by Utility Operations in the amount of \$75,000 from CUES through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #270-07) (Consent Agenda Item "C")

To approve a contract for the purchase of a maintenance agreement between Motorola and the City of Plano in the amount of \$300,000 through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. RA-01-08). (Consent Agenda Item "D")

To approve a contract for the purchase of an annual maintenance agreement between Scientel Wireless, LLC and the City of Plano in the amount of \$500,000 through an existing contract with the Houston- Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. CW10-09) (Consent Agenda Item "E")

To approve of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$125,000 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 "F")

To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$250,000 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 "G")

To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$275,000 from Midwest Tapes 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 "H")

To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$350,000 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 "I")

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

To approve a contract by and between the City of Plano and Plano Economic Development Board, Inc. in the amount of \$855,758 to initiate, promote, monitor and perform activities related to economic development; and authorizing the City Manager to execute any and all documents in connection herewith. (Consent Agenda Item “J”)

Approval of Change Order

To Loblolly Consulting, LLC, increasing the contract by \$38,000 for the purchase of additional services related to the Customer and Utility Services Department’s Business Process Mapping and Documentation Project, Change Order No. 1. (Contract No. DIR-SDD-893) (Consent Agenda Item “K”)

Adoption of Resolutions

Resolution No. 2010-10-1(R): To approve the terms and conditions of funding agreements between the City of Plano, Texas and various arts organizations; authorizing their execution by the City Manager; and providing an effective date. (Consent Agenda Item “L”)

Resolution No. 2010-10-2(R): To approve the terms and conditions of funding agreements between the City of Plano, Texas, and various special event organizers; authorizing their execution by the City Manager or his designee; and providing an effective date. (Consent Agenda Item “M”)

Resolution No. 2010-10-3(R): To approve the terms and conditions of an agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the senior transportation program; and authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “N”)

Resolution No. 2010-10-4(R): To approve the terms and conditions of a grant awarded by the Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Criminal Justice Division of the Office of the Governor of Texas to the City of Plano, Texas for Firearms and Ballistic Forensic Analysis; authorizing the execution of any and all documents in connection therewith by the City Manager; and providing an effective date. (Consent Agenda Item “O”)

Resolution No. 2010-10-5(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Lucas, Texas for the City of Lucas’ use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing execution of the agreement by the City Manager; and providing an effective date. (Consent Agenda Item “P”)

Resolution No. 2010-10-6(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Lucas, Texas, under which the City of Plano will dispatch calls for emergency fire and emergency medical assistance for the City of Lucas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “Q”)

Resolution No. 2010-10-7(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Parker, Texas for the City of Parker's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "R")

Resolution No. 2010-10-8(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Parker, Texas, under which the City of Plano will dispatch calls for emergency fire and emergency medical assistance for the City of Parker; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "S")

Resolution No. 2010-10-9(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 Plano Independent School District's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager; and providing an effective date. Consent Agenda Item "T")

Resolution No. 2010-10-10(R): To approve the terms and conditions of an Agreement by and between the City of Plano, Texas and the Texas Health Center for Diagnostics and Surgery for the use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "U")

Resolution No. 2010-10-11(R): To approve the hiring of an Assistant City Attorney by the City Attorney; and providing an effective date. (Consent Agenda Item "V")

Resolution No. 2010-10-12(R): To approve the terms and conditions of an Interlocal Cooperation Agreement for Library Services by and between the City of Plano and Collin County, Texas providing the terms and conditions for receipt of funding in the amount of \$75,857 from Collin County; approving its execution by the City Manager; and providing an effective date. (Consent Agenda Item "W")

Adoption of Ordinances

Ordinance No. 2010-10-13: To repeal Ordinance No. 80-8-17 codified as Section 2-1 Official Logo of Article I in General, of Chapter 2 Administration of the Code of Ordinances of the City of Plano, Texas and adopting a new Section 2-1 to set forth guidelines for the use of the City of Plano logo; providing a severability clause, a repealer clause, a savings clause, a Publication clause and an effective date. (Consent Agenda Item "X")

Ordinance No. 2010-10-14: To amend Section 11-349, Police Protection, of Article VIII, Special Events, of Chapter 11, Licenses and Business Regulations of the Code of Ordinances of the City of Plano, Texas to provide for the recovery of all police protection costs incurred while providing security at special events; and providing a severability clause, a savings clause, and an effective date. (Consent Agenda Item "Y")

END OF CONSENT

Arts of Collin County Quarterly Report (Regular Agenda Item “1”)

Arts of Collin County Executive Director Mike Simpson spoke to \$10.9 million in private donations/pledges since the start of the project and \$2.66 million in current cash available towards construction. He spoke to recent donations including the *Donor Bridge Program* which incorporates multiple cities and an in-kind sculpture donation. Mr. Simpson reviewed fundraising programs including naming opportunities, on-line donations, brick/paver/seat purchases, in-kind opportunities, and the *Bravo Wall* where those donating \$50,000 or more on or before groundbreaking are recognized. He spoke to establishment of a Business Executive Advisory Board to draw donations from area companies and ongoing activities including participation in Plano and Frisco Events, sponsorship of the Plano Symphony Orchestra’s Home for the Holiday’s Concert, preparation of a case study of the Fox River Performing Arts Center and new in-kind promotions. Mr. Simpson spoke to the appointment of an art selection committee and actions moving forward to continue working with the three cities on the timing of bond sales, concentration on major donors and partners, developing key sponsorship opportunities, working with Hunt Construction to maintain low cost bids, expansion of fundraising efforts and building awareness and momentum.

City Manager Search Process (Regular Agenda Item “2”)

Scott Reilly, CEO of Affion Public, reviewed the process including interviews for profile development, posting and recruitment, candidate screening and presentation, interviews and selection.

To approve an Engineering Services Contract by and between the City of Plano and Graham Associates, Inc. in the amount of \$239,970 for Independence Parkway Corridor and authorizing the City Manager to execute all necessary documents. (Regular Agenda Item “3”)

Deputy Director of Public Works and Engineering Cosgrove reviewed improvements to be made at the intersections of Independence Parkway and 15th Street, Park Boulevard, and Parker Road. He advised that funding will come from regional toll revenue monies (80%) and City funds (20%) and spoke to right-of-way acquisition, relocation of utilities, construction anticipated to begin in one year and working on one intersection at a time to minimize impact.

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison, the Council voted 8-0 to approve the Engineering Services Contract between the City and Graham Associates, Inc. in the amount of \$239,970.

Public hearing and adoption of Ordinance No. 2010-10-15 as requested in Zoning Case 2010-05 to amend an Ordinance of the City of Plano, Texas, amending Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to related sections of the Zoning Ordinance regarding data centers; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano (Regular Agenda Item “4”)

Ordinance No. 2010-10-15 (cont'd)

Amend Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) to establish the following parking ratio requirement for data center use:

One space for each 1,000 square feet

Ms. Firgens spoke to review by Staff and an additional modification to the definition to remove "large enterprises or any other." She spoke to the use being similar to office showroom and Director of Planning Jarrell advised that this recommendation is structured specifically for data centers and would not include call centers.

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

Mayor Pro Tem Dunlap stated concern that opportunities for reuse would be limited based on the low parking ratio recommended. Director of Planning Jarrell spoke to developers' concerns regarding current parking requirements and lot coverage stipulations providing land that might be available for parking in the event of reuse. She spoke to the structures as primarily single-purpose buildings that other data center operators may utilize in the future. Council Member LaRosiliere spoke to the purpose of land use creating an opportunity conducive for a data center and not putting an additional requirement of land for future uses.

Mayor Dyer spoke to excess land available based on 50% lot coverage and made a motion, seconded by Council Member LaRosiliere to amend an Section 1.600 of Article 1, Subsection 2.502 of Section 2.500 of Article 2, and Subsection 3.1107 of Section 3.1100 of Article 3 of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24 regarding data centers as recommended by the Planning and Zoning Commission with Staff amendment and as requested in Zoning Case 2010-05; and further to adopt Ordinance No. 2010-10-15. The Council voted 7-1 with Mayor Pro Tem Dunlap voting in opposition. The motion carried.

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		October 25, 2010		
Department:		Public Works / David Falls		
Department Head		Alan Upchurch		
Agenda Coordinator (include phone #): Kim McFarland (972-769-4109)				
CAPTION				
<i>Award of Bid No. 2010-230-B, for the 2009-2010 Arterial Concrete Pavement Rehab, Spring Creek Parkway - Preston Road to Custer Road to Jim Bowman Construction Company, L.P. in the amount of \$774,435.17 and authorizing the City Manager to execute all necessary documents.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	1,515,567	5,268,433	2,300,000	9,084,000
Encumbered/Expended Amount	-1,515,567	-1,157,045	0	-2,672,612
This Item	0	-774,435	0	-774,435
BALANCE	0	3,336,953	2,300,000	5,636,953
FUND(s): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2010-11 Capital Reserve Fund. This item, in the amount of \$774,435, will leave a current year balance of \$3,336,953 for the Arterial Concrete Repair project. STRATEGIC PLAN GOAL: Pavement repairs relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the bid for the 2009-10 Arterial Concrete Pavement Rehab, Spring Creek Parkway - Preston Road to Custer Road to Jim Bowman Construction Company, L.P., in the amount of \$774,435.17, for Alternate No. 1 (Cement that is produced by cement manufacturing that meets or are below the source cap limits for emissions established by the TCEQ) which is within 5% of the base bid, be accepted as the lowest responsible bidder for the project conditioned upon timely execution of all necessary documents.				
This project involves the repair of 10,094 SY of concrete pavement and 12,515 SF of concrete sidewalk along Spring Creek Parkway between Preston Road and Custer Road.				
The secondary vendor being recommended is Ken-Do Contracting, L.P. in the amount of \$821,226.00.				
Engineer's estimate for this project is \$990,446.00.				
List of Supporting Documents: Bid Tabulation, Location Map			Other Departments, Boards, Commissions or Agencies	

CITY OF PLANO

BID NO. 2010-230-B

2009-10 Arterial Concrete Pavement Rehab Spring Creek Parkway – Preston Road to Custer Road Project No. 6087
BID TABULATION

Bid opening Date/Time: Sept 13, 2010 @ 3:00PM

Number of Bids Submitted:

<u>COMPANY NAME</u>	<u>Total Base Bid</u>	<u>Bid Bond Present</u>	<u>Alternate 1</u>
Jim Bowman Construction	\$ 774,435.17	Yes	\$ 774,435.17
Ken-Do Contracting LP	\$ 821,226.00	Yes	\$ 821,226.00
Jerusalem Corporation	\$ 821,424.00	Yes	\$ 821,424.00
Santos Construction Inc.	\$ 862,574.45	Yes	\$ 862,574.45
Estrada Concrete Company	\$ 875,858.75	Yes	\$ 875,858.75
NPL Construction	\$ 1,132,391.00	Yes	\$ 1,189,704.05
Texas Standard Construction	\$ 1,883,950.00	Yes	\$ 1,883,950.00

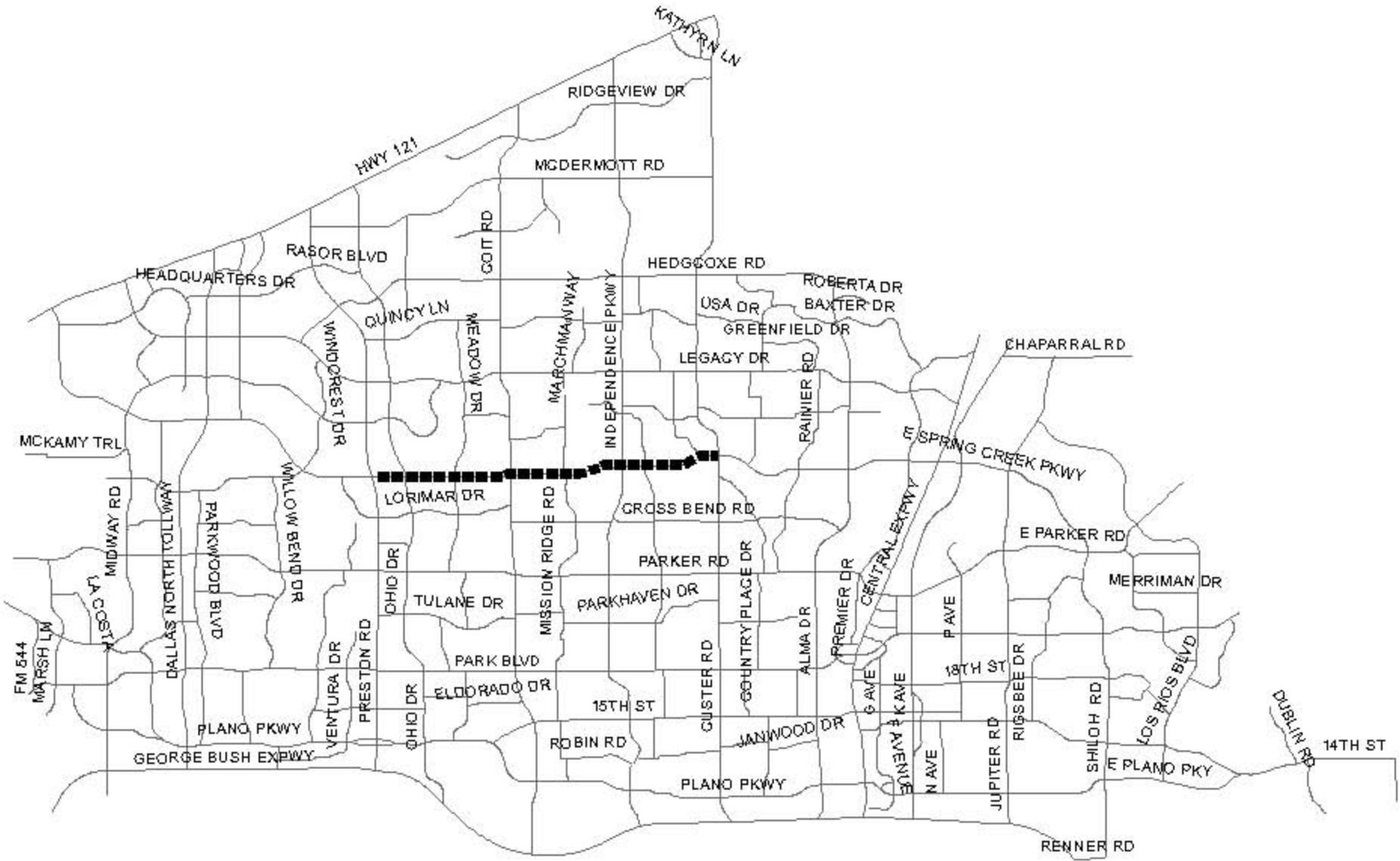
Nancy Corwin

September 13, 2010

Nancy Corwin, Buyer

Date

LOCATION MAP

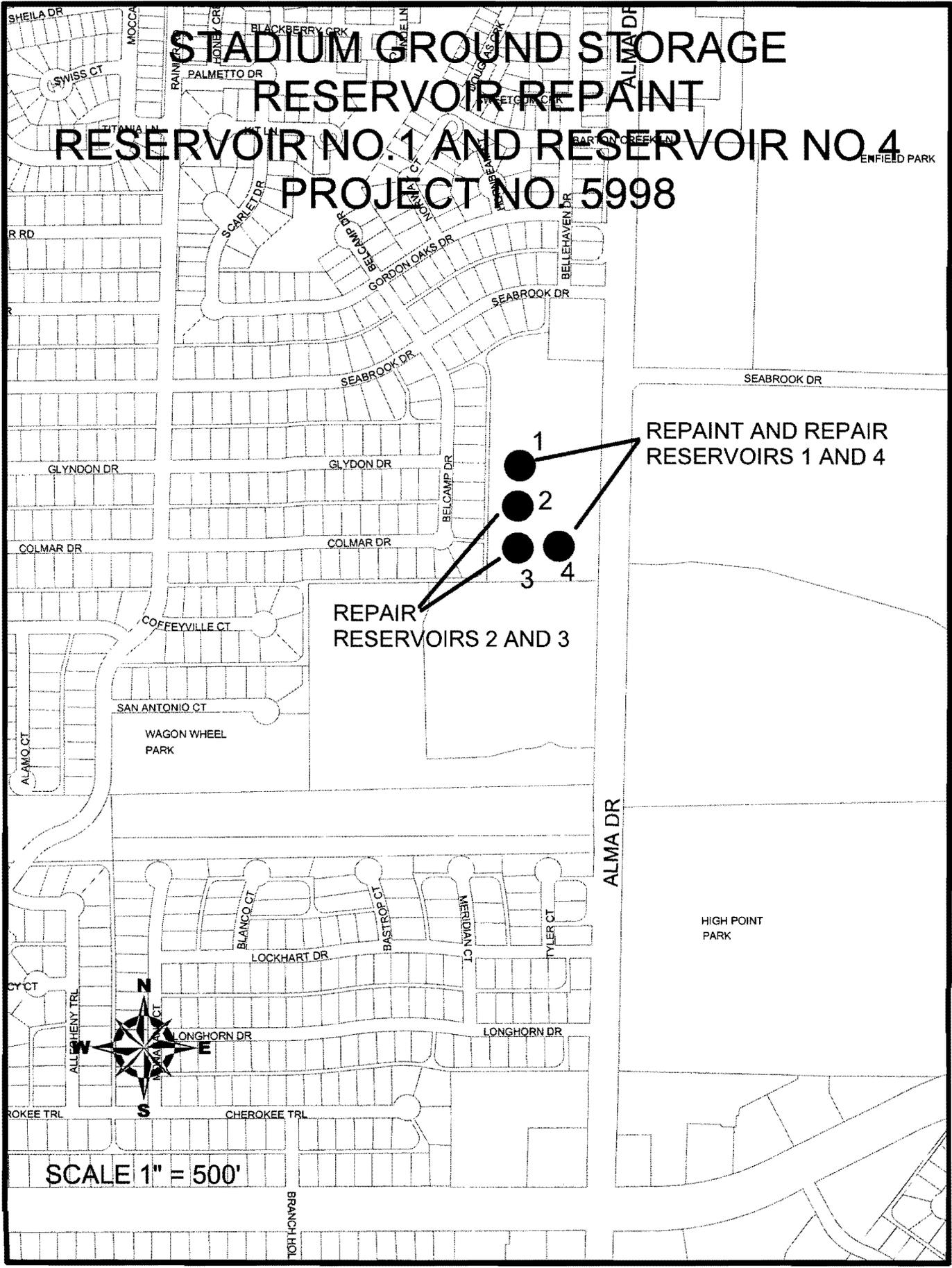




**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/25/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5998
CAPTION				
Award of Competitive Sealed Proposal No. 2010-226-B for Stadium Ground Storage Reservoir Repaint - Reservoir No. 1 and Reservoir No. 4 project to J.R. Stelzer Co. in the amount of \$886,020 and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	29,484	928,516	0	958,000
Encumbered/Expended Amount	-29,484	-42,266	0	-71,750
This Item	0	-886,020	0	-886,020
BALANCE	0	230	0	230
FUND(S): WATER CIP				
COMMENTS: Funds are included in the Water CIP. This item, in the amount of \$886,020, will leave a current year balance of \$230 for the Stadium Ground Storage Reservoir 1 & 4 project. STRATEGIC GOAL: Ground storage tank repainting and repairs relate to the City's goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the Competitive Sealed Proposal of J.R. Stelzer in the amount of \$886,020.04 (Base Bid), be accepted as the best value proposal conditioned upon timely execution of any necessary contract documents. The Base Bid requires that work be done on only one reservoir at a time so that only one reservoir at a time is out of service. A Deductive Alternate Bid in the amount of \$884,020.04 also submitted by J.R. Stelzer, which would have allowed two reservoirs to be taken out of service at one time, is not recommended. The work will include existing paint removal and repainting for Reservoir No. 1 and 4. Also included is repair work on Reservoir No. 1, 2, 3 and 4.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map, Evaluation Matrix, Evaluation Recap		N/A		

STADIUM GROUND STORAGE RESERVOIR REPAINT RESERVOIR NO. 1 AND RESERVOIR NO. 4 PROJECT NO. 5998



REPAIR
RESERVOIRS 2 AND 3

REPAINT AND REPAIR
RESERVOIRS 1 AND 4

SCALE 1" = 500'

**2010-226-B
CSP for Stadium Ground Storage Reservoir Repaint - Reservoir 1 & Reservoir 4 - Project No. 5998**
Base Only

COMBINED MATRIX	Weighting	J.R. Stelzer Co.		TMI Coatings, Inc		A & M Construction/Utilities Inc		Utility Services Co Inc		Classic Protective Coatings		NG Painting L.P		Williams Painting & Sandblasting Inc		Central Tank Coating	
		POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Evaluation Criteria	60%	4.51	2.71	4.24	2.54	5.00	3.00	4.73	2.84	3.42	2.05	4.22	2.53	4.15	2.49	4.32	2.59
Price	20%	4.33	0.87	3.00	0.60	1.67	0.33	2.67	0.53	4.67	0.93	3.67	0.73	2.33	0.47	1.33	0.27
Painting Experience	10%	3.33	0.33	4.67	0.47	3.33	0.33	2.33	0.23	3.67	0.37	2.33	0.23	2.67	0.27	3.33	0.33
Superintendent Qualifications																	
Painting with Containment System																	
Experience	10%	3.33	0.33	3.67	0.37	3.00	0.30	3.33	0.33	4.33	0.43	2.33	0.23	3.33	0.33	2.33	0.23
TOTAL	100%	15.51	4.24	15.57	3.98	13.00	3.97	13.06	3.94	16.09	3.78	12.55	3.73	12.49	3.56	11.32	3.42

Ranking 1 2 3 4 5 6 7 8

**2010-226-B
CSP for Stadium Ground Storage Reservoir Repaint - Reservoir 1 & Reservoir 4 - Project No. 5998**
Includes Base and Deductive Additive

COMBINED MATRIX	Weighting	J.R. Stelzer Co.		TMI Coatings, Inc		A & M Construction/Utilities Inc		Utility Services Co Inc		Classic Protective Coatings		NG Painting L.P		Williams Painting & Sandblasting Inc		Central Tank Coating	
		POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Evaluation Criteria	60%	4.52	2.71	4.27	2.56	5.00	3.00	4.76	2.85	3.43	2.06	4.23	2.54	4.16	2.50	4.32	2.59
Price	20%	4.33	0.87	3.00	0.60	1.67	0.33	2.67	0.53	4.67	0.93	3.67	0.73	2.33	0.47	1.33	0.27
Painting Experience	10%	3.33	0.33	4.67	0.47	3.33	0.33	2.33	0.23	3.67	0.37	2.33	0.23	2.67	0.27	3.33	0.33
Superintendent Qualifications																	
Painting with Containment System																	
Experience	10%	3.33	0.33	3.67	0.37	3.00	0.30	3.33	0.33	4.33	0.43	2.33	0.23	3.33	0.33	2.33	0.23
TOTAL	100%	15.52	4.25	15.60	3.99	13.00	3.97	13.09	3.95	16.09	3.79	12.56	3.74	12.49	3.56	11.32	3.42

Ranking 1 2 3 4 5 6 7 8



CSP No. 2010-226-B

CSP FOR Stadium Ground Storage Reservoir Repaint - Reservoir 1 & Reservoir 4 - Project No. 5998

RECAP

CSP Opening Date/Time: Monday, September 13, 2010 at 3:30 pm (CDT)

Number of Vendors Notified: 590

Vendors Submitting "No Bids": 0

Number of Proposals Submitted: 8

<u>Responses Received:</u>	<u>Total Weighted Score</u>	<u>Base Bid</u>	<u>Base Bid Plus Alternate Deduction</u>
J.R. Stelzer Co.	4.24	\$ 886,020.04	\$ 884,020.04
TMI Coatings, Inc	3.98	\$ 943,700.00	\$ 937,700.00
A & M Construction/Utilities Inc	3.97	\$ 800,000.00	\$ 800,000.00
Utility Services Co Inc	3.94	\$ 846,200.00	\$ 841,200.00
Classic Protective Coatings	3.78	\$ 1,170,097.00	\$ 1,167,097.00
NG Painting L.P	3.73	\$ 948,000.00	\$ 946,000.00
Williams Painting & Sandblasting Inc	3.56	\$ 963,313.00	\$ 961,813.00
Central Tank Coating	3.42	\$ 926,069.00	\$ 926,069.00

Proposals Evaluated Non-Responsive to Specification: 0

Recommended Vendor:

J.R. Stelzer Co. is the recommended vendor for this award with a Total Weighted Score of **4.24** and a total proposed cost of \$ **886,020.04** base bid and \$ **884,020.04** base bid plus alternate deduction.

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

Heather Parkerson

Heather Parkerson, Buyer

October 11, 2010

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:		10/25/2010		
Department:		Public Works / David Falls		
Department Head		Alan Upchurch		
Agenda Coordinator (include phone #): Kim McFarland (972-769-4109)				
CAPTION				
<i>Award of Bid No. 2010-241-B, for the 2009-2010 Residential Concrete Pavement Rehabilitation Project Zone J5 North to Jerusalem Corporation in the amount of \$1,113,571 and authorizing the City Manager to execute all necessary documents.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2010-11	Prior Year (CIP Only)	Current Year	Future Years
				TOTALS
Budget		1,467,415	6,509,585	3,000,000
Encumbered/Expended Amount		-1,467,415	-1,591,765	0
This Item		0	-1,113,571	0
BALANCE		0	3,804,249	3,000,000
FUND(S): CAPITAL RESERVE				
<p>COMMENTS: Funds are included in the 2010-11 Capital Reserve. This item, in the amount of \$1,113,571, will leave a current year balance of \$3,804,249 for the Residential Street & Alley Replacement project.</p> <p>STRATEGIC PLAN GOAL: Street and alley pavement repairs relate to the City's Goals of Financially Strong City with Service Excellence and Great Neighborhoods - 1st Choice to Live.</p>				
SUMMARY OF ITEM				
<p>Staff recommends the bid for the 2009-10 Residential Concrete Pavement Rehabilitation Project Zone J5 North to Jerusalem Corporation, in the amount of \$1,113,571, for Alternate No. 1 (Cement that is produced by cement manufacturing that meets or are below the source cap limits for emissions established by the TCEQ) which is within 5% of the base bid, be accepted as the lowest responsible bidder for the project conditioned upon timely execution of all necessary documents.</p> <p>This project involves the repair of 17,784 SY of concrete street paving, 4,302 SY of alley paving and 15,549 SF of concrete sidewalk located in the area bounded by Spring Creek Pkwy, Custer Rd, Cross Bend Rd, and Independence Pkwy.</p> <p>The secondary vendor being recommended is Ken-Do Contracting LP in the amount of \$1,174,991.</p> <p>Engineer's estimate for this project is \$1,364,197.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Bid Tabulation, Location Map				

CITY OF PLANO

BID NO. 2010-241-B

2009-10 Residential concrete Pavement Rehabilitation Project Zone J5 North, Project 6091

BID TABULATION

Bid opening Date/Time: Oct. 4, 2010 @ 3:00PM

Number of Bids Submitted:

<u>COMPANY NAME</u>	<u>Total Base Bid</u>	<u>Bid Bond Present</u>	<u>Alternate 1</u>
Jerusalem Corporation	\$ 1,113,570.85	Yes	\$ 1,113,570.85
Ken-DO Contracting LP	\$ 1,174,991.33	Yes	\$ 1,174,991.33
Jim Bowman Construction	\$ 1,248,155.21	Yes	\$ 1,248,155.21
Estrada Concrete Co. LLC	\$ 1,256,127.70	Yes	\$ 997,614.50
Santos Construction, Inc	\$ 1,267,910.90	Yes	\$ 1,267,910.90
McMahon Contracting	\$ 1,274,217.17	Yes	\$ 1,274,217.17
Camino Construction LP	\$ 1,341,348.00	Yes	\$ 1,341,348.00
CPS Civil	\$ 1,439,255.00	Yes	\$ 1,439,255.00

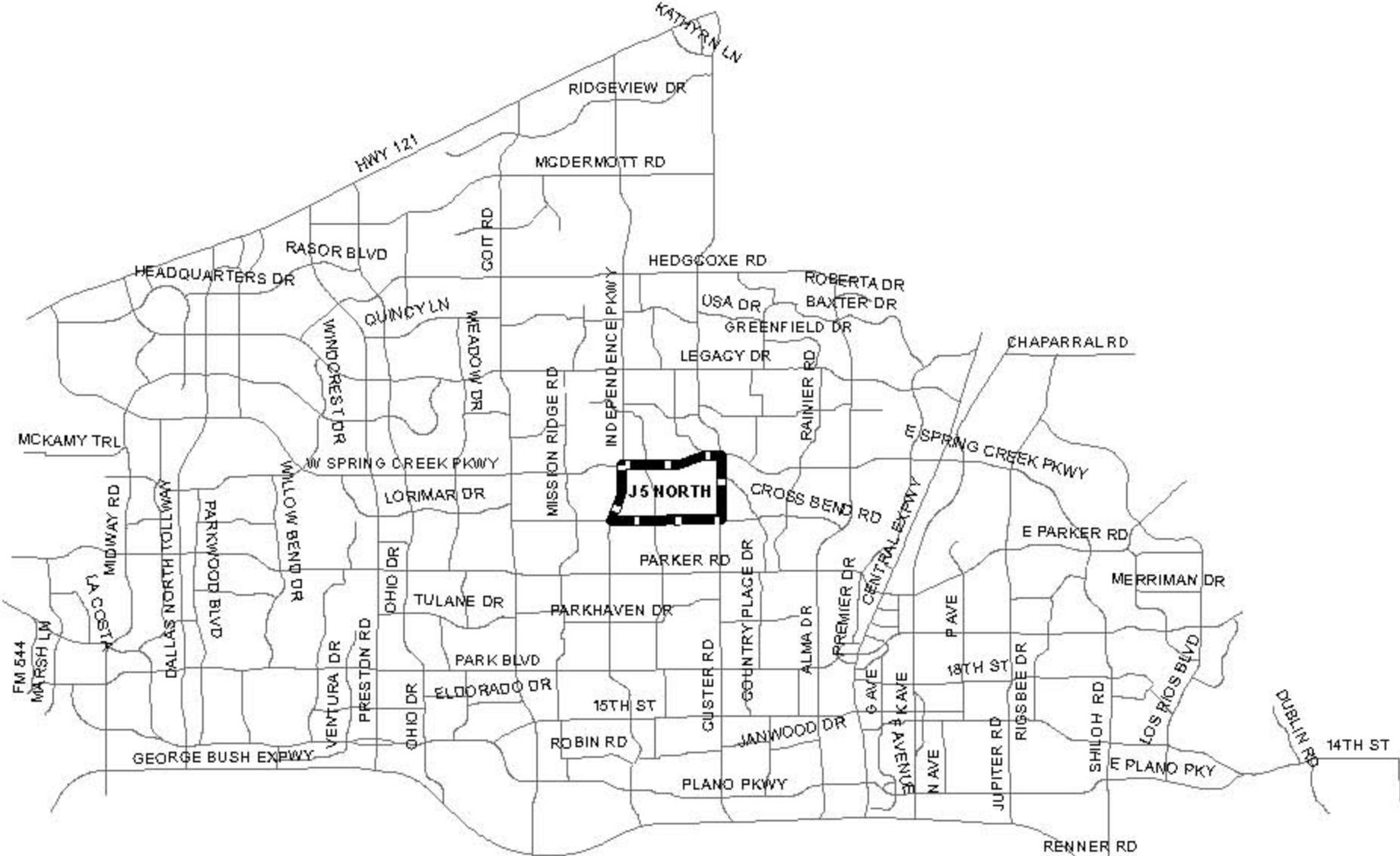
Nancy Corwin

Oct 4, 2010

Nancy Corwin, Buyer

Date

LOCATION MAP





**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:		10-25-10		
Department:		Purchasing/Fleet		
Department Head		Mike Ryan/Reid Choate		
Agenda Coordinator (include phone #): Earl Whitaker x7074				
CAPTION				
To approve the purchase of seven (7) Caterpillar Backhoe Loaders to be utilized by Utility Cut Services, Utility Operations, Streets, and Drainage Operations in the amount of \$501,851 from Holt Company of Texas through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #268-07)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2009-10 and 2010-11	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	520,000	0
Encumbered/Expended Amount		0	0	0
This Item		0	-501,851	0
BALANCE		0	18,149	0
FUND(S): EQUIPMENT REPLACEMENT FUND (ERF)				
<p>COMMENTS: Funding was included in the FY 2009-10 adopted budget to purchase four (4) Caterpillar Backhoe Loaders in the amount of \$280,813, per TASB/Buyboard Contract #268-07. Remaining balance will be used for the purchase of three (3) Caterpillar Backhoe Loaders in the amount of \$221,038 utilizing the same contract number and will be funded from the FY 2010-11 adopted budget in the Equipment Replacement Fund. Remaining balance will be used for other equipment purchases.</p> <p>STRATEGIC PLAN GOAL: Providing equipment purchases relates to the City's Goal of a "Financially Strong City with Service Excellence."</p>				
SUMMARY OF ITEM				
Staff recommends the purchase of seven (7) Caterpillar Backhoe Loaders in the amount of \$501,851 from Holt Company of Texas through an existing contract/agreement with TASB/Buyboard. The City is authorized to purchase from a Local Cooperative Organization pursuant to Section 271 subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (TASB/Buyboard contract #268-07 / City of Plano Internal Contract No. 2011-13-I)				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Award Memo			n/a	



MEMORANDUM

Date: October 6, 2010
To: Earl Whitaker
From: Reid Choate, Fleet Manager
Subject: Backhoe Loaders

It is the recommendation of Fleet Services to purchase seven (7), Caterpillar Backhoe Loaders in the amount of \$501,851 Holt Cat through the TASB/Buyboard contract.

These units are for the scheduled replacements for 00519 in Cost Center 767, 00517 and 98132 in Cost Center 763, 02504 and 97039 in Cost Center 742, 98133 in Cost Center 766, 98131 in Cost Center 471, in the approved FY09-10 and FY10-11 Equipment Replacement Fund.

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



**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:		10/25/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
To approve a contract for the purchase of a Premier Support Services agreement, in the amount of \$68,310 from Microsoft Corporation, through an existing contract with the state of Texas Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR Contract No. DIR-SDD-821)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,495,189	0	2,495,189
Encumbered/Expended Amount	0	-352	0	-352
This Item	0	-68,310	0	-68,310
BALANCE	0	2,426,527	0	2,426,527
FUND(S): TECHNOLOGY SERVICES FUND (066)				
COMMENTS: Funds are included in the 2010-11 Technology Services adopted budget for the purchase of software support service and maintenance agreements. The remaining balance will be used for other maintenance agreements.				
STRATEGIC PLAN GOAL: Software support and service agreements relate to the City's Goal of "Financially Strong City with Service Excellence".				
SUMMARY OF ITEM				
Technology Services recommends Council approve an agreement with Microsoft Corporation through the Department of Information Resources, State of Texas (DIR), in the amount of \$68,310 for a premier support services agreement to provide the City with critical Microsoft support. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter F of the Local Government Code and by doing so satisfies any Sate Law requiring local governments to seek competitive bids for items. (DIR Contract No. DIR-SDD-821).				
List of Supporting Documents: Staff Memo and Contract			Other Departments, Boards, Commissions or Agencies	

Interoffice Memo

Date: 10/06/10
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Microsoft Premier Support Contract

We propose renewing the Microsoft Premier Support contract with Microsoft Corp. through the Department of Information Resources with the State of Texas. Our contract is renewed for a total of \$ 68,310.00 and the DIR contract number is DIR-SDD-821. This support contract provides the City with critical Microsoft support. It includes a total of 80 hours of support assistance hours and a total of 120 hours of support for problem resolution support. This support contract is crucial for our continuing support of the network. With it we improve our network continuity and have less downtime for outages. The agenda item should have Microsoft's name on it with a referral to the DIR contract number as shown above.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND MICROSOFT CORPORATION
FOR PREMIER SUPPORT**

THIS CONTRACT is made and entered into by and between **MICROSOFT CORPORATION**, whose address is 5335 Wisconsin Avenue, N.W., Suite 600, Washington, DC, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide Microsoft Premier Support. These services shall be provided in accordance with this Contract and with the Department of Information Resources Contract No. DIR-SDD-821, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Department of Information Resources Contract No. DIR-SDD-821 on file with the City of Plano Technology Services Department;
- (c) Microsoft's Statement of Work (Exhibit "A"); and
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

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

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **SIXTY-EIGHT THOUSAND THREE HUNDRED TEN AND 00/100 DOLLARS (\$68,310.00)**.

III. TERM

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

IV. DESCRIPTION OF SERVICES

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the Department of Information Resources Contract No. DIR-SDD-821 or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

V. CITY CONTACT

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

VI. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

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

VII. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information

pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

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

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

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

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

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

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

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

X. VENUE

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

XI. ASSIGNMENT AND SUBLETTING

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

**XII.
INDEPENDENT CONTRACTOR**

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

**XIII.
FORCE MAJEURE**

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
TERMINATION FOR CAUSE**

If either party defaults in the performance of this Contract, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Contract effective upon giving a written notice of termination to the defaulting party.

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and

owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVI.
SEVERABILITY**

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

**XVII.
TERMINATION FOR CONVENIENCE**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Contract, the terms and conditions in effect at the time of the termination or expiration will apply to those Services.

**VIII.
PROPRIETARY INFORMATION; CONFIDENTIALITY;
INTELLECTUAL PROPERTY RIGHTS**

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Contract will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Contract. The obligations set forth in this Section will survive the expiration or termination of this Contract.

**XIX.
MAILING OF NOTICES**

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

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

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

Microsoft Corporation
7000 N. SH 16, LC-1/3761
Irving, Texas 75039
Attn: Robert Van Meter

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.

**XX.
ENTIRE AGREEMENT**

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

City agrees to reference this Contract and The Department of Information Resources Contract No. DIR-SDD-821 on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Contract; (ii) clearly indicate the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXI.
AUTHORITY TO SIGN**

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

**XXII.
SUCCESSORS AND ASSIGNS**

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

**XXIII.
HEADINGS**

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

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

MICROSOFT CORPORATION

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__ by _____, (*Authorized representative*) _____ (*Title*) of **MICROSOFT CORPORATION**, a _____, (*Name of State*) corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas

**Microsoft Premier Support Services Description Schedule:
Fee and Named Contacts**

Tex DIR Website:

<http://www.dir.state.tx.us/store/busops/go-direct/microsoft821.htm#con>

Customer: City of Plano

(Microsoft Affiliate to complete)

Premier Support Services Description Number

(Microsoft Affiliate to complete)

Schedule Number

001124518
Ren_001328273

This Schedule is made pursuant to the Microsoft Premier Support Services Description identified above (the "Services Description"). The terms of the Services Description and applicable Exhibits are incorporated herein by this reference and by accepting Our performance of Services under this Schedule You agree to be bound by these terms. Any terms not otherwise defined herein will assume the meanings set forth in the Agreement and the Services Description. Regardless of any terms and conditions contained in any purchase order, the terms of this Schedule apply.

Term
This Schedule will commence on <u>10/28/2010</u> (the "Commencement Date") and will expire on <u>10/27/2011</u> (the "Expiration Date").

1. PREMIER SUPPORT SERVICES AND FEES. The quantities listed in the table below represent the amount of Services that You have pre-purchased for use during the term of this Schedule and applicable fees.

a. Fee Summary

Services Summary	Price (US\$)
Country: United States	\$68,310
Total	\$68,310

b. Services by Support Location

Country: United States (Premier Standard 0)
<ul style="list-style-type: none"> • Support Account Management (estimated at 130) • Up to 80 hours Workshops, Support Assistance* • Up to 120 hours Problem Resolution Support

*All registration requirements for Workshops and Events must be completed by You no later than 60 days prior to the expiration date of this Fee and Named Contacts Schedule(s).

2. MICROSOFT CONTACT

Microsoft Contact: Contact for questions and notices about this Schedule and the Services Description:

Microsoft Contact Name:	Robert Van Meter
Address:	Microsoft Corporation 7000 N. SH 16, LC-1/3761 Irving, TX 75039
Phone:	469-775-7048
Email:	robvme@microsoft.com
Facsimile:	425-708-0154

3. CUSTOMER NAMED CONTACTS

a. Premier Customer Named Contacts: Any subsequent changes to the Named Contacts should be submitted to the Services Resource CSM.

Contacts will carry over forward from the previous Term.

AFFIDAVIT OF NO PROHIBITED INTEREST

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

MICROSOFT CORPORATION

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

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

Notary Public, State of _____



**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:		10/25/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
To Motorola, Inc,decreasing the contract by \$75,000, to reduce the number of Motorola Mesh poles to be installed. Change Order No. 5, Original Bid No. 2008-41-I, HGAC Contract No. RA01-06.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	18,119,759	2,380,241	0	20,500,000
Encumbered/Expended Amount	-18,119,759	-1,989,981	0	-20,109,740
This Item	0	75,000	0	75,000
BALANCE	0	465,260	0	465,260
FUND(S): TECHNOLOGY IMPROVEMENTS (TAX NOTES)				
COMMENTS: Funds are available from the 2007 and 2008 Tax Notes Sales. This change order decreases the contract amount by \$75,000 and increase the available current year balance to \$465,260 for the Moto Mesh project.				
STRATEGIC PLAN GOAL: Contract modification for the wireless mesh network relates to the City's Goal of Service Excellence.				
SUMMARY OF ITEM				
Technology Services requests Council approval of Change Order No. 5 to Motorola, Inc. in the amount of -\$75,000. The purpose of this change order is to reduce the contract value by the amount of \$75,000. This reduction is for poles that will not be installed. The installation is de-scoped from Motorola's contractual commitment. Original Contract amount with Change Orders one through four was \$10,090,865, new amount with reduction is \$10,015,865.00. Original Bid No. 2008-41-I, HGAC Contract No. RA01-06.				
List of Supporting Documents: Contract Modification No. 5			Other Departments, Boards, Commissions or Agencies	



CHANGE ORDER

[5]

Change Order No. 5

Date: August 18, 2010

Project Name: City of Plano, Texas – Phase W@W

Customer Name: City of Plano, Texas

Customer Project Mgr: David Stephens

The purpose of this Change Order is to: *(highlight the key reasons for this Change Order)*

The purpose of this change order is to reduce the contract value by the amount of \$75,000. This reduction is for poles that will not be installed and are de-scoped from Motorola's contractual commitment.

All other contractual commitments have been met.

Contract # 07/13046

Contract Date: 12/19/2007

In accordance with the terms and conditions of the contract identified above between City of Plano, Texas and Motorola, Inc., the following changes are approved:

Contract Price Adjustments

Original Contract Value:	\$ 9,800,000.00
Previous Change Order amounts for Change Order numbers <input type="text" value="1"/> through <input type="text" value="4"/>	\$ 290,865.00
This Change Order:	\$ (75,000.00)
New Contract Value:	\$ 10,015,865.00

Completion Date Adjustments

Original Completion Date:	December 2009
Current Completion Date prior to this Change Order:	December 2009
New Completion Date:	August 18,2010



CHANGE ORDER

[5]

Changes in Equipment: *(additions, deletions or modifications)*

No change

Changes in Services: *(additions, deletions or modifications)*

Installation of poles de-scoped from Motorola's contractual commitment.

Schedule Changes: *(describe change or N/A)*

N/A

Pricing Changes: *(describe change or N/A)*

Reduction in contract value of \$75,000

Customer Responsibilities: *(describe change or N/A)*

N/A

Payment Schedule for this Change Order:
(describe new payment terms applicable to this change order)

No change

Unless amended above, all other terms and conditions of the Contract shall remain in full force. If there are any inconsistencies between the provisions of this Change Order and the provisions of the Contract, the provisions of this Change Order will prevail.

IN WITNESS WHEREOF the parties have executed this Change Order as of the last date signed below.

Motorola, Inc.

Customer

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

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

Reviewed by: _____
Motorola Project Manager

Date: _____

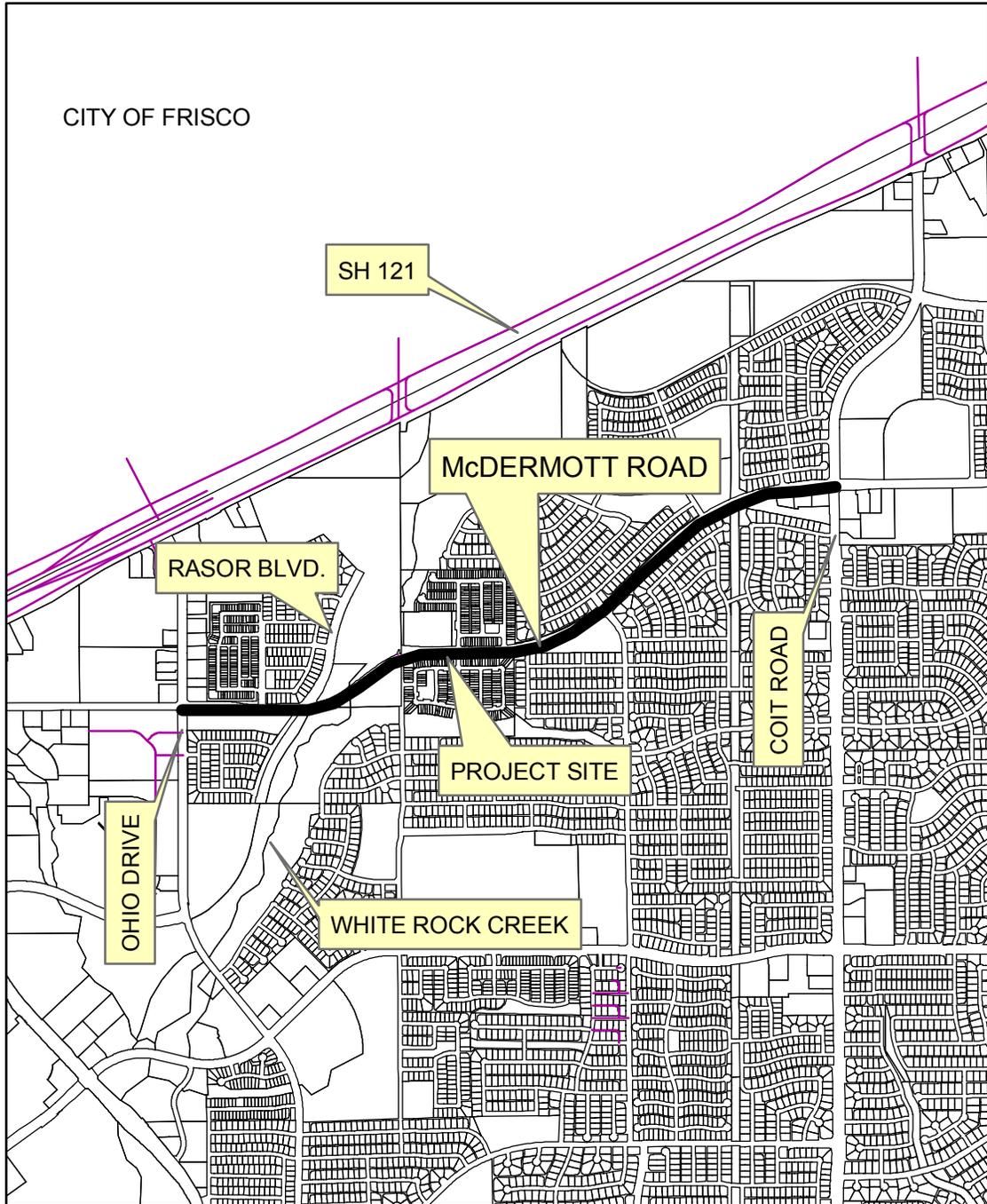


**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/25/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5387
CAPTION				
To Tiseo Paving Company, increasing the contract by \$66,304 for McDermott Road from Ohio Drive to Coit Road, Change Order No. 3. Original Bid No. 2009-143-B.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	1,626,034	810,966	0	2,437,000
Encumbered/Expended Amount	-1,626,034	-743,623	0	-2,369,657
This Item	0	-66,304	0	-66,304
BALANCE	0	1,039	0	1,039
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This change order, in the amount of \$66,304, will leave a current year balance of \$1,039 for the McDermott – Coit to Ohio project. STRATEGIC PLAN GOAL: Revised retaining wall construction relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This change order, in the amount of \$66,304.33, is for the adjustment in pay quantities to the amounts actually installed, for additional improvements necessary for the construction of the revised MSE retaining walls adjacent to the new bridge, and for the revised retaining wall necessary to avoid conflicts with existing utilities. Staff recommends approval of Change Order No. 3. The contract total will be \$2,290,918.54, which includes change orders of 7.44% of the original contract amount of \$2,132,270.05..				
List of Supporting Documents: Location Map; Change Order 3			Other Departments, Boards, Commissions or Agencies N/A	

McDERMOTT ROAD WIDENING FROM OHIO DRIVE TO COIT ROAD

PROJECT No. 5387



CITY OF FRISCO

SH 121

McDERMOTT ROAD

RASOR BLVD.

COIT ROAD

PROJECT SITE

OHIO DRIVE

WHITE ROCK CREEK

CITY OF PLANO

PUBLIC WORKS & ENGINEERING DEPT.

2,000 1,000 0 2,000 Feet



1 inch = 2,000 feet

CHANGE ORDER NO. 3

**MCDERMOTT ROAD FROM OHIO DRIVE TO COIT ROAD
PROJECT NO. 5387 (CSJ 0918-24-119)
PURCHASE ORDER NO. 103768
CIP NO. 31397
BID NO. 2009-143-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 **TISEO PAVING COMPANY** for the **MCDERMOTT ROAD OHIO DRIVE TO COIT ROAD PROJECT**, dated December 14, 2009.

B. DESCRIPTION OF CHANGE

The change order is for the adjustment of pay quantities to cover items actually installed for the project, for additional items required for the construction of the revised design on the MSE retaining walls, and for the revised cast-in-place retaining wall necessary to avoid conflicts with existing utilities.

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>CURRENT QTY.</i>	<i>REVISED QTY.</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>AMOUNT OF CHANGE</i>
FEDERAL PARTICIPATION						
31	Retaining Wall (Cast in Place)	264	174	S.F.	\$57.00	(5,130.00)
34	Rip Rap (Conc)(5")	73	84	C.Y.	\$260.00	2,860.00
40	Rail (TY 221)	50	40	L.F.	\$45.00	(450.00)
41	Remov Rail (Conc Parapet & Mtl Elmnts)	242	272	L.F.	\$12.50	375.00
112	Mfg. Redesign & Shop Drwg Prep (MSE)	0	1	L.S.	\$14,400.00	14,400.00
113	Add'l. Excav. & Haul for MSE Wall	0	326	C.Y.	\$15.00	4,890.00
114	Rock Fill (TY D)	0	253	C.Y.	\$69.17	17,500.01
115	Excavation (Channel)	0	651	C.Y.	\$18.00	11,718.00
116	Retaining Wall Foundation (Cast in Place)	0	12	C.Y.	\$1,227.33	14,727.96
117	Modify Exist. Area Inlet	0	1	L.S.	5,413.36	5,413.36
	SUB-TOTAL:					\$66,304.33
CITY OF PLANO						
	SUB-TOTAL:					\$0.00
	TOTAL:					\$66,304.33

Original Contract Amount	<u>\$ 2,132,270.05</u>
Contract Amount (Including Previous Change Orders)	<u>\$ 2,224,614.21</u>
Amount, Change Order No. 3	<u>\$ 66,304.33</u>
Revised Contract Amount	<u><u>\$ 2,290,918.54</u></u>
Total Percent Increase Including Previous Change Orders	<u>7.44%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 10 day(s) to this project:

Original Contract Time	<u>200 working days</u>
Amount (Including Previous Change Orders)	<u>260 working days</u>
Amount, Change Order No. 3	<u>10 working days</u>
Revised Contract Time	<u>270 working days</u>
Total Percent Increase Including Previous Change Orders	<u>35.00%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **TISEO PAVING COMPANY**, do hereby agree to append this Change Order No. 3 to the original contract between themselves, dated December 14, 2009.

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:
TISEO PAVING COMPANY**

By: _____
(signature)

By: Robert Caudill
(signature)

Print
Name: Thomas H. Muehlenbeck

Print
Name: Robert Caudill

Print
Title: City Manager

Print
Title: Vice President

Date: _____

Date: 10/12/2010

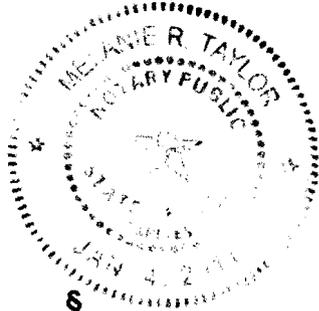
APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 12th day of OCTOBER, 2010, by **ROBERT CAUDILL, VICE PRESIDENT** of **TISEO PAVING COMPANY a TEXAS** corporation, on behalf of said corporation.



Melanne R. Taylor
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

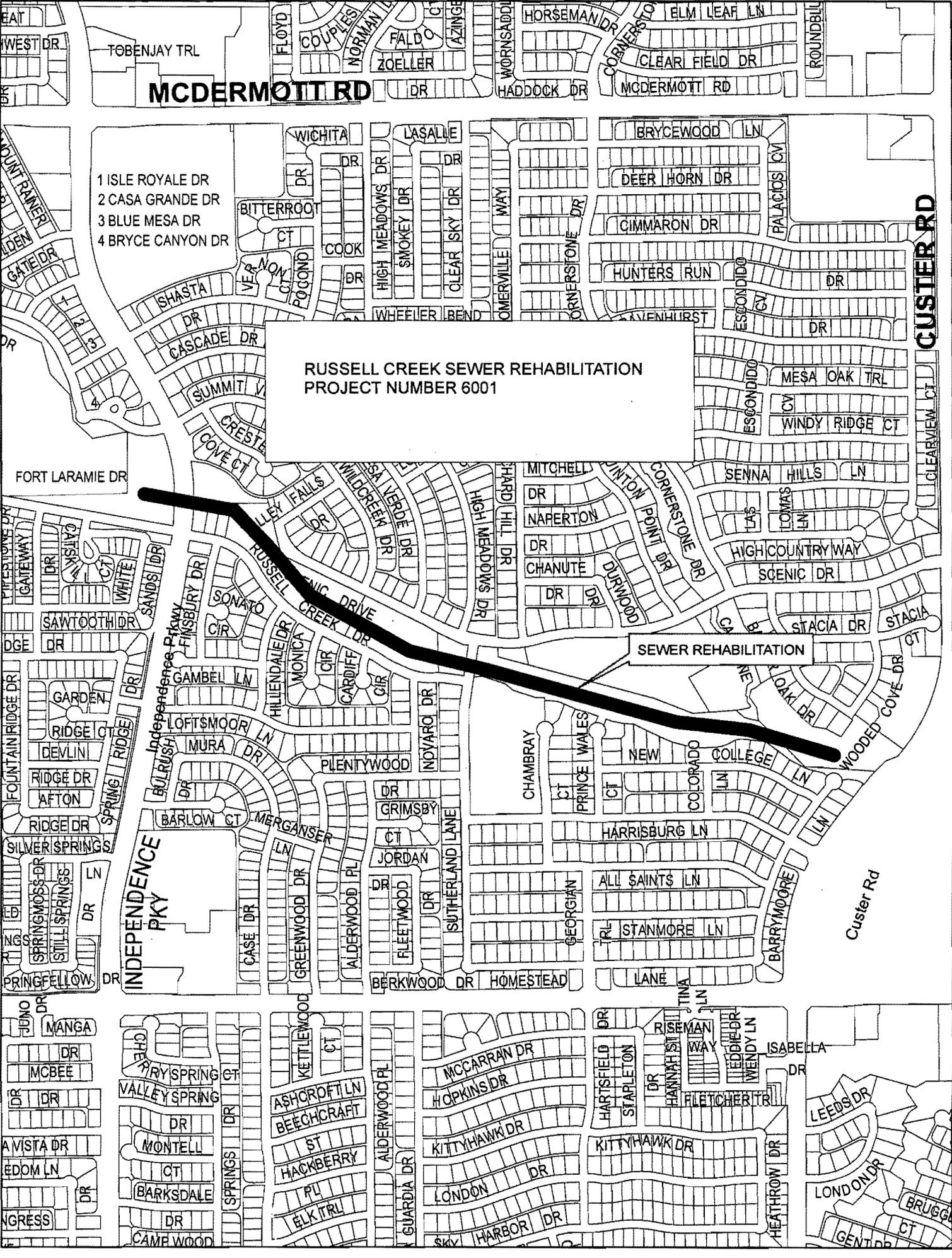
This instrument was acknowledged before me on the _____ day of _____, 2010, by **THOMAS H. MUEHLENBECK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10-25-10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 6001
CAPTION				
To Insituform Technologies, Inc., increasing the contract by \$111,078 for Russell Creek Sewer Main Rehab Phase 1, Change Order No. 1. Original Bid No. 2010-83-B.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	1,041,091	518,909	0	1,560,000
Encumbered/Expended Amount	-1,041,091	-235,583	0	-1,276,674
This Item	0	-111,078	0	-111,078
BALANCE	0	172,248	0	172,248
FUND(S): SEWER CIP				
COMMENTS: Funds are included in the 2010-11 Sewer CIP. This item, in the amount of \$111,078, will leave a current year balance of \$172,248 for the Russell Creek Sewer Rehab, Phase I project. STRATEGIC PLAN GOAL: Sewer rehab construction relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This change order in the amount of \$111,078.25 is for revising the scope of work to include additional pipes, pump and other associated costs for sewer by pass pumping. Additional capacity was needed to handle peak flows. The design was based on average day flows that were supplied by North Texas Municipal Water District. During construction, an instantaneous peak flow caused a small overflow of sewage. This required that additional pumping capacity be added to handle the larger flow. Staff recommends approval of Change Order No.1. The contract total will be \$1,229,478.25, which increases the original contract amount of \$1,118,400.00 by 9.93%				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map; Change Order No. 1			N/A	



MCDERMOTT RD

- 1 ISLE ROYALE DR
- 2 CASA GRANDE DR
- 3 BLUE MESA DR
- 4 BRYCE CANYON DR

**RUSSELL CREEK SEWER REHABILITATION
PROJECT NUMBER 6001**

SEWER REHABILITATION

Custer Rd

CHANGE ORDER NO. 1

**RUSSELL CREEK SEWER MAIN REHAB PHASE 1
PROJECT NO. 6001
PURCHASE ORDER NO. 103317
CIP NO. 46619
BID NO. 2010-83-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 **INSITUFORM TECHNOLOGIES, INC.** for the **RUSSELL CREEK SEWER MAIN REHAB PHASE 1 PROJECT**, dated April 12, 2010.

B. DESCRIPTION OF CHANGE

The change order is for Additional costs related to By Pass Pumping.

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>
5a	Additional By Pass Pumping	0	1	LS	\$111,078.25	\$111,078.25
TOTAL:						\$111,078.25

Original Contract Amount	<u>\$ 1,118,400.00</u>
Contract Amount (Including Previous Change Orders)	<u>\$ 1,118,400.00</u>
Amount, Change Order No. 1	<u>\$ 111,078.25</u>
Revised Contract Amount	<u>\$ 1,229,478.25</u>
Total Percent Increase Including Previous Change Orders	<u>9.93%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add **10** day(s) to this project:

Original Contract Time	<u>85 working days</u>
Amount (Including Previous Change Orders)	<u>85 working days</u>
Amount, Change Order No. 1	<u>10 working days</u>
Revised Contract Time	<u>95 working days</u>
Total Percent Increase Including Previous Change Orders	<u>11.76%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **INSITUFORM TECHNOLOGIES, INC.**, a Delaware corporation licensed to business in the State of Texas do hereby agree to append this Change Order No 1 to the original contract between themselves, dated April 12, 2010.

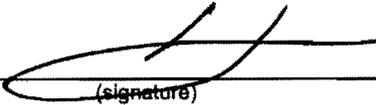
F. AUTHORITY TO SIGN

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

OWNER: CITY OF PLANO

CONTRACTOR: INSITUFORM TECHNOLOGIES, INC.

By: _____
(signature)

By:  _____
(signature)

Print
Name: Thomas H. Muehlenbeck

Print
Name: H. Douglas Thomas

Print
Title: City Manager

Print
Title: Vice President – Global Procurement / OPS Support

Date: _____

Date: 10-12-10

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

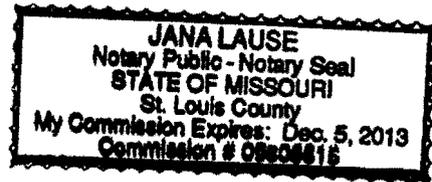
ACKNOWLEDGMENTS

STATE OF MISSOURI §
 §
COUNTY OF ST. LOUIS §

This instrument was acknowledged before me on the 12th day of October, 2010, by H. DOUGLAS THOMAS, VICE-PRESIDENT-GLOBAL PROCUREMENT / OPS SUPPORT, of INSITUFORM TECHNOLOGIES, INC., a Delaware corporation licensed to business in the State of Texas, on behalf of said corporation.



Notary Public, State of Missouri



STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by THOMAS H. MUEHLENBECK, CITY MANAGER of the CITY OF PLANO, TEXAS, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10-25-10		
Department:		City Secretary		
Department Head		Di Zucco		
Agenda Coordinator (include phone #): X7551				
CAPTION				
Adoption of amendment to Strategic Plan: 2010-2015				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: This item has no fiscal impact				
SUMMARY OF ITEM				
Replacement of Page 6 in 2010-2015 Strategic Plan adopted by City Council on August, 23, 2010.				
List of Supporting Documents: Replacement Page			Other Departments, Boards, Commissions or Agencies	

City of Plano *Our Mission*

**The Mission of the City of Plano is to provide
outstanding services and facilities,
through cooperative efforts with our citizens,
that contribute to
the quality of life in our community.**



**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:		10/25/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas approving an agreement between the City of Plano and SunGard Public Sector Inc., a sole source vendor, for the maintenance and support of H.T.E. software applications in the amount of \$126,498; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,495,189	0	2,495,189
Encumbered/Expended Amount	0	-352	0	-352
This Item	0	-126,498	0	-126,498
BALANCE	0	2,368,339	0	2,368,339
FUND(s): TECHNOLOGY SERVICES FUND (066)				
COMMENTS: Funds are included in the 2010-11 Technology Services approved budget. The remaining balance will be used throughout the year for other maintenance agreements.				
STRATEGIC PLAN GOAL: Maintenance and software support agreements relate to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
Technology Services recommends Council approve this Resolution for Sungard Public Sector, in the amount of \$126,498, for a premier support services agreement. Maintenance and support for the Sungard HTE Inc. is only available from one source, Sungard HTE, Inc., and therefore, is exempt from competitive bid as provided for in Section 252.022(a) (7) of the Texas Local Government Code..				
List of Supporting Documents: Staff Memo, Resolution, and Maintenance Agreement.			Other Departments, Boards, Commissions or Agencies	

Memorandum

Date: September 15, 2010

To: David Stephens, Director of Technology Services

From: Danny Housewright, Systems and Programming Manager

Subject: Annual Maintenance for SunGard Public Sector Applications

We have received the annual renewal of maintenance and support for the SunGard Public Sector (SPS) software applications that various City Departments use. These applications are essential to the business operations of Customer and Utility Services, Building Inspections, Property Standards, and Environmental Waste Services. Inquiry access to information stored in the SPS applications is used by a number of departments across the city. Therefore, the continuation of maintenance and support of these applications is very important to the City of Plano.

This maintenance and support can come only from SPS since they do not allow any third party companies to maintain or modify any code. In fact, our software license agreements would become invalid if the City or any other source made any changes to SPS programs. Therefore, SPS is a sole source provider of these services.

Annual maintenance and support with SPS is necessary in order to receive help in resolving issues with the SPS software applications and to continue to receive upgrades and enhancements to the SPS products.

A Resolution of the City Council of the City of Plano, Texas approving an agreement between the City of Plano and SunGard Public Sector Inc., a sole source vendor, for the maintenance and support of H.T.E. software applications in the amount of \$126,498; authorizing its execution by the City Manager or, his authorized designee; and providing an effective date.

WHEREAS, the City Council of the City of Plano has been presented with a renewal maintenance agreement from SunGard Public Sector Inc. for maintenance and support of H.T.E. software applications used by various City Departments in an amount not to exceed \$126,497.72 for the first year, a substantial copy of which is attached hereto and incorporated herein as Exhibit "A" (hereinafter called "Agreement"); and

WHEREAS, the City Council finds that the maintenance and support for the H.T.E. software applications is only available from one source, SunGard Public Sector Inc., and, therefore, is exempt from competitive bid as provided for in Section 252.022(a)(7) of the Texas Local Government Code; and

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

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

Section I. The City Council of the City of Plano, Texas, hereby finds and determines that maintenance and support for the H.T.E. software applications used by various City departments is available from only one source, and, therefore, exempt from competitive bid or proposal as provided for in Section 252.022(a)(7) of the Texas Local Government Code.

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

Section III. The City Manager or, in his absence, a Deputy City Manager, 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 attached hereto as Exhibit "A" .

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

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**SUNGARD PUBLIC SECTOR INC. SUPPORT SERVICES AGREEMENT
CONTRACT NO. PLAN-101017**

This SunGard Public Sector Inc. Support Services Agreement (“Agreement”) is entered into by and between **SunGard Public Sector Inc. (SunGard Public Sector)**, a Florida Corporation, with its principal place of business at: 1000 Business Center Drive, Lake Mary, Florida 32746;

and

**City of Plano
(Customer),**

with its principal place of business at
P.O. Box 860279
Plano, TX 75086-0279

1.

Schedule of Licensed Programs Covered Under this Agreement	Support Services Fee for Initial Term October 1, 2010 - September 30, 2011
Qrep End User - CG (4)	\$ 1,248.00
BP Voice Response Selectron Interface - VI	\$ 1,799.20
Click2Gov Core Module - K1	\$ 1,367.60
Click2Gov BP Module - K3	\$ 3,796.00
Click2Gov Wireless BP - KB	\$ 2,943.20
NAVI - Customer Information Systems - CX	\$ 27,820.00
NAVI - Cash Receipts - CR	\$ 5,876.00
NAVI - Building Permits - BP	\$ 10,051.60
NAVI - Code Enforcement - CE	\$ 6,120.40
NAVI - Land/Parcel Management - LX	\$ 6,229.60
NAVI - Work Orders/Facilities Management - WF	\$ 17,154.80
QRep Catalogs (CXJ,LXJ,CRJ,WFJ,BPJ) - CJ (5)	\$ 1,612.00
NAVI - Document Management Services - DX	\$ 1,055.60
NAVI - Contact Management - CZ	\$ 12,230.40
Click2Gov CRT - KF	\$ 4,232.80
QRep Administrator - CG (3 Users)	\$ 936.00
Retrofit Modifications (41) - MI	\$ 4,100.00
QRep End User - CG (8 Users)	\$ 2,496.00
CIS Voice Reponse Selectron - V2	\$ 1,929.20
Delinquency Call Out Listing Interface - DL	\$ 634.40
CIX IVR Credit Card Interface - CY	\$ 634.40
GTG LG Centralized Address Manager - LC	\$ 2,085.32
GTG Looking Glass Viewer Web (20 Units)	\$ 2,564.80
GTG GIS (15 Users)	\$ 2,780.40
Electronic Learning Pass (HELP) Card	\$ 4,800.00
Total	\$ 126,497.72

2. **TERM.** The Term of this Agreement shall be per the above schedule (“Initial Term”). This Agreement can be renewed for successive one (1) year terms by payment of the then-current annual Support Services Fee. SunGard Public Sector will invoice Customer when the Support Services Fees are due.
3. **SUPPORT SERVICES.** For so long as Customer has purchased Support Services and is current in its payments to SunGard Public Sector, Customer shall be entitled to receive, and SunGard Public Sector agrees to provide, the following services which are hereinafter referred to as “Support Services” for the Licensed Programs listed in Paragraph 1 hereof:

- 3.1 **Program Fix Service.** Customer shall promptly report to SunGard Public Sector any errors or defects in the Licensed Program's which prevents the Licensed Programs from operating substantially in accordance with their documentation and shall further provide such information as may be required by SunGard Public Sector to replicate such errors or defects. Customer agrees to provide dial-in access to Customer's computer in order for SunGard Public Sector to investigate reported errors or defects. SunGard Public Sector will address any such replicable errors or defects with an effort commensurate with their severity and will deliver to Customer a remedial release or workaround as it becomes available. In the event the problem Customer reported as an error or defect was in fact not in the Licensed Programs, then Customer shall pay SunGard Public Sector, at SunGard Public Sector's then current list price therefor, for time spent as a result of Customer's report.
- 3.2 **Software Upgrades and Updates.** Customer shall receive, at no additional cost, upgrades and updates to the Licensed Programs which are generally made available at no cost by SunGard Public Sector to customers who have purchased Support Services. Customer shall receive one original of any upgrade or update to the Licensed Programs delivered hereunder in electronic form or on media, according to the general form of distribution implemented by SunGard Public Sector. Customer agrees that any upgrades or updates provided by SunGard Public Sector shall be held by Customer upon all of the terms and shall be subject to all of the conditions contained in the license agreement granting Customer the right to use the Licensed Programs.
- 3.3 **Telephone Support.** SunGard Public Sector shall make available a toll free telephone support line, twenty-four (24) hours a day, seven (7) days per week, for use by Customer's representatives who shall have received training on the Licensed Programs and who shall be relatively proficient in the operation of the Licensed Programs.
- 3.4 **Exclusions.** Support Services do not include on-site services nor Licensed Programs that are not at the latest release level or the level immediately prior to the latest release, or for which Customer has not installed all distributed corrective code, or Licensed Programs that have been modified or customized, or that have been damaged by negligence, misuse, use with inappropriate software or equipment or by other external causes.

4. **SUPPORT SERVICES FEES.**

- 4.1 Support Services Fees for the Initial Term hereof are as provided in Paragraph 1, and are due and payable upon execution of this Agreement.
- 4.2 Support Services Fees for Renewal Terms are due and payable prior to the first day of the Renewal Term, and are subject to change upon each renewal date.
- 4.3 Support Services Fees stated herein do not include sales (or equivalent) taxes. Taxes due, if any, will be added to Customer's invoice.
- 4.4 Support Services Fees are not refundable in whole or in part, except in the event of Customer's termination for cause as provided in Paragraph 9.3 hereof.

5. **MODIFICATION MAINTENANCE SERVICES.** For so long as Customer has purchased Modification Maintenance Services and is current in its payments to SunGard Public Sector under this Agreement, Customer shall be entitled to receive, and SunGard Public Sector agrees to provide, the following service:

- 5.1 **Modified Program Compatibility.** For each non Licensed Program in library SunGard Public Sector MOD that was written by SunGard Public Sector or any Licensed Program that has had custom modifications performed by SunGard Public Sector at the customer's request, SunGard Public Sector will perform all necessary programming to ensure that the program is compatible with each new software release, version, or Program Temporary Fix made available by SunGard Public Sector.

6. **MODIFICATION MAINTENANCE FEES.**

- 6.1 Modification Maintenance Fees are determined on an annual basis. This determination is based upon the number of modified programs prior to each renewal period multiplied by the then current rate charged per program.
- 6.2 Modification Maintenance Fees are not refundable in whole or in part.

7. **WARRANTIES AND REMEDIES.** SunGard Public Sector warrants that the Support Services provided under this Agreement shall be performed professionally, in a workmanlike manner and by employees with appropriate skills and expertise. Except as provided in this paragraph, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, IN THE EVENT HTE BREACHES THIS WARRANTY, IS TO TERMINATE THIS AGREEMENT PURSUANT TO THE TERMS OF PARAGRAPH 9 BELOW.
8. **LIMITATION OF LIABILITY.** SunGard Public Sector's liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement, shall not exceed the Support Services Fees paid for the Initial Term or Renewal Term then in effect. In no event shall SunGard Public Sector be liable for any indirect, special, or consequential damages, or economic loss in connection with, or arising out of, this Agreement.
9. **TERMINATION.** This Agreement may be terminated as follows:
 - 9.1 Upon Customer's failure to renew this Agreement at the expiration of the Initial Term or any Renewal Term.
 - 9.2 By SunGard Public Sector, if Customer fails to pay Support Services Fees on or before the due date, then this Agreement shall terminate if non-payment continues for more than ten (10) days after receipt of notice in writing from SunGard Public Sector to Customer of such non-payment setting forth the sum then due and how such sum was determined.
 - 9.3 Except as provided in Paragraph 9.2 hereof, by the non-breaching party, in the event this Agreement is breached by a party and that party fails to cure the breach within thirty (30) days after having been given written notice thereof.
 - 9.4 If Customer terminates this Agreement and subsequently desires to reinstate Support Services, SunGard Public Sector's then-current policy with regard to reinstatement shall apply.
10. **GENERAL TERMS. Choice of Law/Dispute Resolution.** This Agreement shall be governed by laws of the State of Florida. Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations, then either party may commence legal action against the other. Each party hereto agrees to submit to the personal jurisdiction and venue of the state and/or federal courts in or for Seminole County, Florida for resolution of all disputes in connection with this Agreement.

Binding Agreement. The individual signing this Agreement for Customer warrants that he/she has been duly authorized to bind Customer to all rights, duties, remedies, obligations and responsibilities hereunder and that the Agreement is a valid and binding obligation of Customer.

Assignment. This Agreement and the rights, title, and interest herein, may not be assigned or transferred by Customer without the prior written consent of SunGard Public Sector, which consent may be withheld. SunGard Public Sector may assign its rights, title and interest herein by providing prior written notice to Customer.

Successors Bound. The terms and conditions of this Agreement shall extend and inure to the benefit and be binding on the respective successors and permitted assigns of Customer and SunGard Public Sector.

Force Majeure. Neither party shall be held responsible for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control.

Severability. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Notices. Any notice provided for herein shall be in writing and sent by registered or certified mail, postage prepaid, addressed to the party for which it is intended at the address set forth on the first page of the Agreement or to such other address as either party shall from time to time indicate in writing. Any notice given pursuant to this paragraph shall be deemed given when received or five (5) calendar days from the date of the mailing, whichever occurs first.

Headings. Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms hereof.

Non-Hiring Statement. During the term of this Agreement and for a period of twenty-four (24) months after the termination of this Agreement, the Customer may not offer to hire or in any way employ or compensate any of the employees of SunGard Public Sector or persons who have been employed by SunGard Public Sector within the immediate past twenty-four (24) months without prior written consent of SunGard Public Sector.

Non-waiver. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to Support Services, and there are no representations, conditions, warranties, or collateral agreements, expressed or implied, statutory or otherwise, with respect to this Agreement other than as contained herein. This Agreement supersedes all previous communications, representations or agreements, either written or oral, between the parties. This Agreement may not be modified or supplemented in any way except by written agreement signed by persons authorized to sign agreements on behalf of Customer and of SunGard Public Sector. Preprinted conditions which vary from the terms and conditions herein, and which are contained in any purchase order or other document submitted hereafter by Customer, are of no force or effect.

AFFIDAVIT OF NO PROHIBITED INTEREST

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

The parties, each acting with due authority, have executed this Agreement by setting forth their respective signatures:

CITY OF PLANO, TX

SUNGARD PUBLIC SECTOR INC.

Authorized Signature

Authorized Signature

Print Name & Title

Print Name & Title

Date

Date

EXHIBIT A

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of SunGard Public Sector Inc., (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

SUNGARD PUBLIC SECTOR INC.

Name of Contractor

By: _____

Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this ____ day of

September 2010.

Notary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		October 25, 2010		
Department:		Library Administration		
Department Head		Cathy Ziegler		
Agenda Coordinator (include phone #): Mary Ann Dunnivant (4208)				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and Denton County, Texas and providing terms and conditions for receipt of funding for Library Services in the amount of \$9,966 from Denton County, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	FY 2010-11	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	9,966	0
BALANCE		0	9,966	0
FUND(S): GENERAL FUND				
<p>COMMENTS: Approval of this item will result in \$9,966 in revenue from the Denton County Interlocal Cooperative Library Agreement. Funds received from this agreement will be used by the City of Plano – Plano Public Library System – to provide full library services for the residents of Denton County.</p> <p>STRATEGIC PLAN GOAL: Providing Interlocal library services relates to a “Financially Strong City with Service Excellence.”</p>				
SUMMARY OF ITEM				
<p>Approval of this Interlocal Cooperation Agreement for Library Services between the City of Plano, Texas and Denton County, Texas is requested for receipt of funding in the amount of \$9,966 from Denton County, Texas.</p>				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
<ol style="list-style-type: none"> Interlocal Cooperation Agreement for Library Services is attached as Exhibit “A” to the Resolution. 				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and Denton County, Texas and providing terms and conditions for receipt of funding for Library Services in the amount of \$9,966 from Denton County, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement For Library Services by and between the City of Plano, Texas, and Denton County, Texas (see Exhibit "A") providing terms and conditions for receipt of funding from Denton County, Texas in the amount of \$9,966; and

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

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

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

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

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

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

STATE OF TEXAS, §
COUNTY OF DENTON § **PLANO PUBLIC LIBRARY SYSTEM**
§

**INTERLOCAL COOPERATION AGREEMENT
FOR LIBRARY SERVICES**

THIS AGREEMENT is made and entered into by and between Denton County a political subdivision of Texas, hereinafter referred to as "**COUNTY**," and the City of Plano, a Municipality of Denton County, Texas, hereinafter referred to as "**MUNICIPALITY**," and has an effective date of October 1, 2010.

WHEREAS, COUNTY is a duly organized political subdivision of the State of Texas engaged in the administration of county government and related services for the benefit of the citizens of Denton County; and

WHEREAS, the City of Plano is a duly organized **MUNICIPALITY** of Denton County, Texas engaged in the provision of library service and related services for the benefit of the citizens of **MUNICIPALITY**; and

WHEREAS, COUNTY has requested, and **MUNICIPALITY** has agreed, to provide library services for all residents of **COUNTY**; and

WHEREAS, COUNTY and **MUNICIPALITY** mutually desire to be subject to the provisions of V.T.C.A., Government Code Chapter 791, the Interlocal Cooperation Act; and V.T.C.A., Local Government Code Chapter 323, County Libraries.

NOW, THEREFORE, COUNTY and **MUNICIPALITY**, for the mutual consideration hereinafter stated, agree and understand as follows:

I.

The term of this Agreement shall be for the period from October 1, 2010, through September 30, 2011.

II.

For the purposes and consideration herein stated and contemplated, **MUNICIPALITY** shall provide library services for the residents of **COUNTY** without regard to race, religion, color, age, disability and/or national origin. Upon proper proof by individual(s) of residence in

COUNTY, Texas, such individual(s) shall be entitled issuance, at no cost, a library card to be used in connection with said library services.

MUNICIPALITY shall develop and maintain through the Library one or more of the following programs of service:

1. Educational and reading incentive programs and materials for youth.
2. Functional literacy materials and/or tutoring programs for adults.
3. Job training/career development programs and/or materials for all ages.
4. Outreach services to eliminate barriers to library services.
5. Educational programs designed to enhance quality of life for adults.

III.

COUNTY designates the County Judge to act on behalf of **COUNTY** and serve as liaison officer for **COUNTY** with and between **COUNTY** and **MUNICIPALITY**. The County Judge or his designated substitute shall insure the performance of all duties and obligations of **COUNTY** herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of **COUNTY** in full compliance with the terms and conditions of this Agreement. The County Judge shall provide immediate and direct supervision of **COUNTY'S** employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of **COUNTY** and **MUNICIPALITY**.

IV.

MUNICIPALITY shall designate **CATHY ZIEGLER** to act on behalf of **MUNICIPALITY** and to serve as liaison officer of **MUNICIPALITY** with and between **MUNICIPALITY** and **COUNTY** to insure the performance of all duties and obligations of **MUNICIPALITY** as herein stated and shall devote sufficient time and attention to the execution of said duties on behalf of **MUNICIPALITY** in full compliance with the terms and conditions of this Agreement. **CATHY ZIEGLER** shall provide management of **MUNICIPALITY'S** employees, agents, contractors, sub-contractors, and/or laborers, if any, in the furtherance of the purposes, terms and conditions of this Agreement for the mutual benefit of **MUNICIPALITY** and **COUNTY**.

MUNICIPALITY shall provide to **COUNTY** a copy of the annual report submitted to the Texas State Library and shall respond to **COUNTY'S** annual questionnaire as documentation of **MUNICIPALITY'S** expenditures and provision of service.

V.

The **MUNICIPALITY** shall be solely responsible for all techniques, sequences, procedures, and for the coordination of all work performed under the terms and conditions of this Agreement; shall insure, dedicate and devote the full time and attention of those employees necessary for the proper execution and completion of the duties and obligations of the **MUNICIPALITY** stated in this Agreement; and shall give all attention necessary for such proper supervision and direction.

VI.

The **MUNICIPALITY** agrees that its library department shall assume the functions of a **COUNTY** library and to provide a librarian who meets the requirements of the **MUNICIPALITY'S** job description.

VII.

The **COUNTY** and **MUNICIPALITY** agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees. This Agreement does not and shall not be construed to entitle either party or any of their respective employees, if applicable, to any benefit, privilege or other amenities of employment applicable to the other party. The **MUNICIPALITY** understands and agrees that the **MUNICIPALITY**, its employees, servants, agents and representatives shall not represent themselves to be employees, servants, agents and/or representatives of the **COUNTY**.

The **COUNTY** and **MUNICIPALITY** acknowledge and agree that **COUNTY** and **MUNICIPALITY** do not waive any sovereign or governmental immunity available to **COUNTY** and **MUNICIPALITY** under Texas law and does not waive any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

VIII.

This Agreement is not intended to extend the liability of the parties beyond that provided by law. Neither **MUNICIPALITY** nor **COUNTY** waives any immunity or defense that would otherwise be available to it against claims by third parties.

IX.

Any notice required by this Agreement shall be delivered, in writing, by either **COUNTY** or **MUNICIPALITY** to the following addresses:

The address of **COUNTY** is: County Judge, Denton County
110 West Hickory
Denton, Texas 76201
Telephone: 940-349-2820

The address of the **MUNICIPALITY** is: The City of Plano through
Plano Public Library System
2501 Coit Road
Plano, Texas 75075
Attention: Cathy Ziegler
Telephone: 972-769-4208

X.

For the full performance of the services above stated, **COUNTY** agrees to pay **MUNICIPALITY** fees as described herein, from current revenues available for such payment. **COUNTY** shall pay **MUNICIPALITY** fees in the amount of **FOUR THOUSAND NINE HUNDRED SIXTY-SIX AND NO/100 DOLLARS (\$4,966.00)**, based upon North Central Texas Council of Governments service population allocation figures provided to **COUNTY** by the Library Advisory Board, payable in equal quarterly installments to **MUNICIPALITY** commencing October 1, 2010. The Allocation chart setting forth said figures is attached hereto and incorporated herein for all intents and purposes as Attachment "A." In addition, **COUNTY** agrees to pay **MUNICIPALITY** an amount not to exceed **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)** in matching funds upon the following conditions:

1. **MUNICIPALITY** shall attempt to secure funding from sources other than **COUNTY**.
2. Upon receipt of additional funding, **MUNICIPALITY** shall provide proof of the receipt of such funds to the Denton County Auditor on a quarterly basis.

3. **COUNTY** shall match **MUNICIPALITY'S** additional funding in an amount not to exceed \$5,000.00.
4. Payment by **COUNTY** to **MUNICIPALITY** shall be made in accordance with the normal and customary processes and business procedures of **COUNTY**, and payment shall be satisfied from current revenues of the **COUNTY**.

The **COUNTY** has reviewed the **MUNICIPALITY'S** Library Internet usage operating procedures and finds them in compliance. The **MUNICIPALITY** agrees to keep their Internet policy (See Attachment "B" attached hereto and incorporated herein for all intents and purposes) in effect for the duration of this Agreement.

XI.

This Agreement may be terminated, at any time, by either party by giving sixty (60) days advance written notice to the other party. In the event of such termination by either party, **MUNICIPALITY** shall be compensated pro rata for all services performed to the termination date, together with reimbursable expenses then due and as authorized by this Agreement. In the event of such termination, should **MUNICIPALITY** be overcompensated on a pro rata basis for all services performed to the termination date or be overcompensated for reimbursable expenses as authorized by this Agreement, **COUNTY** shall be reimbursed pro rata for all such overcompensation. Acceptance of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

XII.

This Agreement represents the entire and integrated Agreement between **MUNICIPALITY** and **COUNTY** and supersedes all prior negotiations, representations and/or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both **MUNICIPALITY** and **COUNTY**.

XIII.

The validity of this Agreement, and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Further, this Agreement shall be performable and all compensation payable in Denton County, Texas.

XIV.

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the extent possible.

XV.

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 and each party hereby certifies to the other that any necessary orders or resolutions extending said authority have been duly passed and are now in full force and effect.

EXECUTED in triplicate originals on the dates set forth below.

COUNTY

By _____
Mary Horn, County Judge
Denton County, Texas

Acting on behalf of and by the authority of the Commissioners Court of Denton County, Texas

DATED: _____
ATTEST: _____

By _____
Denton County Clerk

APPROVED AS TO FORM:

BY _____
Assistant District Attorney

MUNICIPALITY

By _____
Name: _____ Thomas H. Muehlenbeck
Title: _____ City Manager

Acting on behalf of and by the authority of the Plano City Council, Plano, Texas

DATED: _____
ATTEST: _____

By _____
City Secretary

APPROVED AS TO FORM:

BY _____
City Attorney

APPROVED AS TO CONTENT:

BY _____
Director, Library Services

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Denton County under this contract.

James Wells, Denton County Auditor

ATTACHMENT "A" TO INTERLOCAL COOPERATION AGREEMENT

DENTON COUNTY LIBRARY FUNDING WORKSHEET - FY2011

428,300
397,864
230,636

DENTON COUNTY POPULATION:
 POPULATION OF CITIES WITH LIBRARIES
 REMAINING POPULATION

LIBRARY	TOTAL POP	CITY POP	COUNTY allocation	PER CAPITA ALLOCATION	MATCHING FUNDS	TOTAL	INITIAL REQUEST	APPROVED % Reduction
AUBREY	7,972	5,050	2,929	\$ 5,150	\$ 10,000	\$ 15,150	\$ 15,150	\$14,383
CARROLLTON	112,769	71,374	41,395	\$ 72,780	\$ -	\$ 72,780	\$ 72,780	\$59,141
FLOWER MOUND	98,480	62,950	36,510	\$ 84,190	\$ -	\$ 84,190	\$ 84,190	\$80,981
FRISCO	58,857	37,252	21,605	\$ 37,996	\$ 5,000	\$ 42,996	\$ 42,990	\$40,841
JUSTIN	4,977	3,150	1,827	\$ 3,212	\$ 10,000	\$ 13,212	\$ 13,210	\$12,550
KRUM	6,320	4,000	2,320	\$ 4,079	\$ 10,000	\$ 14,079	\$ 14,080	\$13,376
LAKE CITIES	52,534	33,250	19,204	\$ 33,805	\$ 10,000	\$ 43,805	\$ 43,800	\$41,705
LEWISVILLE	151,927	96,158	55,769	\$ 98,053	\$ -	\$ 98,053	\$ 98,050	\$93,148
LITTLE ELM	42,185	26,700	15,485	\$ 27,226	\$ 10,000	\$ 37,226	\$ 37,230	\$36,369
PILOT POINT	6,478	4,100	2,378	\$ 4,181	\$ 10,000	\$ 14,181	\$ 14,180	\$13,471
PLANO	8,500	5,380	3,120	\$ 5,486	\$ 5,000	\$ 10,487	\$ 10,490	\$9,968
PONDER	1,817	1,150	667	\$ 1,173	\$ 10,000	\$ 11,172	\$ 11,170	\$10,612
SANGER	11,139	7,050	4,089	\$ 7,186	\$ 10,000	\$ 17,186	\$ 17,190	\$16,331
THE COLONY	63,357	40,100	23,257	\$ 40,830	\$ 10,000	\$ 50,830	\$ 50,890	\$48,348
TOTAL	628,300	397,864	230,636	\$ 405,600	\$ 100,000	\$ 505,500	\$ 505,500	\$480,230

-525,270

TOTAL REDUCTION

Aubrey Population:	Lake Cities Population:	Little Elm Population:
Aubrey	Conith	Little Elm
Crossroads	Hickory Creek	Oak Point
Krugerville	Lake Dallas	Total
Total	Shady Shores	
	Total	
Carrollton	122,100	96,450
less Dallas county	50,726	282
Carrollton (Denton C	71,374	96,168

ATTACHMENT "B" TO INTERLOCAL COOPERATION AGREEMENT

205 Internet Policy

(Approved by the Library Advisory Board October 6, 1999)

205.1 **Mission Statement**

The Plano Public Library System ("Library") is to provide and promote open access to cultural, intellectual and informational resources that will enrich and enlighten all segments of our community.

205.2 Internet Policy

The Internet is a resource that enables the Library to provide the public access to information beyond the confines of its own collection. Currently, it is an unregulated medium and, while it makes available material that is personally, professionally, culturally and educationally enriching, it also enables the user to access material that may be inaccurate, misleading, offensive, disturbing, and/or illegal.

The Library is not a full service Internet provider. Services which will not be available include, but are not limited to, newsgroups, chatlines, and personal electronic mail accounts. Patrons will not be permitted to load their own software.

The City of Plano disclaims any responsibility to monitor for, or prevent viruses that may be transmitted electronically. Patrons are advised to take precautions for eliminating viruses or other software corruption.

The City of Plano does not promote or condone the use of its computer system for illegal purposes and expressly prohibits the same as well as accessing illegal sites. Further, the City finds there is material on the Internet, while not obscene, is not appropriate for minors due to explicit sexual descriptions or graphics. The City recognizes that minors utilize all Library resources, including Internet, outside of their parents' presence. The City of Plano, through the Library, has a compelling interest to assist parents in protecting the welfare of minors* who are vulnerable and unable to make critical decisions in an informed and mature manner, particularly when viewing illegal material on the Internet. To address these concerns, all but one computer in each library has filtering devices for the purpose of blocking illegal materials for all users including materials that are harmful to minors in accordance with state law.**

Anyone wishing to utilize the Internet must possess a Plano library card. Minors must have a parent make an election for filtering, if any, the child may use. Minors whose parents allowed them to have unrestricted Internet use and adults may access the unfiltered computer if the site(s) desired is not available on the filtered computer.

Even filters cannot insure that obscene and other illegal materials are not available. Due to the Internet capability to constantly change and establish new sites, user expertise, and other technology, it is still possible to access illegal, obscene or offensive sites. The City of Plano makes no guarantee that such access will not occur even with the use of filters. The selection of a filtering program is solely within the discretion and judgment of the City. Users must accept responsibility for information displayed or printed during their Internet session.

The City of Plano cannot guarantee that access to sites containing adult entertainment, pornography or illegal activities will be blocked. The City of Plano expressly disclaims any liability or responsibility resulting from the use of its computer system or selection of a filtering program.

*Minors – Persons who are under 18 years of age

**Illegal materials are those that meet the definition of obscenity and harmful materials to minors as defined by the Texas Penal Code Sections 43.21 and 43.24 as follows

The Texas Penal Code defines obscenity as:

“Material the average person applying contemporary community standards would find that taken as a whole, it appeals to prurient interest in sex; and depicts or describes patently offensive representation or descriptions of:

Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or,

Patently offensive representations or description of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernible turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and,

Taken as a whole, lacks serious literary, artistic, political or [note] and scientific value.”

T.P.C. 43.21.

The Texas Penal Code defines material harmful to minors as material whose dominant theme taken as a whole:

- Appeals to the prurient interest of a minor in sex, nudity, or excretion;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and,
- Is utterly without redeeming social value for minors. T.P.C. 43.24



**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:		10/25/2010		
Department:		Customer & Utility Services		
Department Head		Mark Israelson		
Agenda Coordinator (include phone #): Eric Ellwanger X5128				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, amending specific sections of Ordinance No. 2010-9-5 codified as Section 21-147, of Article IV, Service Charges Generally, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano to clarify the water rate schedule as provided in Section 21-147(1)(b)(3) for residential customers and Section 21-147(3)(b)(3) for customers with separately metered irrigation systems, and distinguish fees for residential and commercial customers with 1-inch metered irrigation use under Section 21-147(3)(a) effective November 1, 2010, and providing a repealer clause, a severability clause, a savings 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: 10/11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): WATER & SEWER (041)				
COMMENTS: Approval of this item will clarify sections of the water rate schedule as passed in Ordinance 2010-9-5. This amendment will have no impact to the FY 2010-11 Water & Sewer Budget.				
SUMMARY OF ITEM				
STRATEGIC PLAN GOAL: Changes to Water & Sewer Service Rates and Fees relate to the City's Goal of "Financially Strong City with Service Excellence".				
List of Supporting Documents: Ordinance 2010-9-5 Amendment Memo			Other Departments, Boards, Commissions or Agencies	

Memo

Date: 10/13/2010

To: Mark Israelson, Assistant City Manager

From: Eric Ellwanger, Customer & Utility Services Manager

RE: Ordinance 2010-9-5 Amendment Memo

Ordinance 2010-9-5 that was passed by City Council on 9/13/2010 had three separate typographical errors in the Water Rate Schedules as presented. Outlined below are the three errors and their corrections. The amended Ordinance with the corrections as outlined below will be sent to City Council on 10/25/2010.

- The third tier of consumption charges for both residential and separately metered irrigation use were mislabeled as "All over 5,000 gallons" when they should have been labeled "5,001--20,000 gallons".
- Separately metered irrigation use minimum charges for a 1 inch meter have historically been differentiated between residential and commercial use. The amended ordinance adds a line to distinguish between a 1 inch residential meter and a 1 inch commercial meter.

An Ordinance of the City of Plano, Texas, amending specific sections of Ordinance No. 2010-9-5 codified as Section 21-147, of Article IV, Service Charges Generally, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano to clarify the water rate schedule as provided in Section 21-147(1)(b)(3) for residential customers and Section 21-147(3)(b)(3) for customers with separately metered irrigation systems, and distinguish fees for residential and commercial customers with 1-inch metered irrigation use under Section 21-147(3)(a) effective November 1, 2010, and providing a repealer clause, a severability clause, a savings clause, and an effective date.

WHEREAS, on September 13, 2010 the City Council of the City of Plano enacted Ordinance No. 2010-9-5 amending the fee schedules for water service provided in the City; and

WHEREAS, it is necessary to clarify the water rate schedule as provided in Section 21-147(1)(b)(3) for residential customers and Section 21-147(3)(b)(3) for customers with separately metered irrigation systems, and distinguish fees for residential and commercial customers with 1-inch metered irrigation use under Section 21-147(3)(a) effective November 1, 2010.

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

Section I. *Effective November 1, 2010, Section 21-147(1)(b) of Ordinance No. 2010-9-5 codified as Section 21-147, of Article IV, Service Charges Generally, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano is revised to read as follows:*

“Sec. 21-147. Water charges.

- b. Consumption charges.
 - 1. First 1,000 gallons included in meter charge (minimum bill).
 - 2. 1,001--5,000 gallons (per 1,000 gallons)..... \$0.39
 - 3. 5,001--20,000 gallons (per 1,000 gallons)..... 2.01
 - 4. All over 20,000 gallons (per 1,000 gallons)..... 4.02”

Section II. *Effective November 1, 2010, Sections 21-147(3)(a) and 21-147(3)(b) of Ordinance No. 2010-9-5 codified as Section 21-147, of Article IV, Service Charges Generally, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano are hereby revised to read as follows:*

“(3) Separately metered irrigation use.

- a. Minimum charge.
 - 1. 5/8 and 3/4 inch..... \$16.93
 - 2. 1 inch (Residential)..... 16.93
 - 3. 1 inch (Commercial)..... 38.24
 - 4. 1 1/2 inch..... 74.92
 - 5. 2 inch..... 118.24
 - 6. 3 inch..... 233.73
 - 7. 4 inch..... 363.78
 - 8. 6 inch..... 724.86
 - 9. 8 inch..... 1158.16
 - 10. 10 inch..... 1663.81

- b. Consumption charges.
 - 1. First 1,000 gallons included in meter charge (minimum bill).
 - 2. 1,001--5,000 gallons (per 1,000 gallons)..... \$0.39
 - 3. 5,001--20,000 gallons (per 1,000 gallons)..... 2.01
 - 4. All over 20,000 gallons (per 1,000 gallons)..... 4.02"

Section III. Any provision of any Ordinance of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance is hereby repealed, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section IV. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion 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 of any Ordinances at the time of passage of this Ordinance.

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

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/25/10		
Department:		Budget		
Department Head		Karen Rhodes-Whitley		
Agenda Coordinator (include phone #): Casey Srader x5152				
CAPTION				
An Ordinance of the City of Plano, Texas, approving the carrying forward of certain fiscal year 2009-10 funds to fiscal year 2010-11; 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: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	2,967,174	0	2,967,174
BALANCE	0	2,967,174	0	2,967,174
FUND(S): GENERAL FUND, WATER & SEWER FUND, SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND, MUNICIPAL DRAINAGE FUND, PC REPLACEMENT FUND AND ECONOMIC DEVELOPMENT FUND.				
COMMENTS: Funds are available from the FY 2009-10 approved budget in the listed funds as carry forwards into FY 2010-11 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 2009-10 Carry Forward List to FY 2010-11 and sets the level of transfers for the various funds, as reviewed by the City Council.				
List of Supporting Documents: 2009-10 Carry Forward Request Log			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas, approving the carrying forward of fiscal year 2009-10 funds to fiscal year 2010-11; and providing an effective date.

WHEREAS, on September 13, 2010, the City Council approved the budget for fiscal year 2010-2011 by passing Ordinance 2010-9-8; and

WHEREAS, State law provides that cities have the authority to carry forward funds from the 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 2009-2010 to fiscal year 2010-2011.

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 budget 2009-2010 to the fiscal year budget 2010-2011:

A.	General Fund	\$2,481,063
B.	Water & Sewer Fund	\$265,965
C.	Sustainability & Environmental Services Fund	\$51,868
D.	Municipal Drainage Fund	\$104,849
E.	PC Replacement Fund	\$55,829
F.	Economic Development Fund	\$7,600

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

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CARRY FORWARD REQUESTS
2009-10 FUNDS TO 2010-11**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
<u>BUDGETED PROJECTS/ITEMS</u>							
115	City Secretary	Training	\$ 628	Conference Registration and travel costs for certification & recertification courses.	115.6309	115.6309	\$ 628
215	Non-Departmental	Medicare Settlement	\$ 750,000	To cover special Medicare settlement.	215.6127	215.6127	\$ 750,000
		Retirement Payout funds	\$ 813,616	Funding available from retirements budgeted in 2009-10 but not used.	215.6109	215.6109	\$ 813,616
219	Financial Systems Admin.	Printer	\$ 1,724	Printer(s) will not be received until October, need CF to cover purchase (the order is currently billed to Fund 66).	219.6252	219.6252	\$ 1,724
321	Records Management	Travel/Professional Development	\$ 2,300	Open Records Conference, November 2010.	321.6307	321.6307	\$ 2,300
		Training	\$ 700	Laserfiche Training class.	321.6309	321.6309	\$ 700
352	Facilities Maintenance	Utility Gas Account Overage	\$ 70,000	Lower budgeted natural gas and warmer than usual winter precipitated this overage. Will use in anticipated increased gas prices next budget year.	352.6332	352.6332	\$ 70,000
383	MP3 Program	Municipal Marketing Consultant	\$ 10,000	Consultant fees for MP3 class, municipal marketing project.	383.6312, 383.6307, 383.6346, 383.6353	383.6312	\$ 10,000
534	PSC	Tower Security	\$ 176,553	Tower Security Camera Project (approved in 2008-09 Budget).	534.8452	534.8452	\$ 176,553
556	Emergency Management	EOC/Training Facility	\$ 261,278	Supplemental funds required to complete the new EOC facility.	556.8416	556.8416	\$ 62,312
					556.8451	556.8451	\$ 2,700
					556.8452	556.8452	\$ 5,000

**CARRY FORWARD REQUESTS
2009-10 FUNDS TO 2010-11**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
					556.8453	556.8453	\$ 180,266
					556.8454	556.8454	\$ 11,000
619	Property Standards	Contracts-Professional Services	\$ 19,500	To pay for outstanding Contracted Services for various property abatements as well as for public nuisance abatements costs expected to increase in FY 2010-11.	619.6312	619.6312	\$ 19,500
		Contracts-Other	\$ 20,000	To pay for outstanding Contract Work Orders that have not been invoiced yet, to cover graffiti abatement cost increases due to legislative mandates expected in 2011, and to pay for document imaging of departmental records during FY 2010-11.	619.6319	619.6319	\$ 20,000
622	Planning	Contracts-Professional Services	\$ 40,651	To complete 2nd phase of consulting work on Zoning Ordinance.	622.6312	622.6312	\$ 40,651
		Contracts-Professional Services	\$ 8,000	ESRI/Laserfiche Search Tools, modifications to existing web interface and migration of existing documents.	622.6312	622.6312	\$ 8,000
		Contracts-Professional Services	\$ 5,000	Public Meeting Facilitation Services for the Comprehensive Plan update meetings in Oct and Nov 2010.	622.6312	622.6312	\$ 5,000
623	Rental Registration./Inspection	Hardware-Non Capital	\$ 4,700	Purchase of notepad units has been delayed due to ongoing system development challenges, also needs these funds to purchase notepads for the vacant Rental Registration positions expected to be filled in a couple of months.	623.6252	623.6252	\$ 4,700
634	Park Field Services	Contractual: Median Tree Trimming, Plant Replacement, Striping selected parking lots	\$ 50,000	Projects delayed: Tree trimming due to drought in June - August, excess rain in September. Median Plant replacement delayed due to rain in Sept. Parking lot stripes delayed in Sept. due to rain.	634.6312	634.6312	\$ 50,000

**CARRY FORWARD REQUESTS
2009-10 FUNDS TO 2010-11**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
637	Athletic Fields Maint	Sand, Clay & Loam	\$ 9,107	Continuation of the re-leveling of undulating athletic fields project continues after the drought of 2005-06.	637.6223	637.6223	\$ 9,107
		Field Marking & Sanitation	\$ 29,000	Funds will be used for contractual employees to mark athletic fields and clean restrooms for athletic tournament events (instead of using regular employees OT hours).	637.6312	637.6312	\$ 29,000
647	Sports Turf Maintenance	Chemicals	\$ 39,000	Additional funds will be required in 2010-11 to purchase post-emergent chemicals used to treat athletic fields because the chemical used in the past is no longer available.	647.6212	647.6212	\$ 39,000
		Contractual Mowing	\$ 29,000	Missed mowing rotations in 2009-10 due to rain and with 2 vacant equipment operator positions in CC 649 (Sports Turf District) the department requests funds to be used for contractual mowing.	647.6312	647.6312	\$ 29,000
648	Ground Maint. Svcs.#2	Water Utilities/landscape maintenance at Legacy	\$ 52,000	Invoice for landscaping maintenance/water at Legacy location for FY 2008-09 contract and the 2009-10 contract period from Hewlett Packard (EDS) has not been received by the City.	648.6333	648.6333	\$ 52,000
651	Recreation Administration	Senior Transportation Program	\$ 15,800	Would like to carry forward into FY 10/11 to support the invoices for September that have not been received, and have something available to support the funding received from DART, if funds are all expended.	651.6319	651.6319	\$ 15,800
681	Library Administration	Library Wi-Fi implementation project	\$ 16,550	Project is still making its way to the top of the Technology Service project list.	681.6252	681.6252	\$ 16,550
684	Schimelpfenig Library	Computer hardware-Non-Capital	\$ 105	Printer(s) will not be received until October, need CF to cover purchase (the order is currently billed to Fund 66).	684.6208	684.6252	\$ 105

**CARRY FORWARD REQUESTS
2009-10 FUNDS TO 2010-11**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
719	Neighborhood Maint.	Safe Street Program	\$ 20,000	Maintenance Costs required to repair existing speed cushions previously installed under program.	719.6208	719.6208	\$ 20,000
721	Engineering	Consulting Services	\$ 35,851	Consulting for the proposed changes to the City's Storm Water Management Program.	721.6312	721.6312	\$ 35,851
01 Subtotal General Fund			\$ 2,481,063				\$ 2,481,063
421	Customer & Utility Svcs	Minor Apparatus	\$ 5,000	AMR Project-Water Meters and Fixed Network Devices.	421.6208	422.6229	\$ 5,000
		Travel	\$ 11,000	AMR Project-Water Meters and Fixed Network Devices.	421.6307	422.6229	\$ 11,000
		Contractual Labor	\$ 6,000	AMR Project-Water Meters and Fixed Network Devices.	421.6312	422.6229	\$ 6,000
		Contractual Repair	\$ 5,000	AMR Project-Water Meters and Fixed Network Devices.	421.6314	422.6229	\$ 5,000
		Print Shop	\$ 5,000	AMR Project-Water Meters and Fixed Network Devices.	421.6348	422.6229	\$ 5,000
		Associations	\$ 9,500	AMR Project-Water Meters and Fixed Network Devices.	421.6443	422.6229	\$ 9,500
422	Utility Billing Field Svcs	Maintenance Parts & Supplies	\$ 96,500	AMR Project-Water Meters and Fixed Network Devices.	422.6229	422.6229	\$ 96,500
723	Utility Planning	Consulting Services	\$ 18,965	Consulting for the proposed changes to the City's Storm Water Management Program.	723.6312	723.6312	\$ 18,965
763	Utility District #2	Debris Hauling Contract	\$ 20,000	Invoices for September Hauling Services will not be received until October.	763.6319	763.6319	\$ 20,000
765	Meter Services	CHGOUT of Water Meters	\$ 89,000	Installed fewer meters than was anticipated for FY 2009-10, need funds for Change-out program.	765.6272	765.6272	\$ 89,000
41 Subtotal Water & Sewer			\$ 265,965				\$ 265,965

CARRY FORWARD REQUESTS							
2009-10 FUNDS TO 2010-11							
Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
712	Environ. Education	Education Center Landscaping	\$ 28,018	Delayed construction, delayed landscaped installation.	712.6206	712.6216	\$ 28,018
714	Compost Marketing	Fuel Tank for Custer Road Grind Site	\$ 9,600	Fuel tank required for the grinder and the front end loaders. NTMWD down-sized their tank at the site and the City needs to purchase their own 1,000 gal. tank for use at the site.	714.6314	714.8416	\$ 9,600
717	Sustainability	Metal sign	\$ 6,450	Bidding for the graphics delayed the purchase and installation of the sign for EEC.	717.6301	717.6301	\$ 6,450
		Graphic Artist	\$ 3,000	Evaluating Bids for graphics. Need add'l funds for bid.	717.6312	717.6312	\$ 3,000
		Lawnmower exchange program	\$ 4,800	Remaining Grant funds have not been awarded.	717.6499	717.6499	\$ 4,800
45	Subtotal Sustainability & Environmental Services		\$ 51,868				\$ 51,868
471	Municipal Drainage Operations	Concrete	\$ 60,000	Required to cover September concrete invoices that will not be received until October 2010.	472.6225	472.6225	\$ 60,000
472	Municipal Drainage Admin.	Contract-Professional Services	\$ 23,589	Use with Engineering Funds to contract a consultant to evaluate proposed changes to Storm Water Mgmt. Program/ modification to iSWM procedures.	472.6312	472.6312	\$ 23,589
473	Storm Water	Contract-Professional Services	\$ 21,260	TCEQ requires new Storm Water monitoring effective January 2012, monitoring contract must be in place prior to that date. Uncertain of exact cost for monitoring.	473.6312	473.6312	\$ 21,260
47	Subtotal Municipal Drainage Fund		\$ 104,849				\$ 104,849

CARRY FORWARD REQUESTS							
2009-10 FUNDS TO 2010-11							
Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
58	PC Replacements-PSC	Computer Hardware	\$ 55,829	Public Safety Communications did not receive all the PC's that were to be replaced on Supplement #58534005.	58.6252	58.6252	\$ 55,829
58	Subtotal PC Replacement Fund		\$ 55,829				\$ 55,829
76.226	Economic Development	Economic Impact Studies	\$ 7,600	To fund economic impact studies for the FY 2010-11 Economic Development Projects.	226.6312	226.6312	\$ 7,600
76	Subtotal Economic Development Fund		\$ 7,600				\$ 7,600
GRAND TOTAL CARRY FORWARDS REQUESTED			\$ 2,967,174	GRAND TOTAL CARRY FORWARDS APPROVED			\$ 2,967,174
							\$ -
PROTECTED CARRY FORWARD FUNDS							
	PROTECTED FUNDS:						
01.532	Police: LEOSE Funds	State LEOSE (Law Enforcement Officer Standards and Education) funds	\$ 140,171	State LEOSE (Law Enforcement Officer Standards and Education) funds are used for training, as authorized by Chief of Police, and mandated by state law. LEOSE regulations and this sub account started in 1997. At the end of each fiscal year the remaining funds are carried forward to the next fiscal year.	01.532.6309. LEOSE	01.532.6309. LEOSE	\$ 144,382
01.532	Police: TICKET Funds	Major Criminal Investigation Expense Funds are protected by State Law	\$ 25,000	Funds in this sub account are used for expenses of major criminal investigations. The balance of this sub account is carried forward at the end of each fiscal year to sub account 01.532.6312.TICKET.	532.6312. TICKET	532.6312. TICKET	\$ 25,000

**CARRY FORWARD REQUESTS
2009-10 FUNDS TO 2010-11**

Cost Center	Department Name	Description	Total Amount Requested	Reason	Object Codes:		Approval Amount
					From	To	
01.582	Health FDA Grant Funds	Grant funds received in Sept. 2010 are for programming to be expensed in Fy 2010-11	\$ 2,500		582.4846	582.4846	\$ 2,500
02	Sproles Library Fund	Special Library funding	\$ 31,780	Specially designated Library funds, exempt from Budget process.			Fund Balance
14.131	911 Wireline Fees	Funds are protected by State Law	Fund Balance	911 System upgrade, Supplement #131002, waiting on vendor/RFP Depot.	131.8416	131.8416	Fund Balance
19.233	Teen Court Program Fund		Fund Balance				Fund Balance
20.234	Municipal Court. Tech Fund		Fund Balance				Fund Balance
55.232	Courts Building Security Fund		Fund Balance				Fund Balance
73.689	Library Memorial Fund	Donations	\$ 20,995	Unused fund balance from 2009-10, will be used for projects and materials in FY 2010-11.	73.689	73.689	Fund Balance
76.231	Economic Development Incentive Fund	Incentive Fund	Fund Balance	Carry forward remaining fund balance for future projects.	231.6319	231.6319	Fund Balance
86.276	Juvenile Case Manager Fund		Fund Balance		86.276	86.276	Fund Balance

PROTECTED CARRY FORWARD FUNDS APPROVED



**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:		10/25/10			
Department:		Sustainability & Environmental Services			
Department Head		Nancy Nevil			
Agenda Coordinator (include phone #): Tiffany Stephens x 4264					
CAPTION					
<p>An Ordinance of the City of Plano, Texas, repealing Ordinance No. 2000-8-4 in order to terminate the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano and approving a new Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, providing terms and conditions upon which Allied Waste Systems, Inc. shall be granted an exclusive Private Franchise for collection and disposal of solid waste for commercial customers located within the City of Plano in accordance with Article 10-A of the City Charter and a non-exclusive Private Franchise for collection of recyclable materials from commercial customers located in the City of Plano; and authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, a penalty clause, providing for publication and an effective date. First Reading – September 13, 2010</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11 to 2017-18	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	5,759,755	5,759,755
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	112,066	112,066
BALANCE		0	0	5,871,821	5,871,821
FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND					
<p>COMMENTS: Approval of the Commercial Waste Hauling Franchise Agreement will generate \$112,066 more revenue than was originally anticipated by passing through increases in disposal costs with the North Texas Municipal Water District.</p> <p>STRATEGIC PLAN GOAL: Generation of revenues through the regulation of a Commercial Waste Hauling Franchise relates to the City's goal of a Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
<p>The Sustainability and Environmental Services Department negotiated a new commercial waste franchise agreement with Allied Waste Services of Plano. The rates have been increased only to cover the pass-through NTMWD disposal increase. Allied has documented their proven ability to maintain at or above a 85% Good to Excellent customer service satisfaction rating for the previous ten-year contract period. Allied has always been very willing and helpful to work outside the normal standard operational protocol and above the performance requirements during special and unforeseen events.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Cover Memo, Private Franchise Agreement					



P.O. Box 860358
 Plano, Texas 75086-0358
 972-769-4264
 Fax No. 972-769-4172



MEMORANDUM

DATE: October 11, 2010

TO: Thomas H. Muehlenbeck
 City Manager

FROM: Nancy Nevil
 Sustainability & Environmental Services Director

SUBJECT: Justification for Negotiated Commercial Franchise Agreement

At the September 13 City Council Meeting, I was asked to prepare a detailed justification for negotiating the commercial franchise agreement in lieu of bidding the service. Specifically, Council wanted to understand the value of the commercial franchise partnership as it currently exists to decide the validity of a challenge that Allied Waste rates are not competitive.

Following is a complete listing of considerations resulting in my recommendation to contract with Allied Waste as the exclusive franchisee for commercial waste hauling:

A. Value of Partnership with City Programs

Program	Annual Contribution	Total Contract (7 years) Contribution	Additional Impact
Reduced Recycling Processing Fee	\$101,610	\$1,016,000	
Commercial Recycling Program	\$744,790	\$5,213,530	\$5,978,000 Disposal cost avoidance
Live Green Expo	\$10,000	\$70,000	
Environmental Community Awards	\$10,200	\$71,400	
Employee Awards Program	\$7,000	\$49,000	
Total	\$873,600	\$6,115,200	\$5,978,000

1. Reduced Recycling Processing Fee

In April 2010, the City conducted an audit of Allied Waste’s processing costs and determined their actual expenses to be \$56.00 per ton. In negotiating the processing agreement, Allied Waste agreed to reduce the processing fee to \$51.00 per ton contingent upon a successful negotiation of the commercial waste franchise agreement. Based on an average of 20,322 tons delivered annually to Allied Waste over the last three years, the City would save **\$101,610** each year for a total of **\$1,016,100** during the ten year contract.

2. Commercial Recycling Program:

The contract includes an annual payment to the City of approximately **\$744,790** to fund the commercial education and technical assistance program for a total value of **\$5,213,530** over the term of the agreement. At the end of last year, this program resulted in increasing the commercial recycling rate to 26%, diverting 47,615 tons from the commercial waste stream for a cost avoidance savings of **\$854,000**. Assuming no increases in waste diversion over the term of the agreement, the cost avoidance to the city would be **\$5,978,000**.

3. Live Green Expo

Allied has agreed to be a Gold Sponsor of the Live Green Expo, contributing **\$10,000** in 2010 for a total of **\$70,000** over the term of the agreement. Allied Waste has been a sponsor of the Expo for the past four years, contributing a total of **\$20,000**.

4. Environmental Community Awards

The Environmental Community Awards is the City's annual recognition of individuals and organizations within our community that have made significant contributions to improving the environment. Allied Waste has sponsored this event for 19 years. They have agreed to continue this sponsorship at **\$10,200** each year for a total of **\$71,400**.

5. Annual Employee Awards Function

The Sustainability & Environmental Services Department Business Plan includes an annual awards event to celebrate departmental gain-sharing accomplishments and recognize exceptional employees, perfect attendance, safe drivers, employees of the year, Most Improved, Best Customer Service, Most Spirited, and Most Dependable. Allied Waste sponsors this each year for **\$7,000** annually for a total of **\$49,000** over the term of the agreement.

6. Allied has partnered with several organizations in the community to assist them with special events, which totals approximately \$5-10,000 annually. Some include: Plano Santa, Alcatel Race for the Cure, Shops of Legacy Christmas Tree Lighting, Recycles Day Events at Frito Lay, Taste of Plano, Plano Balloon Festival, Clean Out Your Locker Day, and various PISD events.

7. Allied Waste has also demonstrated a high level of cooperation and goodwill beyond the contracted services. Over the past nine years, Allied Waste has partnered on projects/programs important to the City, many times at their own expense. Some more notable examples include:

- Piloting Construction & Demolition (C&D) collection programs performed at residential developments, multi-family/assisted living projects and large commercial projects that helped develop the City's formal C&D Recycling Program
- Coordinating "compactor" loads of organic recycling materials from high volume commercial locations to benefit our *Texas Pure* composting process
- Identifying and sorting high fiber loads from selected commercial accounts to recycle significant volumes of materials
- Loaning the City two grapple trucks to assist with the 2007 Spring storm clean-up activities

- Developing and coordinating our formal Street Placement Program to accommodate requests from residents on major construction/deconstruction projects within existing neighborhoods.
- Providing 95-gallons carts for paper recycling at smaller offices and businesses and servicing them free of charge.
- Loaning trucks for use at the regional truck rodeo
- Assisting with and providing large container disposal services for various neighborhood clean-up projects such as Douglas Community and “Love Where You Live.”
- Waiving the residential recycling processing costs of \$6,282.28 during six months (December 08 to May 09) when the recycling market dropped due to the world economy fall-out and surplus of materials.
- Providing personnel, educational material and demonstrations for recycling program start-ups for multi-family unit dwellings.
- Donating the artwork for the Environmental Education Center (\$4,500).

B. Commercial Comparisons with NTMWD Member Cities

Roll-Off Service	Plano	Plano - No Program Support (1)	Allen (2)	Frisco (3)	McKinney (4)	Richardson (6)
Container Delivery	\$78.62	\$73.47	\$117.62	\$75.00	\$53.63	\$30.00
Rental	\$5.22	\$4.88	\$6.40	\$3.50	\$3.21	\$4.25
Hauling	\$154-271*	\$115-224*	\$268.20	\$196.00	\$138.19 (5)	\$168.00
Disposal Cost Per Ton	\$43.34	\$40.50	\$44.20	\$41.00	\$200 per haul	\$20.50
Front Load Service (container size, frequency, service %)						
2 yd – 1xwk (7%)	\$54.66	\$48.32				
3 yd – 1xwk (5%)	\$71.48	\$62.70	\$93.22	\$47.25	\$79.19	
4 yd – 1xwk (11%)	\$86.84	\$75.74	\$102.17	\$63.00	\$95.35	\$78.00
6 yd – 1xwk (12%)	\$118.99	\$103.13	\$126.16	\$94.50	\$125.78	
8 yd – 1xwk (17%)	\$156.21	\$136.79	\$148.68	\$126.00	\$169.06	\$125.00
8 yd – 2xwk (23%)	\$275.76	\$239.12	\$276.45	\$252.00	\$279.69	\$226.00
8 yd – 3xwk (24%)	\$413.02	\$358.10	\$396.27	\$378.00	\$410.32	\$321.00

*Zone 1	\$154.85	\$115.08
Zone 2	\$193.32	\$151.03
Zone 3	\$232.06	\$187.24
Zone 4	\$271.31	\$223.93

The majority of hauls are generated from Zone 2.

- (1) Eliminated franchise fee (7%) and all program support outlined in A.
- (2) Includes 15% franchise fee, support of Keep Allen Beautiful program and funding education coordinator
- (3) No franchise fee or partnership funding
- (4) Includes 5% franchise fee; no program support
- (5) Reduced hauling distance from McKinney to Melissa
- (6) City provided service

While it is difficult to compare rates with varying components, the information supports two conclusions: (1) proposed rates compare favorably with Allen and McKinney who also include franchise fees and program support (#s in orange), and (2) rates without support compare favorably with Frisco who does not include any fees or support (#s in blue).

C. Customer Service

1. The City conducts a Commercial Solid Waste Customer Service Satisfaction Survey every 2-3 years. Allied has consistently received good ratings with the last survey conducted (2008) rating 85% Good to Excellent. There were 52 customers that rated Allied Waste as “Needs Improvement” in the overall rating. The General Manager and Municipal Marketing Manager contacted each business to discuss concerns and identify procedural improvements in order to improve customer service. A follow-up survey was conducted six months later and all but five businesses rated service Good to Very Good.
2. The commercial survey is done to ensure the City’s contractor understands the importance of customer service and the businesses receive the level of service expected in Plano. As far as we can determine, the Cities of Plano and Allen are the only cities in the DFW Metroplex that survey commercial customers.

D. Waste Industry Corporate Pro Forma

The \$8 million investment in capital for servicing the commercial sector would limit the bidders to Republic, IESI and Waste Management (WM). Since all tonnage is required to be disposed of at NTMWD, there is no opportunity for the bidder to discount rates by lowering internal disposal costs. Also, IESI and WM are publicly traded companies like Republic and have minimum Pro Forma standards and levels of authority. A contract of this size would require approval from regional authority at a minimum but more than likely from the CEO.

E. Competitive Bid Law in Texas

The competitive bid law in Texas requires municipalities, before entering into a contract involving the expenditure of more than a certain amount, put the project out for competitive bid or sealed proposal (Sec. 252.021, et seq. Texas Local Government Code). There are exemptions to this rule, including procurements necessary to preserve or protect the public health or safety (Sec. 252.022 Texas Local Government Code).

The Texas Court of Appeals, in Browning-Ferris, Inc. v. Leon Valley, 590 S.W. 2d 729 (Tex.Civ.App. - San Antonio 1979, writ refused n.r.e. March 19, 1980) upheld the City of Leon Valley’s ordinance granting an exclusive franchise for garbage collection to Sanitas Waste Disposal of San Antonio, Inc., without utilizing the competitive bid process. The court held that the City of Leon Valley was not required by State law to competitively bid their garbage collection business because garbage collection falls within the exception applicable to preserving and protecting the public health and safety.

This case is still good law in Texas and has been cited in several opinions issued by the Attorney General since the City of Leon Valley decision.

The cities of Allen and McKinney recently negotiated their waste hauling contracts in lieu of competitive bidding, conducting comparison rate studies to ensure competitive pricing. Cities in the DFW Metroplex with long-term relationships include: Arlington (59

years); Grand Prairie (48+ years); Lewisville (25+ years); Grapevine (20+ years); McKinney (20 years); Allen and Flower Mound (15 years).

F. Workforce:

Allied Waste operates its hauling operation for the northern section of DFW from Garland to Grapevine out of the Plano facility. The impact of losing the franchise would result in displacing 21-23 drivers with a median salary of \$50K, 4 maintenance technicians with median salary of \$45K, and 3 dispatch/clerical employees with median salary of \$35K. There most likely would be a loss of management personnel as well.

G. Response to Roll-Off Cost Comparison (provided by Dwayne Clark)

At the September 13 City Council Agenda Meeting, Plano resident Dwayne Clark and a representative of ServAll presented data they felt supported a lack of competitive prices for commercial waste hauling, specific to the roll-off business. Mr. Clark made adjustments to the document and distributed to City Council. We called each hauler and were unable to verify the quotes provided by Mr. Clark. However, I visited with Mr. Clark by phone and he assured me each hauler provided him with a quote to haul from Plano.

We have taken Mr. Clark's document and adjusted to reflect the actual disposal rate of \$40.50 per ton. Following is the comparison of a 21-day rental for 30 cubic yard roll-off dumpster disposing of 4 tons (average roll-off haul) from Zone 2 (highest % of roll-off containers in Plano). The franchise fees and program costs have been adjusted out of calculation to ensure consistent basis for comparison:

Allied Waste - Republic

	Unit	Rate	Total \$
Delivery			\$73.47
Pickup			\$151.03
Daily Fee	21	\$4.88	\$102.48
Disposal	4	\$40.50	\$162.00
Fuel Charge			
Sales Tax		8.25%	\$40.34
Total			\$529.32

Bluebonnet

	Unit	Rate	Total \$	
Delivery			\$50.00	
Pickup			\$295.00	Includes disposal for 6 tons
Daily Fee	0	3	\$ -	3 weeks included; after \$3.00/day
Additional Tons	0	40.5	\$ -	6 tons included
Disposal Fee Adjustment	6	\$18.50	\$111.00	Difference between \$22 & \$40.50
Fuel Charge		5% Fuel	\$17.25	
Sales Tax		8.25%	\$39.04	
Total			\$512.29	

Compared to Allied Waste	\$529.32	3% lower
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Servall

	Unit	Rate	Total \$	
Delivery			\$400.00	
Pickup			\$ -	
Daily Fee			\$ -	30 days included
Additional Tons			\$ -	10 tons included
Disposal Fee Adjustment	10	\$18.50	\$185.00	Difference between \$22 & \$40.50
Fuel Charge			\$ -	
Sales Tax		8.25%	\$48.26	
Total			\$633.26	
Compared to Allied Waste		\$ 529.32	16% higher	

Moore

	Unit	Rate	Total \$	
Delivery			\$90.00	
Pickup			\$295.00	
Daily Fee	11	3.00	\$ 33.00	10 days included; after \$3.00/day
Additional Tons	0	40.5	\$ -	5 tons included
Disposal Fee Adjustment	5	\$13.50	\$67.50	Difference between \$27 & \$40.50
Fuel Charge		6%	\$23.10	
Sales Tax		8.25%	\$41.96	
Total			\$550.56	
Compared to Allied Waste		\$529.32	4% higher	

Alpha Waste

	Unit	Rate	Total \$	
Delivery			\$346.42	
Pickup				
Daily Fee	0	3	\$ -	3 weeks included; after \$3.00/day
Additional Tons	0	40.5	\$ -	5 tons included
Disposal Fee Adjustment	5	\$19.50	\$97.50	Difference between \$21 & \$40.50
Fuel Charge				
Sales Tax		8.25%	\$36.62	
Total			\$480.54	
Compared to Allied Waste		\$529.32	10% lower	

Waste Management

	Unit	Rate	Total \$	
Delivery			\$100.00	
Pickup			\$355.00	
			\$ -	
Daily Fee	21	\$5.00	\$105.00	
Additional Tons	0	40.5	\$ -	7 tons included
Disposal Fee Adjustment	7	\$22.50	\$157.50	Difference between \$18 & \$40.50
Fuel Charge	455.00	9.90%	\$45.05	
Environmental	455.00	7.50%	\$34.13	
Sales Tax		8.25%	\$59.95	
Total			\$862.40	
Compared to Allied Waste		\$529.32	39% higher	

As you can see from the above comparison, Allied Waste rates are very comparable to what is currently being charged in the Metroplex when you adjust to NTMWD disposal rates and remove the franchise fee and program support.

It is true other vendors would be required to include franchise fees and program support for items listed in A.1 – A.6 above. Based upon the current rate comparison without these programs, it seems unreasonable to expect bidding the service would result in significant changes to the existing rates. An insignificant decrease would not justify the inconvenience to every commercial customer of changing out containers. In addition, we would have no guarantee the new contractor would perform at the same level of customer service or would offer program support not spelled out in the contract.

In Mr. Clark’s email, he also recommends a two-year contract and open competition. I will address each one separately:

Bidding Two-year Contract for Front-load Service:

Allied Waste would be the only logical bidder or other bidders would have to depreciate their costs over two years, instead of 5-7 years which is normal for collection equipment.

Open Competition:

Our major concern with open competition is enforcement. The City of Plano is one of five surrounding cities (Allen, Frisco, McKinney and Richardson) to reach an agreement with North Texas Municipal Water District (NTMWD) to manage the long-term responsibilities, risks, and associated cost of operating a cost-effective regional disposal system. The NTMWD contract requires all Plano solid waste (commercial and residential) be disposed of through the NTMWD transfer stations and landfill. Multiple contractors would require additional staff to monitor hauling and disposal activities to ensure compliance with the NTMWD agreement. The City believes a franchise agreement with one hauler is the best method of ensuring and enforcing the disposal agreement with NTMWD.

In addition, the Supreme Court is clear that it does not favor flow control ordinances of the kind enacted by the Towns of Clarkstown (C & A Carbone, Inc. v. Town of Clarkstown, N.Y., 114 S.Ct. 1677 (1994)), and Smithtown (SSC Corp. v. Town of Smithtown, 66 F.3d 502 (2nd Cir. 1995)). The City of Plano has avoided this issue by utilizing an exclusive franchisee to perform its commercial solid waste collection and disposal.

Because customers would also be able to change providers at their discretion, an additional enforcement burden would be placed on staff to continually monitor dumpsters throughout Plano and reconcile franchise payments to ensure the City is not losing revenue.

The amount of franchise fees collected would also be impacted as multiple haulers would be establishing various rates, making reconciliation even more challenging. Currently, the exclusive franchise agreement ensures all individual businesses have proper solid waste service at a competitive rate (economies of scale) and provides a consistent revenue stream for budget purposes. The commercial rates are established by the City Council, not the franchise hauler.

Operating with one hauler reduces the number of trucks required to service front-load containers (efficient routing) resulting in less traffic, lower street maintenance costs, and less harmful air emissions. The franchised hauler is required to maintain clean and safe vehicles and replace vehicles on a regular schedule. This would be difficult to monitor with multiple haulers.

As referenced earlier in this document, a franchised hauler provides greater opportunities for waste diversion through community partnerships that encourage recycling.

Summary

Allied Waste has been a valuable partner. They have enabled the City to develop an exemplary waste diversion program as a result of their \$7 million capital investment in the Materials Recovery Facility located at 4200 E. 14th Street. Allied Waste has also proven their commitment to continually focus on exceptional customer service and support community events.

I trust this information gives the Mayor and City Council a higher level of confidence in how competitive the rates are and how much effort the Sustainability & Environmental Services Department expends to ensure customer service and waste diversion remain preeminent in the selection process for a commercial waste hauler.

The second reading approving the franchise agreement will be on the October 25 Council Agenda.

Please let me know if you have any questions regarding this information.

x: Mark Israelson, Assistant City Manager
 Robert Smouse, Environmental Waste Services Manager
 Reid Donaldson, Allied Waste Area Municipal Marketing Manager

An Ordinance of the City of Plano, Texas, repealing Ordinance No. 2000-8-4 in order to terminate the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano and approving a new Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, providing terms and conditions upon which Allied Waste Systems, Inc. shall be granted an exclusive Private Franchise for collection and disposal of solid waste for commercial customers located within the City of Plano in accordance with Article 10-A of the City Charter and a non-exclusive Private Franchise for collection of recyclable materials from commercial customers located in the City of Plano; and authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, a penalty clause, providing for publication and an effective date.

WHEREAS, the collection, transportation, processing and disposal of solid waste and recyclable materials is a governmental function necessary to preserve and protect the public health, safety and general welfare; and

WHEREAS, negotiations of the recycling processing agreement with Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano (“Allied”) resulted in reduced recycling processing fees contingent upon the successful negotiations of the commercial collection franchise agreement; and

WHEREAS, the City of Plano, Texas (“City”) and Allied wish to terminate the existing exclusive Private Franchise Agreement and enter into a new exclusive Private Franchise Agreement under which Allied will provide solid waste collection and disposal services for the City’s commercial customers under the new terms and conditions; and

WHEREAS, the City and Allied also wish to terminate the existing non-exclusive Private Franchise Agreement and enter into a new non-exclusive Private Franchise Agreement under which Allied will collect recyclable materials from commercial customers located in the City of Plano; and

WHEREAS, upon full review and consideration of the Private Franchise Agreement, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (“Agreement”), and all matters attendant and related thereto, the City Council is of the opinion that Allied should be granted an exclusive private franchise for the collection and disposal of solid waste for commercial customers within the City, and a non-exclusive private franchise for collection of recyclable materials for commercial customers within the City; that the terms and conditions of the Agreement should be approved; and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City; and

WHEREAS, pursuant to Article 10-A.02 of the City Charter, this Ordinance shall be read at two (2) separate regular meetings of the City Council and shall not be finally passed until thirty (30) days after the first reading; and this Ordinance shall not take effect until thirty (30) days after its final passage; pending such time, the full caption of the Ordinance shall be published once each week for four (4) consecutive weeks in the official newspaper of the City of Plano and the expense of such publication shall be borne by the proponent of the franchise.

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

Section I. The facts, findings and recitations set out in the preamble of this Ordinance are hereby adopted and made a part of this Ordinance the same as if they were recited in full.

Section II. Ordinance No. 2000-8-4 is hereby repealed and the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano is hereby terminated.

Section III. The terms and conditions of the new Private Franchise Agreement under which Allied shall be granted the exclusive rights to provide solid waste collection and disposal services for commercial customers within the City and the non-exclusive rights to provide collection of recyclable materials to commercial customers are found to be acceptable and in the best interests of the City and its citizens, and are hereby in all things approved.

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

Section V. Any provision of any Ordinance of the City of Plano, Texas, codified or uncodified, in conflict with the provisions of this Ordinance is hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

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

Section VII. 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 of any Ordinances at the time of passage of this Ordinance.

Section VIII. Any person, firm or corporation violating or failing to comply with any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor. Upon conviction in Municipal Court, violators may be subject to a fine not to exceed the sum of **TWO THOUSAND DOLLARS (\$2,000.00)** for each offence, and each and every day such violation continues shall constitute a separate offense.

PASSED AND APPROVED ON FIRST READING by the City Council of the City of Plano, Texas, this 13th day of September, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

PASSED AND APPROVED ON SECOND READING by the City Council of the City of Plano, Texas, this ____ day of _____, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

DATED:

First Reading: September 13, 2010

Second Reading: October 25, 2010

EXHIBIT A

PRIVATE FRANCHISE AGREEMENT

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This Private Franchise Agreement (hereinafter the "Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation located in Collin and Denton Counties, Texas (hereafter the "City") and **ALLIED WASTE SYSTEMS, INC.**, a Delaware corporation **d/b/a Allied Waste Services of Plano**, with its principal place of business in Phoenix, Arizona (hereinafter, "Contractor"), both acting by and through their duly authorized agents and representatives. The City and Contractor may be hereinafter referred to together as the "Parties."

RECITALS

WHEREAS, the City desires to provide commercial establishments within its corporate city limits with Solid Waste and Recyclable Materials collection, transport and disposal services by engaging an independent contractor to perform such services; and

WHEREAS, Contractor has provided the City with commercial solid waste collection and disposal services under an exclusive License Agreement since February 1, 1991; and

WHEREAS, Contractor has performed the service in a satisfactory manner and the City wishes to continue this service for commercial customers under the terms and conditions set forth below; and

WHEREAS, the City wishes to divert greater amounts of solid waste generated by commercial customers to recycling and has set a goal of forty percent (40%) diversion; and

WHEREAS, the City desires to engage Contractor to provide the services set out herein and Contractor desires to render the services provided for herein in accordance with the terms and conditions more specifically described hereunder.

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein contained and other good and valuable consideration, the Parties mutually agree as follows:

Section 1. Definitions

Unless otherwise specified herein, the following terms shall have the following meanings:

1.1. "Agreement Year" shall mean a twelve (12) month period of time commencing upon the Effective Date hereof and, thereafter, any anniversary of the Effective Date.

1.2. "Applicable Law" shall mean all statutes, rules, regulations, permits, judgments, or orders and all other requirements of the United States, State of Texas, City of Plano, County of Collin, County of Denton, or other federal, state or local governmental body, agency, or court

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having jurisdiction that apply to or govern Contractor or Contractor's operations under this Agreement, including but not limited to: the storage, collection, transportation, processing and/or disposal of Solid Waste generated or received in the City of Plano; the storage, collection, transportation, processing, and marketing of Recyclable Materials generated or received in the City of Plano, all services to be performed and facilities, sites, and equipment to be used by Contractor under this Agreement; and the acquisition, permitting, construction, equipping, financing, ownership, possession, testing, and operation of Contractor's Recycling Processing Center.

1.3. "Biomedical Waste" shall mean those wastes (i) defined by the United States Environmental Protection Agency (USEPA) as infectious wastes in its Guide for Infectious Waste Management, /EPA/530-SW-86-014, May 1986, or defined by the USEPA as medical wastes in 40 CFR 359.30, and any other wastes identified as infectious or similar wastes in any other applicable federal, state, county or municipal laws, regulations and guidelines, and (ii) "Chemotherapy Waste" (also known as antineoplastic or cytotoxic waste). The term "Chemotherapy Waste", as used herein, means discarded items which have been contaminated by chemotherapeutic drugs or antineoplastic agents, provided that such items, including vials and syringes, shall be empty as defined in applicable federal, state, county or municipal laws, regulations and guidelines.

1.4. "City Representative" shall mean the Sustainability & Environmental Services Director of the City of Plano or his/her designee.

1.5. "Collect", "Collected", and "Collection" shall mean and refer to the picking up and transporting, storage and delivery of Solid Waste to the appropriate Disposal Site and proper disposal of Solid Waste and the picking up and transporting, storage and delivery of commercial Recyclable Materials to the appropriate processing site and/or market and the proper processing of Recyclable Materials from commercial Customers, all in compliance with applicable federal, state and local laws, statutes, ordinances, rules and regulations.

1.6. "Commercial Customers" shall mean all those persons, corporations, businesses, institutions, facilities (including without limitation schools, industrial sites, offices, office complexes, warehouses, municipal and state buildings, condominium offices and residences, apartment buildings and apartment complexes greater than two units) and other entities which utilize on-premise reusable containers for the purpose of accumulating or holding Solid Waste and Recyclable Materials for subsequent transport and disposal.

1.7 "Construction and Demolition Debris" shall mean solid waste generated from construction, remodeling, repair and demolition of structures; road building and land clearing. Construction and demolition debris includes but is not limited to bricks, concrete, rebar and other masonry material, gypsum based sheetrock, soil, rock, lumber, metal, paving material, and tree and brush stumps.

1.8. "Containers" shall include all three dimensional receptacles of metal, rigid plastic or similar construction, of rectangular or similar shape, with or without a top, and with or without wheels, designed to hold Solid Waste and/or Recyclable Materials, either loosely or in a compacted state, and shall specifically include, without limitation, all roll-off open top containers, roll-off closed top containers, roll-off compaction containers and all those receptacles with a volume of

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between two (2) cubic yards and eight (8) cubic yards, inclusive, designed for use with a front-end loader; provided, however, that "Containers" shall not include any receptacles with a capacity of one hundred (100) gallons or less provided by or through the City of Plano for holding or accumulating Solid Waste and Recyclable Materials.

1.9 "Disposal Rate" shall be the per ton charge for disposal at the NTMWD Disposal Facilities agreed to by the City and Contractor, as adjusted on an annual basis.

1.10 "Disposal Costs" shall mean those charges incurred by Contractor for Solid Waste disposal at the NTMWD disposal facilities.

1.11. "Diversion Rate" shall mean the number of tons of Recyclable Materials reported in any Fiscal Year to the City by Contractor and other entities providing Recycling services in the City divided by the sum of (i) number of tons disposed of at the NTMWD disposal facilities and other disposal facilities that may be used by Contractor, other entities and/or City from time to time disposing of Solid Waste originating in the City and (ii) number of tons of Recyclable Materials reported to the City by Contractor and other entities providing Recycling services in the City, all multiplied by 100.

1.12. "Equipment" shall mean all vehicles, containers, machinery, tools and equipment, as well as related supplies and materials reasonably necessary for Contractor's performance hereunder.

1.13. "Escalation" shall mean an annual adjustment based upon the net percentage of increase or decrease in the Consumer Price Index – Urban Wage Earners and Clerical Workers, Dallas – Fort Worth metropolitan area ("CPI-W") by the Bureau of Labor Statistics of the United States Department of Labor, or any successor governmental agency, between the date of the last such adjustment or the date of execution of this Agreement (in the case of the first such adjustment) and the date such an adjustment is made by Contractor.

1.14. "Food Waste Recycling" shall refer to a special service that includes separation, separate storage, separate collection and processing into compost various types of food waste originating from Commercial Customers serviced by the City.

1.15. "Gross Billings" shall be defined as all billings by Contractor net of write-offs for uncollectable accounts for Solid Waste services in connection with the exclusive and noncompetitive Collection services provided hereunder, including without limitation delivery charges and any other additional revenue related thereto, but specifically excluding amounts received by Contractor for sale of Recyclable Materials from Commercial Customers and fees for late payments.

1.16. "Hazardous Waste" shall mean solid waste identified or listed as a hazardous waste by the Administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901, et seq.) or any comparable State of Texas law.

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1.17. "NTMWD" shall mean the North Texas Municipal Water District, a political subdivision of the State of Texas.

1.18. "NTMWD Disposal Facilities or Disposal Sites" shall mean all locations or facilities established and designated by the North Texas Municipal Water District ("NTMWD") and operated as transfer stations or landfills.

1.19. "Recyclable Materials" shall mean those materials diverted from Solid Waste, collected for processing, processed and sold or given to markets for reuse or Recycling in place of virgin materials including, but not limited to, corrugated containers, mixed paper, sorted and unsorted office paper, any other clean and dry paper materials, glass containers, metal containers, plastic containers, bottles, food materials left over from food processing and/or cooking operations set out for separate collection, and other such materials as the Parties may agree to divert for Recycling from time-to-time.

1.20. "Recycling" shall mean the reclamation and/or recovery from Solid Waste of Recyclable Materials.

1.21. "Solid Waste" shall mean any and all garbage, trash, refuse and other discarded material held or accumulated in Containers, including, without limitation: animal and vegetable waste materials resulting from the handling, preparation, cooking, processing or consumption of food; combustible waste materials such as paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings and leaves; noncombustible waste materials such as glass, crockery, metal cans and metal furniture; and building materials and construction and demolition/remodeling debris such as wood, rock, gravel and concrete; provided, however, that Solid Waste does not include Hazardous Waste or Biomedical Waste.

1.22. "Storage" shall mean the holding of Solid Waste and/or Recyclable Materials for a temporary period, at the end of which the Solid Waste and/or Recyclable Materials are processed, disposed of, or permanently stored elsewhere.

Section 2. Grant: Agreement Documents

2.1. For and in consideration of the covenants, agreements and promises contained herein, the City grants to Contractor an exclusive franchise to conduct the business of providing Solid Waste Collection to Commercial Customers in the City of Plano, Texas, and the right to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of Solid Waste Collection for Commercial Customers located within the City. Contractor agrees to make such Collection available to Commercial Customers within the City and agrees that such Collection will be performed pursuant to and consistent with the terms of this Agreement, as well as all ordinances and regulations of the City governing or relating to the Collection of Solid Waste.

2.2. For and in consideration of the covenants, agreements and promises contained herein, the City grants to Contractor a non-exclusive franchise to conduct the business of providing Recyclable Materials Collection to Commercial Customers in the City of Plano, Texas, and the right

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to use the public streets, alleys, and thoroughfares within the corporate limits of the City for the purpose of engaging in the business of Recyclable Materials Collection for Commercial Customers located within the City. Contractor agrees to make such Collection available to Commercial Customers within the City and agrees that such Collection will be performed pursuant to and consistent with the terms of this Agreement, as well as all ordinances and regulations of the City governing or relating to the Collection of Recyclable Materials.

2.3. The Parties agree that the Private Franchise Agreement Documents shall consist of the following:

1. This Agreement;
2. The following listed and numbered Exhibits:

Exhibit “A” - Performance Standards

Exhibit “B” - Environmental Education & Community Awareness

Exhibit “C” – Container and Rolling Stock Equipment Inventory

Exhibit “D” - Rate Schedule for Commercial Waste and Recycling Services

Exhibit “E” - Insurance Requirements

Exhibit “F” – Commercial Recycling Promotional and Education Plan

Exhibit “G” – Performance Bond Specimen

Section 3. Franchise Fees and Disposal Cost

In consideration of the franchise grant contained in Section 2 hereof, Contractor agrees to pay, in the form of a direct wire transfer to the designated depository of the City, cashier’s check, or a Contractor check, depending on the preference of the City, and City agrees to accept, a sum of money as follows:

3.1. A sum of money which shall be equivalent to seven percent (7%) of Contractor’s Gross Billings to Commercial Customers in the City for the preceding month (hereinafter the "Variable Franchise Fee"); and

3.2. SEVEN HUNDRED FORTY-FOUR THOUSAND AND SEVEN HUNDRED AND NINETY DOLLARS (\$744,790.00) in the first year of this Agreement, and a like amount in each subsequent year of this Agreement after adjustment for Escalation (hereinafter the “Fixed Franchise Fee”). Said annual payments will be divided into twelve (12) equal installments and paid monthly; and

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3.3. A sum of money equal to the "Disposal Rate" multiplied by the tons of Solid Waste collected in the City and delivered by Contractor to the NTWMD Facilities for disposal at NTMWD facilities in the preceding month. The monthly tons of waste disposed will be reconciled between Contractor and NTWMD reports, and will be adjusted in the subsequent monthly payment; and;

3.4. Contractor agrees to include the Franchise Fees in its fees and charges to all Commercial Customers in the City, except as explicitly waived in writing by the City's Representative. Franchise Fees are hereby waived for services provided to the Plano Independent School District.

3.5. In order to determine the Gross Billings of Contractor for those categories identified in Section 3.1 above, Contractor agrees to maintain financial records in sufficient detail to itemize billings from any and all sources and to also include any and all other fees, charges for services and revenue derived by Contractor within the corporate limits of the City to which the Franchise Fee has been applied. Within forty-five (45) calendar days of the close of each Agreement Year, Contractor shall prepare a final report for the preceding year, and such report shall be sworn to as being based upon audited performance of Contractor for the period for which the report is filed. Contractor also agrees to submit a monthly report by the 15th of each month that provides Contractor's total billings to the City by roll-off and front load and that includes the total tonnage by roll-off and front load.

3.6. Should any payment due date required by this Agreement fall on a weekend or declared bank holiday, payment shall be delivered to City no later than the close of business of the working day prior to any specifically required due date contained within this Agreement.

3.7. If the City determines that Contractor has failed to pay the full amount of money due under the terms of this Agreement, Contractor shall pay all such amounts, including interest thereon, in full, within ten (10) business days of demand by City. Interest shall accrue at the rate defined in Section 18 below and shall begin accruing from the time that such moneys were initially due and payable to City under the terms of this Agreement.

3.8. **Payments.** The Franchise Fees and Disposal Costs due under this Agreement shall be made by Contractor to City once per month beginning thirty (30) days after the Effective Date of this Agreement. Payments are due to the City by the 15th day of each month. Payments received 10 days after written notice in accordance with Section 3.7, shall accrue interest at the maximum rate allowed by law.

Section 4. Term

4.1. Primary Term. The term of this Agreement shall be for a period of seven (7) years commencing December 1, 2010, the "Effective Date", and, unless renewed according to the terms of Paragraph 4.2 or extended in accordance with Section 8.4, terminating on the seventh (7th) anniversary of said date (the "Primary Term"). This Agreement may be renewed, upon expiration of the Primary Term, in accordance with Section 4.2.

4.2. Renewal. The Primary Term of this Agreement may be extended by agreement of the Parties for a total of two (2) additional three (3) year periods upon the same terms and

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conditions as herein set forth. In order for the Primary Term to be extended for a first renewal term, Contractor must notify the City in writing of its desire to extend the Primary Term for an additional three (3) year period, such notice to be given no more than two hundred ten (210) calendar days nor fewer than one hundred eighty (180) calendar days prior to the end of the Primary Term. The City shall, after Contractor gives such notice, have sixty (60) calendar days in which to notify Contractor of its agreement to extend the Primary Term of the Agreement, failing in which the Agreement will expire as provided for herein.

In the event the Parties elect to extend this Agreement into the first renewal term, they may thereafter extend the term hereof for a second three (3) year period. In order for this Agreement to be extended into the second renewal term, Contractor must notify the City in writing of its desire to extend the term hereof for a final three (3) year period, such notice to be given no more than two hundred ten (210) calendar days nor fewer than one hundred eighty (180) calendar days prior to the expiration of the first renewal term. The City shall, after Contractor gives such notice, have sixty (60) calendar days in which to notify Contractor of its agreement to extend the term of the Agreement for a final three (3) year period; otherwise, the Agreement will expire as provided herein.

Notwithstanding the provisions herein regarding renewal hereof, the Parties agree that the City may, at any time prior or subsequent to expiration of the Primary Term hereof or any extension term hereto, solicit bids or proposals in connection with the Collection of Solid Waste and Recyclable Materials and such other services as are provided for herein, subject to the franchise granted Contractor herein and Contractor's rights to provide service hereunder for the term hereof.

Section 5. General Statement of Contractor's Obligations; Scope of Services

5.1. Contractor hereby agrees to Collect all Solid Waste generated by Commercial Customers within the corporate city limits of the City. Contractor shall, at its own cost and expense, furnish trained personnel and appropriate well maintained Equipment of the highest quality to Collect Solid Waste from Commercial Customers; and will establish and maintain scheduled Collection routes and special schedules as may be necessary to meet the Collection service requirements of the Commercial Customers located within the corporate city limits of the City. Further, Contractor, at its own cost and expense, shall provide for the solicitation, servicing and billing of Commercial Customers, and shall recommend schedules of service to said Commercial Customers, such schedules being subject to the written approval of the City. Unless otherwise established by City ordinance, Collection schedules for commercial Solid Waste shall be determined by Contractor based upon negotiations with its Commercial Customers. Contractor acknowledges and agrees that Contractor shall be obligated to take such actions as necessary to fulfill its duties and obligations hereunder and that the City may from time-to-time issue written directions to Contractor clarifying the scope of Contractor's services to fulfill the intent of this Agreement. Contractor agrees that it will formulate one (1) or more standard contract forms providing for the Collection of Solid Waste from its Commercial Customers, and that said standard forms will be submitted for and subject to approval by the City prior to use. Contractor further agrees that any proposed significant deviations from or modifications to said standard forms will be submitted for and subject to prior approval by the City. All such contracts will provide, among other things, for cancellation by Contractor consistent with the provisions of Sections 20 and 21 hereof. Title to Hazardous Waste

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and Biomedical Waste shall not pass to Contractor at any time and shall remain with the generator of such waste. Title to Solid Waste shall pass to Contractor when such Solid Waste is loaded onto Contractor's vehicle.

5.2. Contractor hereby agrees to Collect Recyclable Materials generated by Commercial Customers within the corporate City limits of the City with whom Contractor has contracted for this purpose. Contractor shall, at its own cost and expense, furnish trained personnel and appropriate well maintained Equipment of the highest quality to Collect Recyclable Materials from Commercial Customers; and will establish and maintain scheduled Collection routes and special schedules as may be necessary to meet the Collection service requirements of the Commercial Customers located within the corporate city limits of the City. Further, Contractor, at its own cost and expense, shall provide for the servicing and billing of Commercial Customers, and shall recommend schedules of service to said Commercial Customers, such schedules being subject to the written approval of the City. Unless otherwise established by City ordinance, Collection schedules for Recyclable Materials shall be determined by Contractor based upon negotiations with its Commercial Customers. Contractor acknowledges and agrees that Contractor shall be obligated to take such actions as necessary to fulfill its duties and obligations hereunder and that the City may from time to time issue written directions to Contractor clarifying the scope of Contractor's services to fulfill the intent of this Agreement. Contractor also acknowledges that the City will be responsible for conducting public education and information services related to commercial Recycling and will generally work closely with Contractor to promote the separation and diversion of Recyclable Materials from commercial Solid Waste and promote the provision of such services by Contractor and other commercial recyclers licensed by the City. Contractor shall coordinate its services working closely with the City as it promotes changes to current services for increased diversion of Recyclable Materials throughout the City from Commercial Customers.

5.3. The City will Collect Food Waste Recyclable Materials from Commercial Customers without interference to Contractor's Solid Waste and/or Recyclable Materials Collection services for the purpose of adding collected Food Waste to the City's composting operations until such time that the City and Contractor mutually agree that the Collection is substantial enough for Contractor to assume the provision of such services per Subsection 5.2 for reasonable costs.

5.4. The City may request additional services from Contractor in the event of a catastrophic event, non-recurring event or other special circumstances in which the City determines that additional Solid Waste and/or Recyclable Materials Collection, transportation, processing, or disposal services are necessary. Contractor agrees to make best efforts to provide such additional services. Such services will be related to the collection, transportation, processing, marketing and/or disposal of Solid Waste and/or Recyclable Materials that may be generated as a result of said catastrophic event, non-recurring event or special circumstances. If Contractor declines to provide such additional services, under the circumstances stated above, regardless of the reasons for declining, the City will not have the right to declare Contractor in default of any provisions of this Agreement.

In the event such additional services are provided by Contractor, the following rates will apply: the cost for providing roll-off container or grapple service and disposal will be one hundred fifty (\$150.00) per hour plus the actual cost of disposal for materials collected from locations within

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the City; and if two persons are required, the cost will be one hundred ninety (\$190.00) per hour plus the actual cost of disposal. If and when such additional services are required, the rate will be adjusted based on the net percentage of increase or decrease in the Consumer Price Index – Urban Wage Earners and Clerical Workers, Dallas – Fort Worth metropolitan area (“CPI-W by the Bureau of Labor Statistics of the United States Department of Labor, or any successor governmental agency, between the date of this Agreement and the last published CPI-W. These charges are not subject to the assessment of Franchise Fees.

Section 6. Disposal of Solid Waste

6.1. Contractor shall deliver Solid Waste Collected pursuant to this Agreement to NTMWD Disposal Facilities or to any transfer station which may hereafter be utilized in the future by the City or jointly by the City and NTMWD (such site hereafter called the "Disposal Site"). In the event that at some future time there is no Disposal Site available for the disposal of commercial Solid Waste as contemplated by this Agreement, costs which may be incurred by Contractor in disposing of said commercial Solid Waste shall, at that time, be negotiated by the Parties in good faith. Any alternative disposal site must be approved in writing by the City prior to its use by Contractor. All laws, rules and regulations governing hours of operation and disposal practices at the Disposal Site shall be strictly observed by Contractor.

6.2. In the event of holidays observed by the City and NTMWD but not observed by Contractor, Contractor shall be allowed to dispose of such Solid Waste Collected that day only at another State of Texas approved Type I or Type IV landfill. Contractor will provide the City with gate receipts, cost per ton and/or yard, identification of and number of vehicles, and total number of all Commercial Customers serviced that day. The City shall have the right to review and approve Contractor’s designated holidays for any calendar year in advance of the year beginning.

6.3 Processing and sale of any Recyclable Materials collected pursuant to this Agreement shall be the responsibility of Contractor.

Section 7. Performance

The Parties agree that all services provided by Contractor pursuant to this Agreement shall be carried out in a competent and businesslike manner and in compliance with the standards and specifications set forth in the attached Exhibit “A” (hereafter "Performance Standards"). Contractor shall not engage any subcontractor without written prior approval of the City. Further, the City Council of the City of Plano (hereinafter the "Council") shall have the right to revise the Performance Standards as it deems necessary, when such revisions are necessary or proper to preserve or protect the health, safety, and welfare of the citizens of the City of Plano; provided, however, that prior to amending the Performance Standards, the Council shall invite and allow Contractor to submit any information it may wish to submit for Council review. The Parties further agree that the Council may seek advice from the City Representative. Any revision or establishment of new Performance Standards shall be approved by the Council and upon such approval shall become a part of this Agreement as though fully set forth herein; provided, however, that the allocation, as between the Parties, of any and all costs which may hereafter be incurred by

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Contractor in conforming with any changes in the Performance Standards, should any such changes be made, shall, at that time, be negotiated by the Parties in good faith.

Section 8. Recycling Program

8.1. General. The City and Contractor shall maintain a Recycling program for its Commercial Customers for the purpose of assisting the City to accomplish an overall Diversion Rate of forty percent (40%) by weight of Solid Waste generated in the City by Commercial Customers. This program shall be consistent with the City of Plano's stated goals of reducing solid waste tonnage and consistent with federal and state mandates imposed after the Effective Date or any renewal date of this Agreement.

8.2. Commercial Recycling Promotion Activities. The City agrees to implement, establish and promote, at its sole cost and expense, the Commercial Recycling Public Education and Promotional Activities included in Exhibit "F." Contractor agrees to cooperate fully with the City in coordinating the delivery of Recycling services that the Commercial Customers decide to utilize from Contractor. Under the program, Contractor shall provide to its Commercial Customers Recycling bins, carts or Containers as needed and mutually agreed upon by the City and Contractor. Charges for the commercial Recycling program shall not exceed those defined in Exhibit "D" which is attached hereto.

8.3 Sale of Recyclable Materials. Contractor shall use due diligence and its best efforts to maximize the economic return from the sale of the Recyclable Materials processed by the Recycling Center and shall maintain at its local office detailed records and files of all bids and quotes it receives from third parties for the purchase of such Recyclable Materials to show that Recyclable Materials have in fact been resold for the purpose of Recycling.

8.4 Waste to Fuel Plant If and when the City decides, after an anticipated feasibility study, to construct and operate a waste-to-fuel energy facility in the City (the "Energy Facility"), Contractor agrees to make a one-time contribution of up to \$1,000,000, payable in twelve monthly equal installments following the commencement of operations at the Energy Facility (the "Waste to Fuel Payment") in exchange for the following:

- 8.4.1** An additional three years to the Primary Term, so that the Primary Term is ten years instead of seven years with the same extension rights set forth in Section 4.2.
- 8.4.2** Contractor's ability to deliver up to 100 tons of Solid Waste per day to the Energy Facility at a rate of \$25.00 per ton.
- 8.4.3** Contractor's ability to purchase up to 10,000 gallons of produced diesel per month from the Energy Facility at a rate equal to the On-Highway Diesel Price Gulf Coast PADD III published by the US Energy Information Administration (EIA) less 20%..

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Notwithstanding the foregoing, Contractor's monthly payment obligations for the Waste to Fuel Payment shall be suspended during any period of time in which the Facility is not open or the City is unable to fulfill its obligations pursuant to Sections 8.4.1, 8.4.2, and 8.4.3 above.

Section 9. Environmental Education & Community Outreach

Contractor will assist in the funding of the Environmental Education & Community Outreach programs and activities, more particularly described in Exhibit "B". Further, Contractor shall comply with City Ordinance 97-9-17 and any amendments or revisions thereto. Contractor shall pay to the City a total of EIGHTY-SIX THOUSAND FOUR HUNDRED SEVENTY-SEVEN DOLLARS (\$86,477.00), the first year of this Agreement and in each subsequent year of this Agreement provided, however, that the financial obligation of Contractor under this Section is subject to Escalation in the same manner and amount as the Collection Rates described in Section 13.2 below. Such payment shall be applied to the following programs: \$10,000 to support the Live Green Expo; \$10,200 to sponsor the Environmental Community Awards; \$7,000 to sponsor annual employee awards program, and \$59,277 to support various public awareness and educational activities.

Section 10. Labor Force

Contractor shall employ only such superintendents, foremen, and workmen who are careful and competent and fully qualified to perform the duties or tasks assigned to them. All employees of Contractor and/or its subcontractors, if any, shall comply with all applicable laws and regulations, and shall have sufficient skill, ability, and experience to properly perform the work assigned to them and operate any equipment necessary to properly carry out the performance of their assigned duties. Contractor agrees to maintain a work environment free from the use, possession, distribution and influence of controlled substances, alcohol, intoxicants, narcotics or other mind-altering substances (referred to hereinafter as drugs and alcohol) and to prohibit employees from using, possessing, distributing or being under the influence of drugs or alcohol at any time within the course and scope of their employment. Contractor shall keep on file with the City a copy of its most current substance abuse policy.

Section 11. Equipment

Contractor, at its sole cost and expense, shall furnish and maintain all Equipment as is reasonably necessary for prosecution of the work in an acceptable manner and at a satisfactory rate of progress. All Collection vehicles used for handling Solid Waste and Recyclable Materials and executing any part of the work shall be subject to the approval of the City. The Equipment shall be maintained in a first class, safe and efficient working condition throughout the Primary Term of this Agreement and any renewal period. Contractor shall establish a regular preventive maintenance program for all Equipment and shall maintain detailed records of all preventive maintenance and other maintenance and repairs to the Equipment. The Equipment shall be used by Contractor in such a manner as to minimize the risk of injury to employees, citizens or property. Contractor shall be responsible for initiating, maintaining and supervising all maintenance programs, safety precautions and programs, in connection with the work and services performed hereunder. Contractor shall establish reasonable procedures and programs to prevent property loss or damage or personal injury

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to persons, including, but not limited to, employees performing such work and all other persons who may be affected. Contractor shall comply with all applicable OSHA rules and regulations when conducting operations pursuant to this Agreement. Contractor shall maintain files and records of all citations and violations of any laws, statutes, ordinances, or regulations in the ownership, title, maintenance, or operating of the Equipment, and such files and records shall be available at all times for review by the City. Contractor shall submit a complete written inventory of all Equipment used in the performance under this Agreement in the form described in Exhibit "C" hereof, and shall make such other submissions as required to reflect Contractor's current Equipment inventory throughout the term of the Agreement or any renewal period. City shall have the right to inspect Contractor's Equipment and operations at any time to ensure compliance with this Agreement. In addition, Contractor shall provide an annual statement, on or before the beginning of each City Fiscal Year, October 1, a listing of its Equipment, age of same, and date of past and planned changes to the Equipment.

Section 12. Performance Bond

Contractor shall furnish to the City a performance bond guaranteeing the faithful performance of this Agreement (hereinafter "Performance Bond"). The Performance Bond shall be in a form similar to the specimen attached hereto as Exhibit "G" and shall be executed by a surety company licensed or authorized to do business in the State of Texas. The Performance Bond shall be in the amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) and shall be valid for the term of this Agreement. The Performance Bond shall be furnished to the City by Contractor prior to the Effective Date. Without limiting any other indemnity provisions herein, said Performance Bond may be called by City for any loss, expense, cost or damage resulting from any default by Contractor hereunder or any failure of performance hereunder by Contractor. The Risk Manager of the City is hereby delegated the authority to approve not only the content of the Performance Bond, but also the financial capabilities of the surety company to perform.

Section 13. Collection Rates

13.1. Rate Structure. The Parties agree that Exhibit "D" , attached hereto, shall establish the maximum permissible rates to be charged by Contractor to Commercial Customers for services provided hereunder during the term of this Agreement or any extensions hereto. The Parties agree that such rates may be modified or adjusted only as provided in Subsections 13.2 and 13.3 herein below and in Section 7 above. The City agrees to include Exhibit "D", and Contractor acknowledges that Exhibit "D" shall be included, in a City Ordinance establishing such rates for Commercial Customers in the City prior to the Effective Date of the Agreement.

13.2. Adjustment to Rate Structure. The Parties agree that the Collection portion of the rate structure shall be subject to Escalation on an annual basis, beginning on the first anniversary of the Agreement. Contractor agrees to provide supporting documentation for any adjustments to collection rates as part of Contractor's request for same. The disposal portion of the rate structure shall be adjusted immediately upon changes in the Disposal Rate charged by the NTMWD at NTMWD Disposal Facilities.

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13.3. Adjustments for Changes in Regulations Affecting Contractor. Notwithstanding the foregoing, the Parties agree that the rates to be charged by Contractor hereunder may be changed by Contractor, upon thirty (30) calendar days notice to City, to compensate for any costs incurred by Contractor in performance of this Agreement which result directly from changes (including changes in official interpretation) of any applicable laws, ordinances, or regulations, including changes relating to permit fees or reporting requirements; provided, however, that City may, at any time and at its sole discretion, suspend imposition of such changed rates pending satisfactory documentation submitted to City by Contractor that such changed rates are justifiable under this Subsection 13.3. Satisfactory documentation shall include a certificate signed by the principal financial officer of Contractor setting forth the amount of the changed rate and the reason why such rate change is properly chargeable, and, if requested by the City, Contractor shall provide to City such additional back-up documentation to reasonably demonstrate the incurrence of any cost change. In the event the City determines that there has been a regulatory change, the City has the right to request Contractor to propose a change under this clause. Nothing included in this Agreement as it currently is executed and as implemented constitutes grounds for any additional adjustment

Section 14. Commercial Customer Billing

Contractor shall be responsible for billing and collecting payments from Commercial Customers. The City shall have the right to approve the format and textual content of the bills. The billing methods and arrangements may from time-to-time be changed by Contractor upon written approval of the City, but in any event, Contractor hereby agrees to bill Commercial Customers no later than thirty (30) calendar days after Contractor provides the Commercial Customer with the Collection service. Such bills shall include any and all appropriate state or federal sales or service taxes, if any, now in existence or that may hereafter be imposed.

Section 15. Vehicular Identification

All vehicles and Equipment used by Contractor for the Collection of commercial Solid Waste and Recyclable Materials shall be clearly marked with Contractor's name in letters of a size sufficient to reasonably identify the vehicle and Equipment, but not less than five inches (5") in height, except as provided for in Section 16(iv). All vehicles and equipment shall be commonly colored or decorated, with any exceptions subject to the written approval of the City. Contractor shall also assign each of its vehicles an identifying number and shall mark the same upon said vehicles in two prominent locations, as approved by the City in figures not less than five inches (5") in height.

Section 16. Regulation of Collection Containers

Contractor shall provide its Commercial Customers with appropriate reusable Containers for Collection of commercial Solid Waste and Recyclable Materials, subject to the following requirements:

- (i) All front loader Containers shall be constructed and maintained in a manner which allows Contractor to achieve the Performance Standards included in Exhibit "A";

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- (ii) All such Containers shall be equipped with suitable covers to prevent the scattering of the Container's contents while in transit or in the Commercial Customer's location;
- (iii) All such Containers shall be cleaned and maintained on a regular basis by Contractor so as to be in good repair, of a good appearance, and free of such refuse residues in the container as may cause odor, provide a breeding place for insects and harborage for rodents; and
- (iv) All such Containers shall be clearly marked with Contractor's name and telephone number in letters not less than two inches (2") in height.

The Performance Standard attached hereto as Exhibit "A" contains detailed standards for regulation of collection Containers.

Section 17. Health and Sanitation

Contractor shall establish and enforce in its operations and among its employees such regulations in regard to cleanliness and Collection of Solid Waste and Recyclable Materials as will tend to prevent the inception and spread of diseases and to effectively prevent the creation of a nuisance on any property either public or private. Contractor shall maintain at its sole cost and expense copies of all permits and licenses required for its Collection of Solid Waste and Recyclable Materials services.

Section 18. Right of Inspection and Audit

The City hereby reserves the right to inspect and evaluate Contractor's operations relating to its performance hereunder either on a continuing or random inspection basis. The City from time-to-time may unilaterally determine which operations of Contractor's related to this Agreement are to be evaluated during a particular period. The City, utilizing its own employees or an independent third party contractor of its own selection, may evaluate technical performance, including reliability and schedule performance, program management, cost control and small business and small disadvantaged business subcontracting. The cost of such third party contractor shall be borne entirely by the City.

Contractor shall keep accurate books of account relating to this Agreement at its principal office in the City or such other location of its choosing for the purpose of determining the amounts due to the City under this Agreement. The City may inspect Contractor's books of account specific to Contractor's billing to Commercial Customers in the City and associated Franchise Fees relative to the City at any time during regular business hours on ten (10) business days' prior written notice and may audit the books for such purpose from time-to-time. All records reasonably necessary for such audit shall be made available by Contractor in a format deemed appropriate at a location in the City of Plano, or Contractor shall pay City's expenses in traveling to any other location necessary to conduct the audit. Contractor agrees to give its full cooperation in any audit and shall provide complete responses to inquiries within ten (10) business days of a written request.

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If the results of the audit indicate that Contractor underpaid the proper amounts due per this Agreement by more than one and one-half percent (1.5%), and Contractor is unable to produce contrary evidence that in City's reasonable judgment is satisfactory to demonstrate to City that the results of the audit are not accurate, then Contractor shall pay to the City a penalty equal to fifty percent (50%) of the total amount underpaid in addition to the total amount underpaid. Interest on the total amount of underpayment shall be paid at the prime interest rate as published in The Wall Street Journal and in effect on the date the original payment was due plus 2%, and interest shall be calculated from the time the original amount is due. Any additional amount due to City hereunder shall be paid within thirty (30) calendar days from the date of invoice. Any amount not paid within thirty (30) calendar days from the date of the invoice will cause interest to be payable at the prime interest rate in effect on the date of the invoice plus 2% on the entire amount from the date of invoice.

The City agrees to hold in confidence any non-public information it learns from Contractor to the fullest extent permitted by law. The City shall not be liable to Contractor for the release of any information obtained as a result of an audit where the City is required to release that information by law or court order.

Section 19. Non-Compliance Default by Contractor

19.1. Treatment of Failure to Perform. In the event Contractor fails, during the Primary Term hereof or any extensions hereto, to perform its duties and discharge its obligations in accordance with the terms, provisions and conditions hereof, the City shall be entitled, at its sole option, either to declare Contractor to be in non-compliance with the terms of the Agreement (hereinafter "Non-Compliance") or declare Contractor to be in default of this Agreement; provided however, that neither (a) the failure of Contractor or the City to attain a Recycling Diversion Rate of forty percent (40%) nor (b) a force majeure event as described in Section 27.13 shall be considered cause to declare Contractor in non-compliance or default of this Agreement

19.2. Declaration of Non-Compliance; Liquidated Damages. In the event the City declares Contractor to be in Non-Compliance, the City shall notify Contractor in writing of such declaration and specify the precise nature of the Non-Compliance. Contractor shall thereafter have two (2) business days in which to correct or cure such Non-Compliance, failing in which Contractor agrees to pay to the City as liquidated damages, not as a penalty, the sum of **THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00)** per day for each event of Non-Compliance; provided, however, that if the event of the Non-Compliance is such that it does not affect the level of service to be provided the City's Commercial Customers and, further, is such that it can be cured in twenty (20) calendar days or less from date of notice and, further, that Contractor commences action to cure such Non-Compliance and diligently pursues such curative measures, then and in that event, liquidated damages shall cease to accrue. In any event, if a condition of Non-Compliance is not corrected or cured within a reasonable time, the City shall be entitled to declare Contractor to be in default hereunder and to take such further action as provided hereinafter.

19.3. Declaration of Default. In the event the City declares Contractor to be in default, whether such declaration of default is subsequent to or in lieu of a declaration of Non-Compliance,

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the City shall notify Contractor in writing of such declaration and specify the precise nature of the default. Contractor shall thereafter have thirty (30) calendar days from date of notice in which to cure such default (or, if same cannot be reasonably cured within such period, commence cure within such period and thereafter diligently complete such cure), failing in which the City shall be entitled to declare this Agreement terminated and shall be further entitled to take such actions or pursue such remedies as allowed by law or this Agreement.

19.4. Immediate Termination. Notwithstanding the provisions hereinabove relating to declarations of default, notice, opportunity to cure and termination, in the event City declares Contractor to be in default hereunder, and the City determines that such default is of a nature and magnitude so as to frustrate or defeat the essential purposes of the Agreement, and further determines that such default may or will result in substantial injury to the public health, safety or welfare, the Parties agree as follows:

- 1) City shall be entitled to declare immediately that this Agreement and Contractor's right to proceed hereunder are terminated;
- 2) City shall be entitled to the full Performance Bond of Contractor; and
- 3) City shall be entitled, at its sole option, to immediate possession of all vehicles, Equipment, containers, facilities or other instrumentalities in possession of Contractor used in connection with this Agreement as may be necessary to permit City to provide and perform Collection of Solid Waste and Recyclable Materials on an interim basis until such time as a satisfactory substitute contractor may be put into place or the Parties hereto otherwise agree, in which event City shall fairly compensate Contractor for the fair market rental value of such vehicles, Equipment, Containers, facilities or other instrumentalities, subject to any offsets or claims by City against Contractor, for up to a nine (9) month period following the date of such termination.

Section 20. Obligations of Parties Upon Default by Contractor

20.1. Termination of the Agreement. In the event of termination of this Agreement as provided for in Section 19 hereof, Contractor shall immediately discontinue all service or performance hereunder and shall immediately cancel and discontinue service under any and all contracts for the Collection of Solid Waste entered into pursuant to the authority and right hereby granted. Further, and within ten (10) business days of termination hereof, Contractor shall submit to City a statement setting forth in detail all services performed hereunder prior to the date of termination.

20.2. Extension of Time. Notwithstanding the provisions of this Section and of Section 19, the Parties agree that in those instances where said Sections impose a time limit for an act or performance by Contractor, the City shall have the right, at its sole discretion, to extend the time for such act or performance, without prejudice to City's right to enforce such time limits thereafter.

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20.3. Rights and Remedies Cumulative. The Parties understand and agree that the rights and remedies conferred upon City by this Section and by Section 19 hereof are cumulative and in addition to any and all other rights or remedies conferred upon City at law or in equity.

Section 21. Termination by Contractor

Contractor may terminate this Agreement only in the event of default by the City and a failure by the City to cure such default after receiving notice thereof, all as provided in this subsection. Default by the City shall occur if the City fails to observe any of its duties under this Agreement. Should such a default occur, Contractor shall deliver a written notice to the City Representative describing such default, specifying the provisions of the Agreement under which Contractor considers the City to be in default, giving sufficient details of the alleged breach to enable the City to cure and the proposed date of termination. Such date may not be sooner than thirty (30) days following receipt of the notice. Contractor, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the City cures such default, then the proposed termination shall be ineffective. If the City fails to cure such default prior to the proposed date of termination, then Contractor may terminate its performance under this Agreement as of such date.

Section 22. Indemnification

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

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE (AT CITY'S EXPENSE); 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

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DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

22.2. Contractor's Indemnification of NTMWD. Additionally, Contractor agrees to indemnify and hold harmless the NTMWD, its officers, agents, servants and employees from and against any and all claims, liabilities, demands, suits, judgments, cost or expenses, including expenses of litigation and reasonable attorneys' fees, arising from any claim, loss or injury related to the negligent acts or omission of Contractor, its officers, agents, employees, subcontractors or any other third party for whom Contractor is legally responsible; provided, however, City shall exercise (or allow Contractor to exercise) all rights City may have under its contract with NTMWD in mitigation of such indemnity obligations of Contractor to NTMWD. Contractor expressly grants standing to the NTMWD to bring suit to enforce this covenant and waives any claim it may have that the NTMWD is not a party to this Agreement or has failed to give adequate consideration for Contractor's covenant to indemnify. It is expressly understood that the foregoing provisions shall not in any way limit the liability of Contractor.

22.3. Patent Infringement Indemnity. Contractor agrees to release, defend, indemnify and hold harmless the City, its employees, officers and agents from and against all suits, actions and claims of every nature and description brought against them or any of them for or on account of Contractor's use of patented appliances and/or products and/or processes. Contractor shall pay all royalties and charges which are imposed by any party for Contractor's use of patented appliances and/or products and/or processes. Evidence of such payment or satisfaction shall be submitted upon request of the City Representative, as a necessary requirement in connection with the final estimate for payment in which a patented appliance and/or products and/or processes are used.

22.4 Waiver of Subrogation. Contractor hereby agrees to waive any and all rights of subrogation it may have against City by virtue of any claims which may arise as a result of services performed in connection with this agreement.

Section 23. Insurance

Contractor agrees to procure and maintain during the term of this Agreement insurance as set forth in Exhibit "E" attached hereto and incorporated herein by reference. Contractor will provide the City with evidence that the required insurance coverage is in force on or before the beginning of each Fiscal Year, October 1.

Section 24. Contractor's Local Office

24.1. Office/Managing Agent. Throughout the term of this Agreement, Contractor shall establish and maintain a local office and authorized managing agent within the City and shall designate in writing the agent upon whom all notices may be served from the City. Service upon Contractor's agent shall always constitute service upon Contractor.

24.2. Hours. Contractor's local office shall be open during Collection hours so that Commercial Customers can lodge complaints, requests for information, and requests for service. At

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a minimum, Contractor's local office shall be open during the hours of 7:30 a.m. and 5:30 p.m., local time, Monday through Friday and 8:00 a.m. to Noon, local time, on Saturday.

24.3. Staffing. Contractor's local office shall have a responsible person in charge during Collection hours on Collection days, shall be equipped with sufficient telephones, a local telephone number, and sufficient attendants to receive telephone calls. Attendant(s) shall receive calls in a courteous and polite manner, record all complaints, and resolve all complaints in an expeditious manner within the following twenty-four (24) hour period.

Section 25. Assignment

Contractor agrees that it may not, without prior written consent from the City, assign any rights or delegate any duties arising under this Agreement to a third-party, unless one-hundred percent (100%) of the stock or shares of the third-party entity is owned by Contractor. Contractor further agrees that any such assignment or delegation of rights or duties shall not relieve Contractor of its obligations to City under this Agreement. In the event that Contractor's Plano operations are sold, assigned or otherwise transferred to a third-party entity not owned completely by Contractor, the City shall have the option to give Contractor notice of termination, without penalty to the City, as if the Agreement had been terminated as a result of term expiration and/or non-renewal.

Section 26. Miscellaneous Provisions

26.1. Independent Contractor. The relationship of Contractor to the City shall be that of an independent Contractor, and no principal-agent or employer-employee relationship between the Parties is created by this Agreement. By entering into this Agreement with the City, Contractor acknowledges that it will, in the performance of its duties under this Agreement, be acting as an independent Contractor and that no officer, agent or employee of Contractor will be for any purpose an employee of the City and that no officer, agent or employee of Contractor is entitled to any of the benefits and privileges of a City employee or officer under any provision of the statutes of the State of Texas and ordinances of the City.

26.2. Non-waiver of Powers and Regulations. This Agreement shall not be taken or held to imply the relinquishment or waiver by the City of its police powers to make other reasonable requirements or regulations pertaining to the subject matter hereof, and the City hereby expressly reserves the right to make all regulations which may be necessary or proper to secure the safety, welfare and accommodation of the public, including, but not limited to, the right to adopt and enforce regulations to protect and promote the health, safety and general welfare of the public from danger and inconvenience in the management and operation of Solid Waste and Recyclable Materials collection, transportation and disposal services detailed herein. Further, nothing herein contained shall constitute a waiver of any of the requirements of the rules and regulations heretofore adopted by the City, including the right to make such changes and amendments to said rules and regulations as said City may deem to be advisable and necessary to protect the public health and general welfare of its inhabitants.

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26.3. Choice of Law: Venue. The Parties agree that this Agreement shall be governed by the law of the State of Texas; the Parties further agree that venue for all actions arising out of this Agreement shall be Collin County, Texas.

26.4. Rules of Construction. As used in this document, a word importing the masculine gender only shall extend to, and be applied to, females as well as males. A word importing the singular number shall include the plural, and a word importing the plural number shall include the singular.

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

26.6. Entire Agreement. This Agreement, the Exhibits hereto, including all amendments and modifications thereto, constitute the entire Agreement and understanding between the Parties relating to the subject matter, and it shall not be modified, altered, changed or amended in any respect unless done so in writing and approved by Resolution of the City Council of the City.

26.7. Bankruptcy; Insolvency. The Parties agree that City shall have the right to terminate this Agreement at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this Agreement, including the remedy available to City under Section 19.4 hereof, by giving written notice of termination to Contractor if the latter should:

- (i) Make an assignment for the benefit of creditors;
- (ii) Become insolvent or have a receiver of its assets or property appointed without filing bankruptcy; or
- (iii) Allow any money judgment against it to remain unsatisfied for a period of thirty (30) calendar days or longer.

26.8. Discrimination Prohibited. Contractor, in the execution, performance, or attempted performance of this Agreement, shall not discriminate against any person or persons because of sex, race, religion, age, color, or national origin. Contractor must be an equal opportunity employer and have an affirmative action plan.

26.9. Time is of the Essence. Time shall be deemed to be of the essence whenever time limits are imposed herein for the performance of any obligations by any of the Parties hereto, or whenever the accrual of any rights to either of the Parties hereto depends on the passage of time.

26.10. Right to Require Performance. The failure of one of the Parties at any time to require performance by the other party of any provisions hereof shall in no way affect the rights of such party thereafter to enforce the same. Nor shall waiver by a party of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provisions itself.

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26.11. Unenforceable Provisions. If any provision of this Agreement shall be declared illegal, void or unenforceable, the other provisions shall not be affected and shall remain in full force and effect.

26.12. Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered, whether or not actually received, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective Party at the address set forth below:

City: Sustainability & Environmental Services Manager
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358
Telephone: (972) 769-4264
Facsimile: (972) 769-4172

With a copy to: Director, Sustainability & Environmental Services Department
P. O. Box 860358
Plano, Texas 75086-0358
Telephone: (972) 769-4264
Facsimile: (972) 769-4172

City Attorney
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358
Telephone: (972) 941-7125
Facsimile: (972) 424-0099

Contractor: Allied Waste Systems, Inc.
Attention: Area President
1212 Harrison Avenue
Arlington, Texas 76011
Telephone: (817) 317-2030
Facsimile: (817) 459-4663

With a copy to: Allied Waste Services of Plano
Attention: General Manager
4200 East 14th Street
Plano, Texas 75074
Telephone: (972) 422-2341
Facsimile: (972) 881-9077

EXHIBIT A

And a copy to: Republic Services, Inc.
Attention: Vice President, Deputy General Counsel - South
18500 N. Allied Way
Phoenix, AZ 85054
Telephone: (480) 627-2700
Facsimile: (480) 627-2714

or such other address as the Parties have heretofore specified by written notice delivered in accordance herewith.

26.13 Force Majeure. Except as to payment obligations, neither Party to this Agreement shall be liable or considered in default under this Agreement when the delay of performance is caused by circumstances beyond its reasonable control and occurring without its fault or negligence, including national emergencies, natural disasters (earthquakes, hurricanes, floods), acts of God, insurrection and war, provided the party invoking this Section immediately provides written notice thereof to the other and does everything reasonably possible to resume its performance hereunder at the earliest practical time; provided, however, that strikes, lockouts, or other labor disturbances of employees of Contractor or any of its subcontractors shall not be considered a cause for delay of performance by Contractor under this Agreement.

26.14 Contractor's Financial Obligation. All obligations of Contractor under this Agreement are to be provided at Contractor's sole cost and expense unless otherwise provided herein.

26.15. Approval by the City Council. This Agreement shall not be considered fully executed or binding or effective on the City until the same shall have been approved and adopted by Ordinance by the City Council of the City of Plano in open meeting as required by law and executed by Contractor and the City. After such approval and acceptance, the City shall deliver to Contractor a certified copy of the Ordinance as evidence of the authority of the City Manager, or his designee, to bind the City to the terms, covenants and provisions of this Agreement and to perform the same in accordance herewith.

26.16. Compliance With Laws. Contractor, its officers, agents, employees, contractors and subcontractors, shall abide by and comply with Applicable Law and all laws, federal, state and local. It is agreed and understood that, if City calls the attention of Contractor to any such violations on the part of Contractor, its officers, agents, employees, contractors or subcontractors, then Contractor shall immediately desist from and correct such violation.

26.17. Effective Date. The Effective Date of this Agreement shall be December 1, 2010.

26.18. Consent. In each instance where City's consent is required hereunder, such consent shall not be withheld unreasonably.

26.19. Inspection: Audit. All inspections and audits which City may conduct hereunder shall be upon reasonable notice and during normal business hours.

EXHIBIT A

[Signatures on following page]

THE CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

ALLIED WASTE SYSTEMS, INC.
d/b/a Allied Waste Services of Plano

By: _____
Name _____
Title: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN.)

This instrument was acknowledged before me on the ____day of _____, 2010 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said municipal corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF)

This instrument was acknowledged before me on the ____day of _____, 2010 by **ALLIED WASTE SYSTEMS, INC.**, a Delaware corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

LIST OF EXHIBITS

Exhibit “A” - Performance Standards

Exhibit “B” - Live Green in Plano

Exhibit “C” - Container and Rolling Stock Equipment Inventory

Exhibit “D” - Rate Schedule for Commercial Waste and Recycling Services

Exhibit “E” - Insurance Requirements

Exhibit “F” – Commercial Recycling Promotional and Education Plan

Exhibit “G” – Performance Bond Specimen

**EXHIBIT “A”
CITY OF PLANO
PERFORMANCE STANDARDS AND
RESPONSIBILITIES OF CONTRACTOR AND
COMMERCIAL CUSTOMERS**

1. Contractor Responsibilities

I. Collection Schedules

- a. Schedules Available: Monday through Saturday.
- b. Hours of Operation: Not before 7:00 a.m. in locations adjacent to residential subdivisions.
- c. Extra Collection: If notified by 10:00 a.m. of service day, extra pickup will be performed that day. Requests after 10:00 a.m. will be performed the following morning before 9:00 a.m. There is a charge for extra pickups and refills, as approved by the City Council.
- d. Holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Pickups scheduled for these days will be either the day before or the day after.

II. Container Service & Maintenance

- a. Container sizes available: 2, 3, 4, 6, and 8 cu. yd.; 10, 20 and 30 cu. yd. open-top roll-off containers; and 6, 8, 20, 30, 32 and 42 cu. yd. Compactors.
- b. Container maintenance: Containers that have been damaged will be exchanged or repaired within 5 working days of notification. If the damage is not due to Contractor servicing or a defect in materials and workmanship, a fee will be charged to the Commercial Customer. The amount will depend on the repairs needed. If an unsightly condition develops due to fire, paint or other causes beyond Contractor control, the Container will be exchanged.
- c. All Containers will be evaluated once a year and exchanged as needed. A request from the Commercial Customer for an exchange in addition to those provided by Contractor will be charged an additional fee, as approved by City Council.
- d. Casters: Casters will be made available upon request for 2, 3 and 4 cu. yd. containers only. Customers requiring casters will be charged an additional service fee, as approved by City Council.
- e. Blocked Containers: If access to a Container is blocked, the driver will radio company dispatcher. A call will be placed to the location describing the obstruction.

The driver will wait until the Commercial Customer is contacted and the obstruction cleared. If not cleared within ten minutes, the driver will proceed on route. Contractor will ensure Collection occurs prior to 9:00 a.m. the following day.

- f. Odor and Insect Control: Contractor shall report any evident problems to the Health Department via e-mail. Contractor will notify all Commercial Customers of proper procedures for minimizing odors and insects in and around Containers.
- g. Overloaded and/or Underserviced Containers: Within 24 hours of incident, the Contractor shall document the problem with photos and/or scale tickets, notify and recommend resolution of problems to the Commercial Customer, copying the Commercial Recycling Supervisor. If the Commercial Customer has front-load service and the container is overloaded, Contractor will notify the Commercial Customer, while still servicing the container (if possible) on the first occurrence at no additional charge. Within 60 days of first occurrence, if the Commercial Customer overloads the container again, Contractor shall notify the Customer, empty the container if possible, and charge the overload fee as identified in the approved rate schedule. If Contractor is unable to safely service the container, and the Customer fails to resolve the matter within 48 hours of notification, they will be charged an extra pickup fee, if serviced, as identified in the approved rate schedule.

III. Customer Service

- a. Complaints: All service complaints shall initially be directed to Contractor and shall be resolved within 24 hours.
- b. Complaints reported to City: All complaints reported to the City will be e-mailed to Contractor Customer Service Supervisor with a copy to General Manager. It shall be the duty of Contractor to take whatever steps may be necessary to remedy the cause of the complaint and notify the City via e-mail of its disposition within 24 hours after receipt of the complaint.
- c. Contractor shall provide for voice mail capabilities after business hours so that Commercial Customers may leave messages. The voice mail message shall also provide a contact name and phone number in case of an emergency, and that contact name and number shall be reasonably available. Voice mail messages shall be responded to by 10:00 a.m. on the business day immediately following the message.
- d. Contractor shall have available and maintain an Internet site that is available 24 hours per day, 7 days per week, subject to Internet Service Provider availability.
- e. Contractor shall have available and maintain a facsimile machine for receiving and transmitting information from the City and/or Commercial Customers.
- f. Contractor shall provide written notice to all Commercial Customers regarding complaint procedures, rules and regulations, and day(s) of Collection on an annual

basis and whenever there is a change in scheduled service, or procedures. Such notice must be approved by the City prior to distribution.

- g. Contractor shall notify the City's Health and Sustainability and Environmental Services Departments by e-mail of violations relating to cleanliness and the creation of a nuisance on any property, either public or private.
- h. Commercial Customer hauls and deliveries of roll-offs will be made within 24 hours.
- i. All vehicles used by Contractor shall be washed at least one time per week.

IV. Reporting

- a. Contractor shall provide the Sustainability and Environmental Services Department with an administrative organizational chart to include key personnel name, position, telephone number, e-mail, pager, and home phone when appropriate. Contractor shall provide an updated chart within 14 days after any key personnel change.
- b. Contractor shall supply the Sustainability and Environmental Services Department with a monthly summary of all complaints indicating the date and hour of inquiry or complaint receipt, the nature of the complaint or inquiry, and the manner and timing of resolution.
- c. Contractor shall supply the Sustainability and Environmental Services Department with a report of any missed collections by 9:00 a.m. of the following business day.
- d. Contractor shall provide the Sustainability and Environmental Services Department with a full explanation of the disposition of any complaint involving a Commercial Customer's claim of damage to private property as a result of actions of Contractor's employees, agents, or subcontractors.

2. Commercial Customer Responsibilities

- a. Commercial Customer is responsible for keeping the area around and on top of container clear of obstructions so Contractor can service the container as scheduled. If container is blocked and is not cleared, service will be delayed and Contractor may require Customer to call for extra pickup if access is not cleared by the following day.
- b. Overfilled Containers: Container will not be emptied if a safety hazard exists. Commercial Customer will be contacted to remove excess. The pickup will be rescheduled when excess refuse has been removed.
- c. Gates and Enclosures: There will be an additional charge per lift.

- d. Odor and Insect Control: The Commercial Customer will be responsible for odor and insect control around Containers.
- e. Casters: Casters will be available for an additional fee on 2, 3 and 4 cubic yard containers only.
- f. Non-Payment: Commercial Customers will be notified in writing when forty-five (45) calendar days past due. If unpaid after sixty (60) calendar days, customer will be notified in writing that service is being suspended until account is paid in full. A copy will be sent to City's Health Department. If a Commercial Customer is suspended twice, a deposit in the amount of one month's average billing will be required to reestablish service. This deposit will be refunded when the account is closed.
- g. Weight: Commercial Customers shall not load front load Containers in excess of 4,000 pounds or roll-off containers in excess of 20,000 pounds. Commercial Customers shall pay Contractor for waiting time in excess of fifteen (15) minutes at \$25 with a maximum of thirty (30) minute wait. There will be a charge equal to fifty percent (50%) of the haul rate should Contractor respond to Customer request and Contractor is unable to haul due to circumstances caused by Customer. If the Commercial Customer refuses to remove such material, Contractor or Contractor's agents may remove such material. Commercial Customers shall reimburse Contractor of all reasonable expenses incurred plus 25% for removing excess material.
- h. Appropriate Material: For the purposes of this Agreement the phrase "appropriate material" shall include all Solid Waste and Recyclable Materials generated by the Commercial Customer with the express exclusion of radioactive, volatile, highly flammable, medical, explosive or toxic materials and shall also exclude excessive amount of earth and sandstone. Expressly excluded material shall be handled by special arrangements only at the discretion of Contractor.
- i. Hold Harmless: Commercial Customer shall be responsible for the safekeeping of any service equipment furnished by Contractor and any rental equipment leased to customer herein. Customer shall indemnify and hold Contractor and the City harmless from and against any and all claims, demands, suits or judgment arising out of or resulting from the customer's use, operation or possession of the service equipment and any rental equipment, except when such equipment is being serviced by Contractor. Commercial Customer agrees that such equipment is in the customer's possession, custody and control except while being delivered, emptied, removed or serviced by Contractor. Commercial Customer agrees that its pavement or roadways are to be trafficked by vehicles necessary for Contractor to perform its obligations under this Agreement and further agrees to waive any claim or cause of action it may have an assert against Contractor for action it may have and assert against Contractor for damages that may occur to such pavement or roadways.

- j. Modification: It is anticipated that the Parties may from time-to-time desire to modify these standards.

EXHIBIT “B”

ENVIRONMENTAL EDUCATION & COMMUNITY AWARENESS

The Environmental Education & Community Outreach Division is responsible for:

- * Implementing and maintaining the Keep America Beautiful (KAB) and Keep Texas Beautiful (KTB) Systems in Plano,
- * Initiating, planning, directing and coordinating programs to residents, schools and civic organizations covering recycling, composting, litter prevention, managing household chemicals, best practices yard care, water quality and conservation, energy conservation, energy-efficiency, air quality, green building and environmental awareness.
- * Educating and involving citizens, businesses, community organizations, schools and government in responsible voluntary actions that will influence citizen participation in promoting a cleaner, safer, healthier and more sustainable community,
- * Furthering the advancement of geographical Recycling through education, promotion, solicitation of funds and implementation of facilities and programs on the local level,
- * Soliciting and accepting donations and appropriations of monies, services, products, property and facilities, and disbursement of said funds for the Live Green Expo and other sustainable initiatives and for the accomplishment of the objectives of the KAB and KTB Systems,
- * Making recommendations to the appropriate community officials, as well as the private sector, regarding measures which it deems necessary to accomplish the objectives of the sustainable initiatives and the KAB and KTB Systems,
- * Promotion and implementation of the Environmental Community Awards,
- * Pursuing the First Place Winner designation in the annual KTB "Governor's Community Achievement Award".

Goals and Strategies will be developed for each Fiscal Year to further the attainment of the above tenets. Upon approval by the City Council, and at the request of Contractor, a copy of these annual Goals and Strategies shall be made available to Contractor.

EXHIBIT "C"
CONTRACTOR INVENTORY OF ROLLING STOCK AND CONTAINERS IN THE CITY

Equipment Type	Year Mfg.	Mfg. Chassis	Mfg. Body	Truck #	Capacity
FRONTLOAD	2009	Mack	McNeilus	1275	28 CYD
FRONTLOAD	2009	Mack	HEIL	1279	28 CYD
FRONTLOAD	2010	MACK	HEIL	1281	28 CYD
FRONTLOAD	2010	MACK	HEIL	1282	28 CYD
FRONTLOAD	2010	MACK	HEIL	1283	28 CYD
FRONTLOAD	2010	MACK	HEIL	1286	28 CYD
FRONTLOAD	2010	MACK	HEIL	1287	28 CYD
FRONTLOAD	2009	MACK	HEIL	1291	28 CYD
FRONTLOAD	2009	MACK	HEIL	1292	28 CYD
FRONTLOAD	2006	MACK	HEIL	7683	28 CYD
FRONTLOAD	2007	MACK	HEIL	7789	28 CYD
FRONTLOAD	2003	MACK	HEIL	730017	28 CYD
FRONTLOAD	2005	MACK	HEIL	758725	28 CYD
ROLLOFF	2008	MACK	DURALIFT	3839	50 K
ROLLOFF	2007	MACK	GALBREATH	6735	50 K
CONTAINER DELIVERY	2000	FREIGHTLINER	G & H	900430	
COMPANY TRUCK	2003		FORD F150	130013	
ROLL OFF	2007	MACK	GALBREATH	6736	50 K
ROLL OFF	2007	MACK	GALBREATH	6738	50 K
ROLL OFF	2000	INTERNATIONAL	G&H	601525	50 K
ROLL OFF	1995	FORD LNT	G&H	617156	50 K
ROLL OFF	1998	VOLVO	GALBREATH	687159	50 K
ROLL OFF	1999	VOLVO	GALBREATH	690160	50 K
ROLL OFF	1999	MACK	G&H	697312	50 K

SERVICE MATRIX FOR COMMERCIAL FEL MSW								
QUANTITY of Containers Under Each Service Level As of June 1, 2010								
CONTAINER SIZE	FREQUENCY							TOTALS
	1	2	3	4	5	6	7	
1	0	0	0	0	0	0	0	0
2	151	22	1	0	0	0	0	174
3	110	18	9	0	0	0	0	137
4	223	58	33	1	0	2	0	317
6	253	132	68	4	13	5	0	475
8	343	462	495	112	97	68	0	1577
10	0	0	0	0	0	0	0	0
NO. OF LIFTS	1086	1396	1836	480	550	450	0	5798

EXHIBIT “D”

RATE SCHEDULE FOR COMMERCIAL WASTE AND RECYCLING SERVICES

Rates for non-compacted front loader service

Service Frequency							Extra Pickup
per week:	1x	2x	3x	4x	5x	6x	
Container Size							
2yd	\$54.66	\$85.27	\$127.88				\$45.35
3yd	\$71.48	\$131.66	\$184.34				\$49.12
4yd	\$86.84	\$153.93	\$221.03				\$54.45
6yd	\$118.99	\$216.48	\$315.54	\$423.48	\$537.05	\$664.66	\$62.30
8yd	\$156.21	\$275.76	\$413.02	\$557.13	\$667.01	\$792.57	\$71.23

Disposal Costs – 85 #/yd.

per month:	1x	2x	3x	4x	5x	6x	
Container Size							
2yd	\$15.95	\$31.91	\$47.86				
3yd	\$23.93	\$47.86	\$71.79				
4yd	\$31.91	\$63.82	\$95.72				
6yd	\$48.26	\$96.42	\$143.78	\$192.05	\$239.66	\$287.17	
8yd	\$64.12	\$128.04	\$192.42	\$255.41	\$319.44	\$383.49	

Hauling Costs

per month:	1x	2x	3x	4x	5x	6x	
Container Size							
2yd	\$38.71	\$53.36	\$80.02				
3yd	\$47.55	\$83.81	\$112.54				
4yd	\$54.93	\$90.11	\$125.31				
6yd	\$70.73	\$120.06	\$171.76	\$231.43	\$297.39	\$377.49	
8yd	\$91.64	\$147.22	\$220.17	\$301.72	\$347.54	\$409.08	

Rates for compacted front loader service

Service Frequency							
per week:	1x	2x	3x	4x	5x	6x	
Container Size							
6yd	\$327.05	\$654.06	\$981.11	\$1308.13	\$1635.15	\$1962.17	\$86.51
8yd	\$436.01	\$872.00	\$1308.01	\$1743.99	\$2180.00	\$2616.01	\$115.33

Disposal Costs – 85 #/yd./ 5-1

per month:	1x	2x	3x	4x	5x	6x	
Container Size							
6yd	\$202.65	\$405.30	\$607.95	\$810.59	\$1013.24	\$1215.90	
8yd	\$270.20	\$540.39	\$810.59	\$1080.80	\$1350.99	\$1621.19	

Hauling Costs per week:	1x	2x	3x	4x	5x	6x
Container Size						
6yd	\$124.40	\$248.76	\$373.16	\$497.54	\$621.91	\$746.28
8yd	\$165.81	\$331.61	\$497.42	\$663.20	\$829.01	\$994.82

Maximum Rates to be charged for co-mingled Recycling Containers

Service Frequency per week:	1x	2x	3x	EOW*	Extra P/U
Container Size					
2yd	\$50.64	\$88.62	\$126.60	\$37.98	\$30.00
3yd	\$50.89	\$89.06	\$127.23	\$38.17	\$30.00
4yd	\$51.14	\$89.50	\$127.86	\$38.36	\$30.00
6yd	\$51.63	\$90.35	\$129.07	\$38.72	\$30.00
8yd	\$52.13	\$91.23	\$130.33	\$39.10	\$30.00

Maximum Rates to be charged for 95 gallon cart Recycling Containers –
 1x Week - \$20.00
 EO Week - \$15.00

Commercial Front Loader Options – Additional cost per lift

Casters	\$3.93
Locks	\$1.31
Gates	\$1.31
(with or without locks)	

Overload Fee

2yd	\$40.00
3yd	\$45.00
4yd	\$50.00
6yd	\$55.00
8yd	\$60.00

Commercial Roll Off Rates

Zone 1	\$154.85
Zone 2	\$193.32
Zone 3	\$232.06
Zone 4	\$271.31

All Hauls to transfer stations \$154.85 –

All Open-top Roll Off Containers consisting of Construction and Demolition materials will be hauled to the RDF 121 Landfill for disposal. OR,
 All Construction and Demolition materials will be recycled through source separation or disposed of at the RDF 121 Landfill

All disposal will be billed at the rate established for disposal at the NTMWD Transfer Facility.

Construction Containers – Misc. Fees

Delivery	Rental Per Day	Late Payment Fee: 1.5% per month for	Return Check Charge: \$35.00
\$78.62	\$5.22	balance due over 30 days.	

Commercial Refuse Hauling Zones

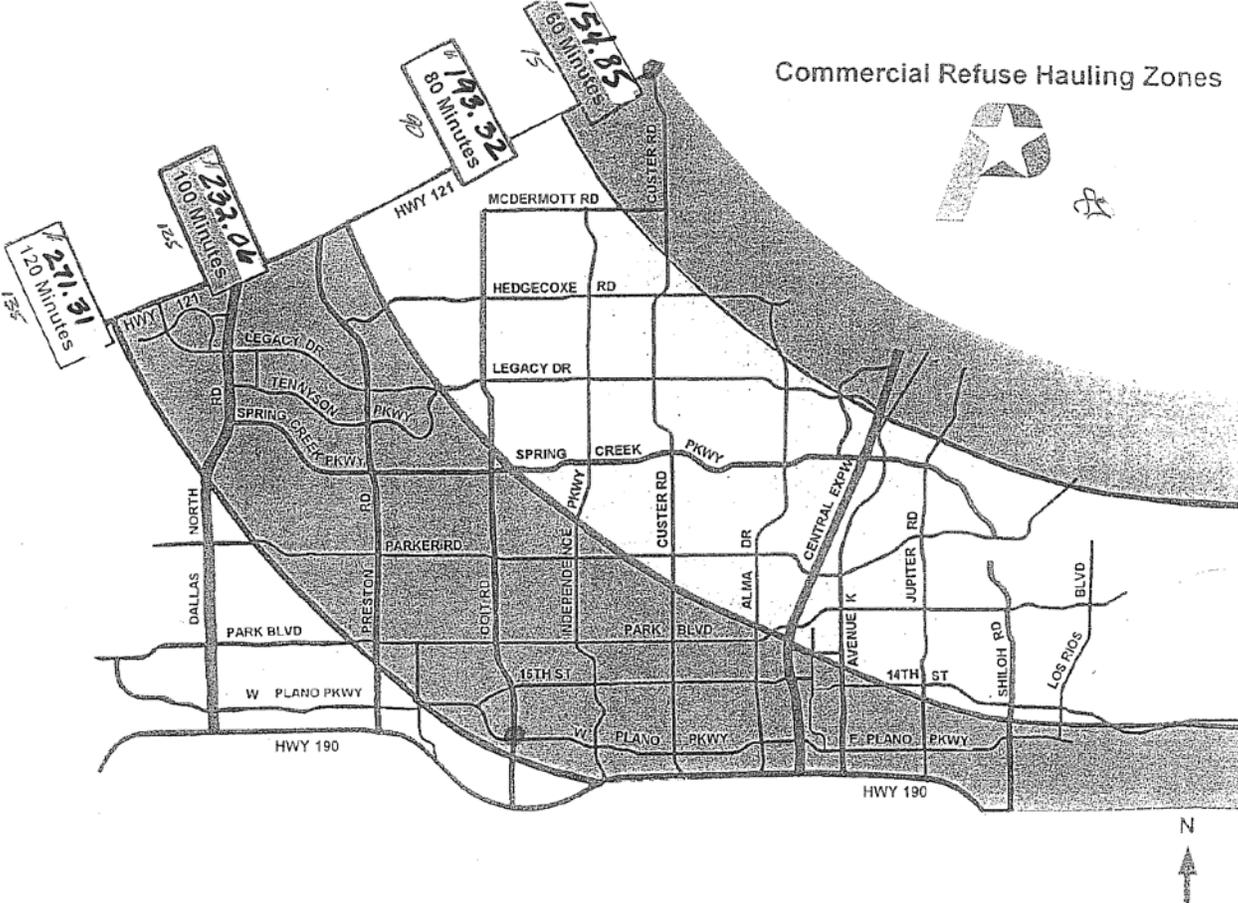


EXHIBIT "E"

INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid.

A. Minimum Scope of Insurance

1. Coverage shall be at least as broad as ISO Commercial General Liability (CGL) occurrence from CG 00 01 or a substitute form providing equivalent coverage. "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.
3. Workers' Compensation insurance (or equivalent) including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Contractor shall maintain limits not less than:

1. Commercial General Liability: \$5,000,000 per occurrence and \$10,000,000 aggregate covering liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in business contract.
2. Automobile liability: \$5,000,000 each accident limit. A waiver of subrogation in favor of the City with respect to physical damaged shall be binding on Contractor.
3. Employer's Liability: Employer's Liability Limits of \$1,000,000 each accident, \$1,000,000 each employee by disease, and \$1,000,000 by disease policy limit.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of the negligent activities performed by or on behalf of Contractor, products and completed operations of Contractor, premises owned, occupied or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers with respect to the negligence of Contractor. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it to the extent of Contractor's negligence.

- b. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- c. Contractor's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from the negligence of Contractor.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

Insurance shall be placed with insurers with an A.M. Best's rating of no less than B+:VI, or A or better by Standard & Poors.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance evidencing coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

EXHIBIT “F”

COMMERCIAL RECYCLING PROMOTION AND EDUCATION PLAN

I. City Responsibilities:

- (a) Provide public education to the commercial and multi-family sectors to help in the implementation and maintenance of the waste reduction and Recycling program, such as:
 - 1. Commercial Recycling tool kits providing information on the basics of Recycling, how to set up a Recycling program, Recycling service providers, etc.
 - 2. Commercial Recycling Coordinators to provide audits, education and technical assistance
 - 3. Media articles, guest editorials, advertising, and/or public service announcements
 - 4. Newsletters
 - 5. Website
 - 6. Email listservs
 - 7. Workshops

- (b) Provide technical assistance to the commercial and multi-family sectors to help in the implementation and maintenance of waste reduction, such as:
 - (i) Reduction partners/mentor program
 - (ii) Business outreach and technical assistance program
 - (iii) Workshops, symposiums, etc.

- (c) Support the Environmental Community Awards and Environmental Star of Excellence Awards program to recognize successful commercial recycling programs

EXHIBIT "G"

PERFORMANCE BOND SPECIMEN

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS: That _____ whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, hereinafter called "Surety", are held and firmly bound unto the **CITY OF PLANO, TEXAS** a home-rule municipal corporation, hereinafter called "Beneficiary", in the penal sum of _____ **DOLLARS** (\$_____) plus fifteen percent (15%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees, and liquidated damages arising out of or connected with the below identified Franchise Agreement in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be extended by a number of years equal to any renewals of the Franchise Agreement.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a Franchise Agreement with the City of Plano, the Beneficiary, dated on or about the _____ day of _____, _____, A.D. which is made a part hereof by reference, and is generally described as follows:

_____.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of its duties, obligations, undertakings, covenants, and agreements set forth in the Franchise Agreement referenced herein in accordance with all terms, conditions and requirements contained in said Franchise Agreement during the initial term thereof and any extension or renewal thereof, which may be granted by the Beneficiary, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Agreement, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications or amendments to said Franchise Agreement that may hereafter be made, notice of which modifications and amendments to the Surety being hereby waived; and, if the Principal shall fully indemnify and save harmless the Beneficiary from all costs and damages which Beneficiary may suffer by reason of Principal's failure to so perform herein and shall fully reimburse and repay Beneficiary all outlay and expense which the Beneficiary may incur in

making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Franchise Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Franchise Agreement, or to the work or to the specifications.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

IN WITNESS WHEREOF, this instrument is executed in ____ copies, each one of which shall be deemed an original, this, the ____ day of _____, _____.

PRINCIPAL: _____

BY: _____
Name

TITLE: _____

SURETY: _____

BY: _____
Name

TITLE: _____

ATTEST:

ATTEST:

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of process is:

NAME: _____
STREET ADDRESS: _____
CITY, STATE, ZIP: _____

NOTE: Date on **Page 1** of Performance Bond must be **same date that City Council awarded Contract**. Date on **Page 2** of Performance Bond must be **after the date that City Council awarded the Contract**. If Resident Agent is not a corporation, give a person's name.



**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:		10-25-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano as Reinvestment Zone No. 123 for a tax abatement consisting of a 14.36 acre tract of land located at the southwest corner of Shiloh Road and East Plano Parkway in the City of Plano, Texas; establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: Notice of public hearing published on October 14, 2010, to create Reinvestment Zone 123. The real property improvements amount is \$4,500,000.				
SUMMARY OF ITEM				
This is related to Air System Components , Inc., a Delaware company, request for tax abatement on Reinvestment Zone 123 and creation of the zone.				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano as Reinvestment Zone No. 123 for a tax abatement consisting of a 14.36 acre tract of land located at the southwest corner of Shiloh Road and East Plano Parkway in the City of Plano, Texas; establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.

WHEREAS, the City Council of the City of Plano, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone for retail tax abatement, as authorized by V.T.C.A. Tax Code Chapter 312 (referred to as the "Property Redevelopment and Tax Abatement Act" or the "Act"); and

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 25th day of October, 2010, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

WHEREAS, the City held such public hearing after giving written notice of said hearing to all taxing units overlapping the territory inside the proposed reinvestment zone; and

WHEREAS, the City at such hearing invited any interested person or his representative to appear for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the notice calling such public hearing should be included in such proposed reinvestment zone, and the concept of tax abatement; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all matters relating to the creation of the reinvestment zone.

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

Section I. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

Section II. Definitions. For the purposes of this Ordinance, the following terms and phrases shall have the following meanings ascribed to them:

- a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Act, any activity at the location, including, but not limited to, new construction.
- b) Taxable Real Property - Taxable real property shall be as defined in the Texas Property Tax Code and shall not include personal property as defined in said code, nor shall it include land.
- c) Taxable Tangible Personal Property - Shall be defined, for purposes of this Ordinance, as tangible personal property, such as office machines and office furnishings, but shall specifically exclude inventory or supplies.
- d) Base Year - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.

Section III. The City, after conducting the above-mentioned hearing and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and to the land included in the zone and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and

- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 123, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2011.

Section VI. To be eligible for tax abatement a retail project shall:

- a) Be located wholly within the zone as established herein.
- b) Not include property that is owned or leased by a member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.
- c) Conform to the requirements of the City's Zoning Ordinance and all other applicable laws and regulations.
- d) Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

Section VII. Written tax abatement agreements with property owner(s) located within the zone shall provide the terms regarding duration of exemption and share of taxable real property (and personalty) value from taxation as approved hereunder as shown below:

- a) Duration of Exemption – ten (10) consecutive tax years beginning with and including the January 1, 2011 assessment date.
- b) Share of taxes abated - percentage of taxes on total value of appraised Real and Business Personal Property and Improvements at the rate of: 50% for the years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020.

Section VIII. Any written agreements authorized under this Ordinance must include provisions for:

- a) Listing the kind, number and location of all proposed improvements of the property;

- b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;
- c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and
- d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.

Section IX. If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof.

Section X. This Ordinance shall become effective from and after its date of passage.

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 123
Real Property
Metes and Bounds

FIELD NOTES
BUILDINGS 9 AND 10

LOT 5, BLOCK 1 PLANO TECH CENTER II

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and J.T. McCullough Survey, Abstract No. 633, and being all of Lot 5, Block 1 of Plano Tech Center II, an addition to the City of Plano as recorded in Cabinet N, Page 862 of the Plat Records of Collin county, Texas (P.R.C.C.T.), same being part of a tract of land described in Special Warranty deed to Argent Plano Realty, L.P., dated May 24, 2000, as recorded in Volume 4678, Page 2236, Deed Records of Collin County, Texas, (D.R.C.C.T.), and being more particularly described as follows:

BEGINNING at the northeast corner of a tract of land described by deed to Patrick Hillary as recorded in Volume 2206, Page 185, D.R.C.C.T., said point being on the west right-of-way line of Shiloh Road (variable width);

THENCE South 87 degrees 10 minutes 35 seconds West, departing said west right-of-way line and along the north line of said Hillary Tract, a distance of 570.20 feet to a ½ inch found iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC", (hereinafter referred to as "with cap") for corner, said corner being the northwest corner of said Hillary Tract;

THENCE North 01 degree 26 minutes 31 seconds West, a distance of 16.55 feet to a point for corner;

THENCE South 89 degrees 40 minutes 24 seconds West, a distance of 312.80 feet to a 1/2 inch found iron rod with cap for corner;

THENCE North 00 degrees 21 minutes 11 seconds West, a distance of 138.22 feet to an aluminum disk found in concrete for corner, said corner being the most southerly southeast corner of Lot 1, Block 1 of Plano Tech Center II, an addition to the City of Plano as recorded in Cabinet N, Page 459, P.R.C.C.T.;

THENCE North 64 degrees 59 minutes 53 seconds East, along the common line between said Lot 1 and said Lot 5, a distance of 50.51 feet to a ½ inch found iron rod with cap for corner;

THENCE North, continuing along said common line, a distance of 681.25 feet to a found "X" cut in concrete for corner;

THENCE North 89 degrees 51 minutes 32 seconds East, departing said common line, a distance of 313.72 feet to a ½ inch found iron rod with cap for corner;

THENCE South 00 degrees 15 minutes 46 seconds East, a distance of 99.57 feet to a found "X" cut in concrete for corner;

THENCE South 89 degrees 56 minutes 16 seconds East, a distance of 419.48 feet to a found "X" cut in concrete for corner, said point being on the west line of a tract of land described by deed to Texas Power & Light Company (known as Tract 2) as recorded in Volume 874, Page 566, D.R.C.C.T.;

THENCE South 00 degrees 11 minutes 54 seconds West, along said west line, a distance of 646.72 feet to a ½ inch found iron rod with cap for corner, said corner being the southwest corner of said Tract 2:

THENCE North 87 degrees 11 minutes 54 seconds East, along the south line of said Tract 2, a distance of 76.77 feet to a ½ inch found iron rod with cap for corner, said corner being the southeast corner of said Tract 2:

THENCE North 00 degrees 35 minutes 54 seconds East, along the east line of said Tract 2, a distance of 1194.03 feet to a ½ inch found iron rod with cap for corner on the west right-of-way line of said Shiloh Road, said corner being on a non-tangent circular curve to the left, having a radius of 1255.00 feet and whose chord bears South 09 degrees 55 minutes 53 seconds East, a distance of 42.48 feet;

THENCE Southerly, along said west right-of-way line and along said circular curve to the left, through a central angle of 01 degree 56 minutes 23 seconds and an arc distance of 42.49 feet to a ½ inch found iron rod with cap for the point of reverse curvature of a circular curve to the right, having a radius of 1145.00 feet and whose chord bears South 05 degrees 09 minutes 05 seconds East, a distance of 229.42 feet;

THENCE Southerly, continuing along said west right-of-way line and along said circular curve to the right, through a central angle of 11 degrees 29 minutes 58 seconds and a arc distance of 229.81 feet to a ½ inch found iron rod for the point of tangency;

THENCE South 00 degrees 35 minutes 54 seconds West, continuing along said west right-of-way line, a distance of 858.99 feet to a found "X" cut in concrete for corner;

THENCE South 00 degrees 39 minutes 42 seconds West, continuing along said west right-of-way line, a distance of 149.97 feet to the POINT OF BEGINNING AND CONTAINING 625,615 square feet or 14.36 acres of land, more or less.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10-25-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Air System Components, Inc., a Delaware Corporation; providing for a real property tax abatement; authorizing its execution by the City Manager or his designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: The real property improvement to be maintained is \$4,500,000.				
SUMMARY OF ITEM				
This is related to Air System Components, Inc., a Delaware Corporation, request for tax abatement on reinvestment zone 123 and creation of the zone.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Tax Abatement Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Air System Components, Inc., a Delaware Corporation; providing for a real property tax abatement; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas and Air System Components, Inc., a Delaware Corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

JOBS

2. Owner estimates the proposed occupancy of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of 130 full time jobs ("Job Equivalents") at the Development in Plano by the Commencement Date (as defined below in Section 3). "Job Equivalent" shall mean one or more Company job positions located at the Development which individually or when combined total 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave).

IMPROVEMENTS

3. The Owner shall occupy not less than 90,000 gross square feet of commercial/industrial space on the Real Property by the Commencement Date. The "Commencement Date" means the date of occupancy of the Real Property by the Owner but in no event shall be later than January 1, 2011. The Owner shall make real property improvements to the Real Property with a taxable value of not less than Four Million Five Hundred Thousand Dollars (\$4,500,000.00) by January 1, 2011 subject to an Event of Force Majeure. The term "Event of Force Majeure" means any contingency or cause beyond the control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Owner's operations in the City.

DEFAULT

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

(a) Owner allows its real property taxes located on the Real Property or real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) Owner fails to occupy the Improvements on or before the Commencement Date, subject to Event of Force Majeure; or

(c) The value of real property improvements on the Real Property on January 1, 2011 is less than the minimum amounts set forth in paragraphs 3 above; or

(d) The assessed value of the Improvements falls below the minimum amounts set forth in paragraph 3 above as the result of the Owner filing a protest or as a result of the removal of Improvements from the Real Property; or

(e) Owner fails to employ at least 75% of the required Job Equivalents as provided in paragraph 2 above, subject to Event of Force Majeure; or

(f) Owner fails to provide annual certification as required in paragraph 8 below;
or

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

6. In the event that the Owner defaults under this Agreement then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraphs 5(a) or 5(g) above and after the Owner fails to cure same within the cure period, this Agreement shall terminate upon delivery of written notice by the City to Owner and all taxes due after termination of this Agreement shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

7. Upon the occurrence of an event of default under Paragraph 5(a) above and after Owner fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 5(g), this Agreement shall terminate upon delivery of written notice by the City to Owner with respect to the tax abatement attributable to the Real Property improvements and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

8. Beginning November 1, 2011 and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

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

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

(b) A transfer or assignment of this Agreement by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this

Agreement and Owner shall continue to conduct business on the subject premises, and shall remain the primary tenant or landlord.

Assignment under either (a) or (b) above may be made without consent of the City; however, Owner agrees to give written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

If (A) Owner desires to assign this Agreement and the City's consent is required to such assignment, and (B) the City does not consent to such assignment, then the Owner may terminate this Agreement by delivering written notice to the City, and upon such termination, the Owner and the City shall have no further rights, duties or obligations under this Agreement.

ABATEMENT PROVISIONS

10. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and real property improvement taxes belonging to Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2011, through December 31, 2020 (the "Term").

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Real Property improvements for each tax year from January 1, 2011, through December 31, 2020.

(c) The Owner shall have the right to protest and/or contest any assessment of the real property improvements, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those in paragraph 3 as a result of an Owner filed protest and/or contest or removal of improvements from the Real Property.

NOTICE

11. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

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

With copy to:

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

For Owner by notice to:

Air System Components, Inc.
Attn: Jon Muckley,
Vice President
605 Shiloh Road
Plano, Texas 75074

With a copy to:

Tomkins Law Department
Attn: Corporate Counsel, Air System Components, Inc.
1551 Wewatta Street, MC10-A5
Denver, CO 80202

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

MISCELLANEOUS PROVISIONS

12. The Owner further agrees that the City, its agents and employees, shall have reasonable right (with no less than 5 business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and real property improvements in order to insure that the location of the Personalty and real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. During the term of this Agreement City shall have the continuing right (with no less than 5 business days prior written notice to Owner) to inspect the Real Property and Personalty during regular business hours to insure that the Personalty and real property improvements are thereafter maintained in accordance with this Agreement.

13. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities

in connection therewith to third parties and Owner agrees to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Owner's default of its obligations hereunder.

14. The City represents and warrants that the Personalty or Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

15. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 22nd day of March, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

16. This Agreement was entered into by Owner pursuant to its duly authorized representative.

17. This instrument shall constitute a valid and binding agreement between the City and Owner when executed in accordance herewith.

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

This Agreement is performable in Collin County, Texas. Signed this ____ day of _____, 2010.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

Air System Components, Inc., a Delaware corporation

By: _____

Name: _____

Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 123

Real Property
Metes and Bounds

FIELD NOTES
BUILDINGS 9 AND 10

LOT 5, BLOCK 1 PLANO TECH CENTER II

BEING a tract of land situated in the J.B. Roundtree Survey, Abstract No. 759 and J.T. McCullough Survey, Abstract No. 633, and being all of Lot 5, Block 1 of Plano Tech Center II, an addition to the City of Plano as recorded in Cabinet N, Page 862 of the Plat Records of Collin county, Texas (P.R.C.C.T.), same being part of a tract of land described in Special Warranty deed to Argent Plano Realty, L.P., dated May 24, 2000, as recorded in Volume 4678, Page 2236, Deed Records of Collin County, Texas, (D.R.C.C.T.), and being more particularly described as follows:

BEGINNING at the northeast corner of a tract of land described by deed to Patrick Hillary as recorded in Volume 2206, Page 185, D.R.C.C.T., said point being on the west right-of-way line of Shiloh Road (variable width);

THENCE South 87 degrees 10 minutes 35 seconds West, departing said west right-of-way line and along the north line of said Hillary Tract, a distance of 570.20 feet to a ½ inch found iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC", (hereinafter referred to as "with cap") for corner, said corner being the northwest corner of said Hillary Tract;

THENCE North 01 degree 26 minutes 31 seconds West, a distance of 16.55 feet to a point for corner;

THENCE South 89 degrees 40 minutes 24 seconds West, a distance of 312.80 feet to a 1/2 inch found iron rod with cap for corner;

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THENCE South 00 degrees 11 minutes 54 seconds West, along said west line, a distance of 646.72 feet to a ½ inch found iron rod with cap for corner, said corner being the southwest corner of said Tract 2:

THENCE North 87 degrees 11 minutes 54 seconds East, along the south line of said Tract 2, a distance of 76.77 feet to a ½ inch found iron rod with cap for corner, said corner being the southeast corner of said Tract 2:

THENCE North 00 degrees 35 minutes 54 seconds East, along the east line of said Tract 2, a distance of 1194.03 feet to a ½ inch found iron rod with cap for corner on the west right-of-way line of said Shiloh Road, said corner being on a non-tangent circular curve to the left, having a radius of 1255.00 feet and whose chord bears South 09 degrees 55 minutes 53 seconds East, a distance of 42.48 feet;

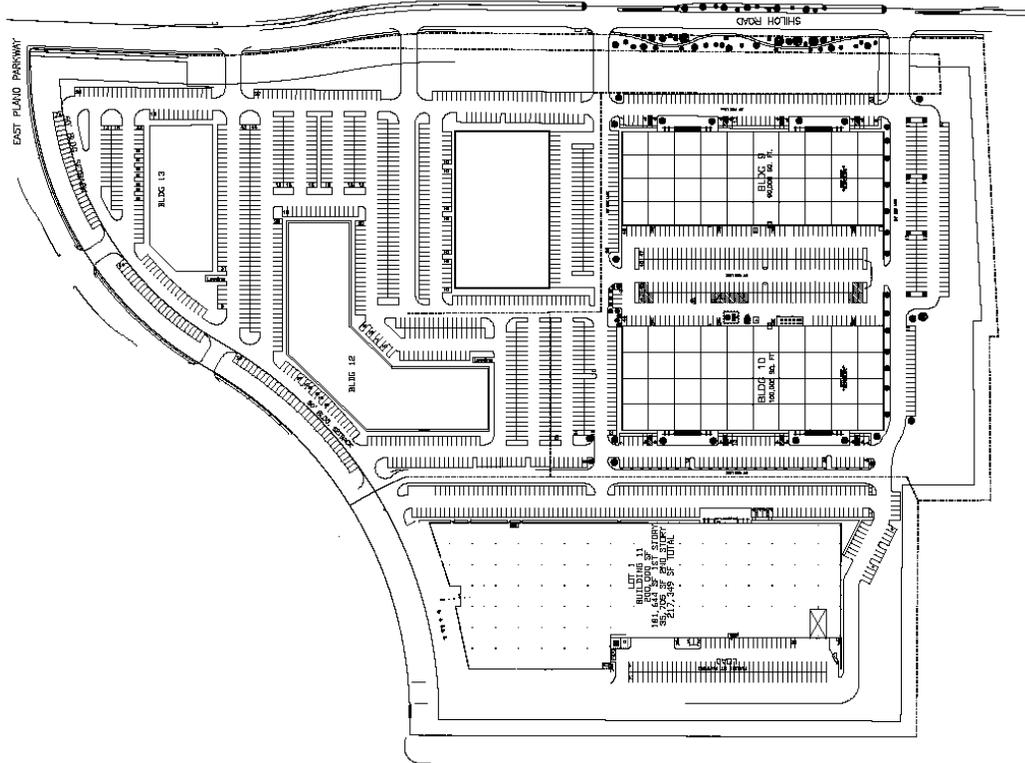
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THENCE South 00 degrees 35 minutes 54 seconds West, continuing along said west right-of-way line, a distance of 858.99 feet to a found “X” cut in concrete for corner;

THENCE South 00 degrees 39 minutes 42 seconds West, continuing along said west right-of-way line, a distance of 149.97 feet to the POINT OF BEGINNING AND CONTAINING 625,615 square feet or 14.36 acres of land, more or less.

EXHIBIT "B"
SITE PLAN
REINVESTMENT ZONE NO. 123



**EXHIBIT “C”
CERTIFICATION FORM
REINVESTMENT ZONE NO. 123**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 123
Tax Abatement Agreement (the “Agreement”) between Air System Components, Inc.,
 (“Company”) and the City of Plano, dated as of _____

This letter certifies that Company is in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2011, through December 31, 2020. This form is due on November 1 of each year the Agreement is in force.

Air System Components, Inc.,
a Delaware Corporation

By: _____
Name:
Title:



**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:		10-25-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an economic development incentive agreement by and between the City of Plano, Texas, and Air System Components Inc., a Delaware corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,578,710	0	12,578,710
Encumbered/Expended Amount	0	-4,463,225	-4,611,650	-9,074,875
This Item	0	-40,000		-40,000
BALANCE	0	8,075,485	-4,611,650	3,463,835
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Air System Components, Inc. for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Air System Components, Inc. agrees to occupy not less than 90,000 sq. ft of commercial/industrial space and maintain or create 100 jobs on or before the commencement date of the agreement.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an economic development incentive agreement by and between the City of Plano, Texas, and Air System Components Inc., a Delaware corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Air System Components Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

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

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City") and Air System Components, Inc., a Delaware Corporation ("Company"), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is a supplier of commercial and residential heating, air conditioning, and ventilation system components; and

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

WHEREAS, the Company has plans to add up to Four Million Five Hundred Thousand Dollars (\$4,500,000.00) of taxable Real Property improvements to its new location in Plano and to add over Nine Hundred Thousand Dollars (\$900,000.00) of taxable Business Personal Property in Plano; and

WHEREAS, the Company, as consideration for a grant, will occupy not less than a total of 90,000 square feet of commercial space located at 605 Shiloh Road, Plano, Texas 75074 (the "Property"); and create, transfer or maintain a 100 Job Equivalents on the Property for the remainder of the Term of this Agreement; and

WHEREAS, occupancy of 90,000 square feet of commercial space on the Property and the creation of 100 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

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

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

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

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

Article 1 Definitions

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

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

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

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

"Job Equivalent" shall mean one or more executive, professional, managerial or technical level Company job positions, excluding third party contractors, located at the Property, individually or when combined, total 2080 hours (inclusive of holidays, vacation and sick leave) annually. The term "Job Equivalent" shall include only exempt employees as defined by the Fair Labor Standards Act.

Article 2 Term

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

Article 3 Obligations of Company

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

(a) Occupy not less than 90,000 square feet of commercial/industrial space on the Property on the Commencement Date;

(b) Create or transfer 100 Job Equivalents to the Property on the Commencement Date;

(c) Continue to occupy the 90,000 square feet of commercial/industrial space and to employ 100 Job Equivalents on the Property for the full Term of this agreement; and

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

Article 4 **Economic Development Grant**

4.01 **Grant.** The City agrees to provide the Company a cash grant of Forty Thousand Dollars (\$40,000.00) for the Company's relocation expenses, for the occupancy of 90,000 square feet of commercial space on the Property, and for the creation of 100 Job Equivalent positions on the Property in accordance with Article 3 (b) above. The Company agrees to maintain the transferred or created Job Equivalents throughout the Term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, the Company shall be entitled to a payment of Forty Thousand Dollars (\$40,000.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City, using the Initial Certification form attached hereto as Exhibit "A", that the Company has met its obligations as set forth in Article 3 (a) and (b) above (such payment referred to as the "Initial Grant Payment"). **IN ORDER TO RECEIVE PAYMENT UNDER THIS AGREEMENT, COMPANY'S INITIAL CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE 3 (A) AND (B) ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE FEBRUARY 1, 2011.**

4.03 **Refunds.**

(a) In the event the Company allows Job Equivalents at the Property to fall below 100 Job Equivalents for more than one hundred eighty (180) consecutive days during the Term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Four Hundred Dollars (\$400.00) for each lost Job Equivalent. For purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2011, and by January 31st of each year thereafter during the Term of this Agreement the actual number of Job Equivalents at the Property for the preceding calendar year, using the Certification form attached as Exhibit "B". All refunds under this Agreement shall be due within thirty (30) days of written demand by the City for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01 but without the addition

of penalty. Repayment of grant funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Company of the conviction.

Article 5 Termination

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

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

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

Article 6 Miscellaneous

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

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

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

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

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

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

If intended for the Company: Air System Components, Inc.
Attn: Jon Muckley,
Vice President
605 Shiloh Road
Plano, Texas 75074

With a copy to: Tomkins Law Department
Attn: Corporate Counsel, Air System Components
1551 Wewatta Street, MC10-A5
Denver, CO 80202

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

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

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

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the

intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

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

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

6.12 **Time is of the Essence.** Time is of the essence in this Agreement.

EXECUTED on this ____ day of _____, 20__.

ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

AIR SYSTEM COMPONENTS, INC.,
a Delaware Corporation

By: _____
Jon Muckley
Vice President

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

[DATE]

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

RE: Initial Certificate of Compliance by Air System Components, Inc., ("Company")
Economic Development Incentive Agreement between Company and the City of Plano
dated as of _____ (the "Agreement")

I hereby certify that Company has occupied not less than 90,000 square feet of commercial/industrial space located at 605 Shiloh Road, Plano, Texas (the "Property") and has created, transferred or maintained 100 new Job Equivalent (as defined in the Agreement) positions to the Property. Company is in compliance with subsections (a) and (b) of Article 3 of the Agreement and is entitled to receive payment under the terms of the Agreement.

Air System Components, Inc.,
a Delaware Corporation

By: _____
Name:
Title:

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

[DATE]

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

RE: Annual Certificate of Compliance by Air System Components, Inc., ("Company")
Economic Development Incentive Agreement between Company and the City of Plano
dated as of _____ (the "Agreement")

I hereby certify that Company is in compliance with each applicable term as set forth in Article 3 of the Agreement. The Term of the Agreement is the Commencement Date through October 31, 2020. The number of new Job Equivalents, calculated as set forth in the Agreement and maintained pursuant to the Agreement since its inception, has not fallen below 100 for more than one hundred eighty (180) consecutive days and is _____ as of the date of this Certificate of Compliance. If the number herein reported is below the number required to be maintained pursuant to the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on April 1st of each year the Agreement is in force.

Air System Components, Inc.,
a Delaware Corporation

By: _____
Name: _____
Title: _____

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

**AGENDA ITEM NO. 5A - PUBLIC HEARING
ZONING CASE 2010-15
APPLICANT: TURNPIKE COMMONS PLANO, LLC**

Request to amend Planned Development-207-Retail on 119.9± acres located at the northwest corner of Shiloh Road and Renner Road in order to modify the development standards and definitions, and to limit uses within certain areas of the district.

APPROVED: 8-0 **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 follows: (Additions are indicated in underlined text and deletions are shown as strike-through text.)

Restrictions:

The permitted uses and standards shall be in accordance with the Retail (R) zoning district unless otherwise specified herein.

General Standards

1. The zoning exhibit shall be adopted as part of the ordinance.
2. Maximum Lot Coverage: 50% increased to 70% if structured parking is provided
3. Maximum Floor to Area Ratio: 1.75:1
4. Maximum Height: Five story (75 feet) for buildings with multifamily residential use; 20 story for all other buildings
5. Minimum Side Yard: None, except as required by building or fire codes

6. Minimum Rear Yard: None, except as required by building or fire codes

7. Parking Regulations:

a. The minimum required parking shall be as follows:

- Multifamily - One Bedroom or Less: One parking space per unit
Two Bedrooms: One and one-half parking spaces per unit
Three Bedrooms or More: Two spaces per unit
- Freestanding Restaurant - One space per 100 square feet of floor area
- Hotel: See Section 3.1100 (Off-Street Parking and Loading)
- Theater: See Section 3.1100 (Off-Street Parking and Loading)
- All Other Nonresidential Uses: One space per 300 square feet of floor area.

b. On-street parking may count toward required parking and shall be permitted on both sides of interior public and quasi-public streets and fire lanes, except where prohibited for vehicular, fire, or pedestrian safety. On-street parking may be parallel, angle, or 90° to the street. Where on-street parking is provided, islands shall be placed as a break to delineate travel lanes. An island break of a minimum six feet in width shall be placed no less than every 150 feet of continuous on-street parking.

c. No off-street loading spaces are required. Off-street loading for the loading and unloading of merchandise and goods must not occur in public streets or fire lanes, but may occur in parking areas or private drive aisles. Designated off-street loading spaces for nonresidential uses, if provided, may not be located adjacent to or across a street or alley from buildings containing residential uses unless the loading dock is screened by solid metal gates, masonry screening walls, overhead doors, buildings, or any combination of these.

d. Except for freestanding restaurants, no parking is required for outdoor patio and sidewalk dining areas or other public seating areas and open space.

Design Standards

8. 1. Street Pattern: The maximum block length shall be 500 feet. Public streets, quasi-public streets, and/or fire lanes may be used to obtain this required block length.

9. 2. Streetscape:

a. Along Wynwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, sidewalks with a minimum width of six feet shall be placed no more than six feet from back of curb. Street trees shall be provided at a rate of one tree per 50 linear feet of street.

- b. Outdoor patio and sidewalk dining, as well as other public seating areas, are permitted within public rights-of-way provided accessible pathways are maintained.

3. Quasi Public Streets definition: Quasi-public streets are privately owned and maintained drives open to public access. A fire lane shall be located within all quasi-public streets. Lots may derive required street frontage from quasi-public streets and may be platted to the centerline of quasi-public streets.

40- 4. Building Design:

- a. Nonresidential, ~~multi-use~~ buildings, except for parking garages, shall have a minimum of 40% of the ground floor comprised of window area. Buildings fronting S. H. 190 frontage road, Renner Rd., and Shiloh Rd. are exempt from this requirement. For the purposes of this standard, ground floor is defined as that portion of a building from the street-level finish floor elevation and extending 12.5 feet above the street-level finish floor elevation.
- b. Canopies, balconies, stoops, bay windows, awnings, and other building projections may encroach up to five feet into the public right-of-way provided accessible pathways are maintained.

44- 5. Landscaping and Open Space:

- a. Except as stated in standard 44- 5.b. below, landscaping shall be provided per Section 3.1200 (Landscaping Requirements) and Section 4.700 (190 Tollway/Plano Parkway Overlay District) except as follows:
 - i. No landscape edge is required along Wynwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, except for lots located within Tract 1.
 - ii. Landscape edge width may be reduced to 10 feet along Shiloh Rd., north of Wynview Dr. and along Renner Rd. between Wyngate Blvd. and Shiloh Rd.
- b. A minimum five-foot landscape edge shall be provided between all surface parking lots and public and quasi-public streets, except for lots located within Tract 1. Street trees shall be provided at a rate of one tree per 50 linear feet of street.
- c. A minimum of two acres of open space shall be provided and shall be open to the public at all times. Open space shall have a minimum dimension of 80 feet.

12. 6. Screening:

- a. The rear and service sides of nonresidential buildings oriented toward residential use or open space shall be screened as provided in Section 3.1000 (Screening, Fence, and Wall Regulations).
- b. Refuse and recycling containers shall not be located within 30 feet of a public or quasi-public street, unless internal to the building, and shall be screened from view from streets and open space in accordance with Section 3.1000 (Screening, Fence, and Wall Regulations).

13. 7. Fencing: For residential use only, fencing is allowed in the front yard setback up to eight feet in height. Fencing must be a minimum of 50% open.

14. 8. Signage:

- a. For buildings fronting S.H. 190 frontage road, Renner Rd., and Shiloh Rd., signage must comply with Section 3.1600 (Sign Regulations) and Section 4.700 (190 Tollway/Plano Parkway Overlay District).
- b. Signage for all other buildings must comply Area A standards within Subsection 3.1605 (Downtown Sign District). Additionally, freestanding, single tenant buildings may have monument signs per Section 4.700 (190 Tollway/Plano Parkway Overlay District).

Multifamily Residential Development Standards

15. 1. Maximum Number of Dwelling Units: 1,200 units

16. 2. Minimum Density: 35 dwelling units per acre

17. 3. Multifamily development shall be exempt from the supplemental regulations of Subsection 3.104 (Multifamily Residence).

Standards Specific to Tracts 1 and 5-10

1. Tract 1 shall be developed in accordance with Retail (R) zoning district area, yard and bulk requirements.

18. 2. Uses:

- a. Regional theater use is permitted. ~~Multifamily use is an additional permitted use.~~
- b. Car wash use is prohibited.

19. ~~Building Design:~~

~~a. Buildings fronting to Renner Road or Shiloh Road:~~

- ~~i. The minimum front yard setback shall be 10 feet.~~
- ~~ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 85 feet if parking or drive aisles are located between the building face and the street.~~
- ~~b. Buildings fronting to Wynwood Drive, Wynhurst Drive, Wyngate Boulevard, or Wynview Drive:
 - ~~i. There is no minimum front yard setback.~~
 - ~~ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.~~~~
- ~~c. Buildings fronting required named quasi-public streets:
 - ~~i. Front yard setbacks are measured from the street easement line.~~
 - ~~ii. There is no minimum front yard setback.~~
 - ~~iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.~~~~

Standards Specific to Tract 2

20. 1. Uses:

- a. Regional theater use is permitted.
- b. Car wash use is prohibited.

24. 2. Building Design:

- a. Buildings fronting to Renner Rd. ~~or Shiloh Rd.:~~
 - i. Minimum front yard setback: 30 feet
 - ii. Maximum front yard setback: None
- b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:
 - i. Minimum front yard setback: None

- ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

Standards Specific to Tracts 3 and 4

~~22.~~ 1. Uses:

- a. Regional theater use ~~and multifamily use are~~ is additional permitted uses.
- b. Car wash use is prohibited.

~~23. Street Pattern: Tract 4 shall be bisected by a named quasi-public street and shall comply with the streetscape requirements in standard 9 above.~~

~~24.~~ 2. Building Design:

- a. Buildings fronting to Wynwood Dr., or Wynhurst Dr., ~~Wyngate Blvd., or Wynview Dr.:~~
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if parking or drive aisles are located between the building face and the street.
- b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Maximum Front Yard Setback: 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Standards Specific to Tract 4

1. Uses:

- a. Multifamily use is permitted.
- b. Car wash use is prohibited.

- c. Office, retail, service and restaurant uses may only occupy space within the first floor of multi-story residential buildings. Free standing office, retail, service and restaurant buildings are prohibited.
- 2. Street Pattern: Tract 4 shall be bisected by a named quasi-public street and shall comply with the streetscape requirements as stated in 'Design Standards 2. Streetscape' above.
- 3. Building Design:
 - a. Buildings fronting to Wynwood Dr., Wynhurst Dr., Wyngate Blvd., or Wynview Dr.:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if parking or drive aisles are located between the building face and the street.
 - b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. The maximum front yard setback shall be 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Standards Specific to Tracts 5 & 7

- 1. Uses:
 - a. Multifamily use is permitted.
 - b. Car wash use is prohibited.
 - c. Retail, service and restaurant uses are prohibited.
- 2. Building Design:
 - a. Buildings fronting to Wynwood Dr.:
 - i. Minimum Front Yard Setback: None

- ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

b. Buildings fronting required named quasi-public streets:

- i. Front yard setbacks are measured from the street easement line.
- ii. Minimum Front Yard Setback: None
- iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

Standards Specific to Tracts 6, 8, 9 & 10

1. Uses: Car wash use is prohibited.

2. Building Design:

a. Buildings fronting to Renner Rd. or Shiloh Rd.:

- i. The minimum front yard setback shall be 10 feet.
- ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 85 feet if parking or drive aisles are located between the building face and the street.

b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:

- i. Minimum Front Yard Setback: None
- ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

c. Buildings fronting required named quasi-public streets:

- i. Front yard setbacks are measured from the street easement line.
- ii. Minimum Front Yard Setback: None
- iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

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

PUBLIC HEARING - ORDINANCE

EH/dw

xc: Charles Nies, Turnpike Commons of Plano
David Hicks, David Hicks Company

CITY OF PLANO
PLANNING & ZONING COMMISSION

October 4, 2010

Agenda Item No. 5A

Public Hearing: Zoning Case 2010-15

Applicant: Turnpike Commons Plano, LLC

DESCRIPTION:

Request to amend Planned Development-207-Retail on 119.9± acres located at the northwest corner of Shiloh Road and Renner Road in order to modify the development standards and definitions, and to limit uses within certain areas of the district.

REMARKS:

This item was tabled at the September 20, 2010 Planning & Zoning Commission meeting. It needs to be removed from the table. At the same meeting, the Commission also approved a waiver to the two year waiting period to allow for consideration of this proposed zoning request.

The applicant is requesting to amend Planned Development-207-Retail (PD-207-R) located at the northwest corner of Shiloh Road and Renner Road in order to modify the development standards and definitions, and to limit uses within certain areas of the district. The R district is primarily intended to provide areas for neighborhood, local, and regional shopping facilities for the retail sales of goods and services. A PD district provides the ability to amend use, height, setback, and other development standards at the time of zoning to promote innovative design and better development controls appropriate to both off and onsite conditions.

A revised concept plan, Turnpike Commons Addition, Block 1, Lot 3, accompanies this request as agenda item 5B.

Purpose of Request

Recently, staff was contacted by the applicant to examine making amendments to PD-207-R in order to allow for a convenience store with gas pumps development to occur at the northwest corner of Renner Road and Shiloh Road. The current stipulations of PD-207-R require buildings to be constructed closer to the right-of-way in order to create a more urban style of development. The language in the existing PD does not allow a gas station canopy to meet this requirement. Additionally, the applicant is interested in relocating the multifamily residential uses shown on the approved concept plan at the

northwest corner of Shiloh Road and Renner Road to the interior of the overall PD development.

Surrounding Land Use and Zoning

The area of the request is currently undeveloped with the exception of the existing buildings in the northeast corner of the PD district. The property to the north is developed as office/warehouse buildings and is zoned Research/Technology Center (RT). To the east across Shiloh Road, are medical office and skilled nursing developments, and single-family residences all within the city of Richardson. To the south across State Highway 190 is a medical office and retail development also within the City of Richardson. To the west of the property is a hotel development zoned RT.

ISSUES:

Tract 1

Tract 1 is bounded by Shiloh Road on the east, Renner Road on the south, Wyngate Boulevard on the west, and Wynview Drive on the north. After further review of this tract, its frontage situation, adjacent heavy traffic flows and configuration with the existing street infrastructure, and the applicant's desire to have retail uses near the intersection of Renner Road and Shiloh Road instead of multifamily uses, staff is recommending that Tract 1 be able to develop at the Retail (R) district base standards. This would enable the 15.7± acre tract to develop as a traditional retail development similar to existing retail developments which are located at many major street intersections throughout the city of Plano. If this corner is allowed to develop in accordance with the R standards, buildings will not be required to be designed in an urban form with buildings pulled up to the street, but instead buildings must be set back at least 50 feet from the property line. The applicant wants to have the hard corner at the intersection of Renner Road and Shiloh Road develop as a convenience store with gas pumps; staff believes it is appropriate to revert back to the R district base standards to better accommodate retail, service, grocery, and other uses which will serve the rest of the proposed development and the surrounding area.

Currently, the PD requires a ten foot landscape edge adjacent to Renner Road and Shiloh Road, and no landscape edge adjacent to Wynview Drive or Wyngate Boulevard. However, since this area is being proposed for development at the R district base standards, staff believes it is appropriate for the development in Tract 1 to provide landscape edges which comply with the 190 Tollway/Plano Parkway Overlay District (which covers the entire PD), and Section 3.1200 (Landscaping Requirements) of the Zoning Ordinance. This would require a 30-foot landscape edge adjacent to Renner Road and Shiloh Road and a ten-foot landscape edge adjacent to Wynview Drive and Wyngate Boulevard.

The original goal for creating the PD in 2008 was to attract more retail and service uses to this intersection to serve businesses within the RT district. Staff believes that allowing retail development to occur in the format desired by most national retailers will enhance the success of the development and better achieve this goal.

Allocation of Uses

The applicant is proposing to allocate specific uses to certain tracts, specifically the multifamily residential and retail uses. The applicant believes that multifamily residential development is better suited to the interior of the development where there is less noise and traffic thus creating a better livable environment. Currently, multifamily residential is allowed everywhere in the PD. The applicant is proposing to limit the multifamily residential uses to Tracts 4, 5 and 7. Staff concurs with limiting the multifamily uses to these tracts in order to promote a better livable neighborhood area.

Since retail and restaurant development typically occurs in high visibility and high traffic areas, the applicant is proposing to limit the allowance of retail, restaurant, and service uses within Tract 4 to be accessory uses to the multifamily uses. Additionally, staff believes that office uses should be similarly limited as well. The proposed changes to the PD will allow retail, restaurant, service, and office uses to be located on the ground floor of multistory residential buildings. By limiting these uses, this further promotes a better livable neighborhood area.

The applicant is proposing that the regional theater use be allowed only in Tracts 1, 2 and 3. Tracts 2 and 3 have significant frontage on highway frontage roads where theaters typically prefer to locate. Although Tract 3 is an interior lot, it is possible that portions of Tracts 2 and 3 could be consolidated thus resulting in a lot that has high visibility from State Highway 190 and would be a suitable potential location for a theater.

Quasi-Public Streets

During the review of PD-207-R staff determined that the term quasi-public streets was used, but never defined within the PD stipulations. The definition below is generally consistent with language used in other PD's within the city:

“Quasi-public streets are privately owned and maintained drives open to public access. A fire lane shall be located within all quasi-public streets. Lots may derive required street frontage from quasi-public streets and may be platted to the centerline of quasi-public streets.”

PD Organization

Currently, the PD stipulations are written to combine tracts with similar stipulations into one section. However, in order to simplify the changes being proposed with this zoning case, the PD stipulations needed to be better organized to reflect the permitted uses and applicable development standards for the individual tracts, and for the ease of the use of the PD. Therefore, staff has reorganized the PD stipulations so that the tracts have now been separated into individual subheadings.

RECOMMENDATION:

Recommended for approval as follows: (Additions are indicated in underlined text and deletions are shown as strike-through text.)

Restrictions:

The permitted uses and standards shall be in accordance with the Retail (R) zoning district unless otherwise specified herein.

General Standards

1. The zoning exhibit shall be adopted as part of the ordinance.
2. Maximum Lot Coverage: 50% increased to 70% if structured parking is provided
3. Maximum Floor to Area Ratio: 1.75:1
4. Maximum Height: Five story (75 feet) for buildings with multifamily residential use; 20 story for all other buildings
5. Minimum Side Yard: None, except as required by building or fire codes
6. Minimum Rear Yard: None, except as required by building or fire codes
7. Parking Regulations:
 - a. The minimum required parking shall be as follows:
 - Multifamily - One Bedroom or Less: One parking space per unit
Two Bedrooms: One and one-half parking spaces per unit
Three Bedrooms or More: Two spaces per unit
 - Freestanding Restaurant - One space per 100 square feet of floor area
 - Hotel: See Section 3.1100 (Off-Street Parking and Loading)
 - Theater: See Section 3.1100 (Off-Street Parking and Loading)
 - All Other Nonresidential Uses: One space per 300 square feet of floor area.
 - b. On-street parking may count toward required parking and shall be permitted on both sides of interior public and quasi-public streets and fire lanes, except where prohibited for vehicular, fire, or pedestrian safety. On-street parking may be parallel, angle, or 90° to the street. Where on-street parking is provided, islands shall be placed as a break to delineate travel lanes. An island break of a minimum six feet in width shall be placed no less than every 150 feet of continuous on-street parking.
 - c. No off-street loading spaces are required. Off-street loading for the loading and unloading of merchandise and goods must not occur in public streets or fire lanes, but may occur in parking areas or private drive aisles. Designated off-street loading spaces for nonresidential uses, if provided, may not be located adjacent to or across a street or alley from buildings containing residential uses unless the loading dock is screened by solid metal gates, masonry screening walls, overhead doors, buildings, or any combination of these.

- d. Except for freestanding restaurants, no parking is required for outdoor patio and sidewalk dining areas or other public seating areas and open space.

Design Standards

~~8.~~ 1. Street Pattern: The maximum block length shall be 500 feet. Public streets, quasi-public streets, and/or fire lanes may be used to obtain this required block length.

~~9.~~ 2. Streetscape:

- a. Along Wynwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, sidewalks with a minimum width of six feet shall be placed no more than six feet from back of curb. Street trees shall be provided at a rate of one tree per 50 linear feet of street.
- b. Outdoor patio and sidewalk dining, as well as other public seating areas, are permitted within public rights-of-way provided accessible pathways are maintained.

3. Quasi Public Streets definition: Quasi-public streets are privately owned and maintained drives open to public access. A fire lane shall be located within all quasi-public streets. Lots may derive required street frontage from quasi-public streets and may be platted to the centerline of quasi-public streets.

~~10.~~ 4. Building Design:

- a. Nonresidential, ~~multi-use~~ buildings, except for parking garages, shall have a minimum of 40% of the ground floor comprised of window area. Buildings fronting S. H. 190 frontage road, Renner Rd., and Shiloh Rd. are exempt from this requirement. For the purposes of this standard, ground floor is defined as that portion of a building from the street-level finish floor elevation and extending 12.5 feet above the street-level finish floor elevation.
- b. Canopies, balconies, stoops, bay windows, awnings, and other building projections may encroach up to five feet into the public right-of-way provided accessible pathways are maintained.

~~11.~~ 5. Landscaping and Open Space:

- a. Except as stated in standard ~~11.~~ 5.b. below, landscaping shall be provided per Section 3.1200 (Landscaping Requirements) and Section 4.700 (190 Tollway/Plano Parkway Overlay District) except as follows:
 - i. No landscape edge is required along Wynwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, except for lots located within Tract 1.

- ii. Landscape edge width may be reduced to 10 feet along Shiloh Rd., north of Wynview Dr. and along Renner Rd. between Wyngate Blvd. and Shiloh Rd.
- b. A minimum five-foot landscape edge shall be provided between all surface parking lots and public and quasi-public streets, except for lots located within Tract 1. Street trees shall be provided at a rate of one tree per 50 linear feet of street.
- c. A minimum of two acres of open space shall be provided and shall be open to the public at all times. Open space shall have a minimum dimension of 80 feet.

~~12.~~ 6. Screening:

- a. The rear and service sides of nonresidential buildings oriented toward residential use or open space shall be screened as provided in Section 3.1000 (Screening, Fence, and Wall Regulations).
- b. Refuse and recycling containers shall not be located within 30 feet of a public or quasi-public street, unless internal to the building, and shall be screened from view from streets and open space in accordance with Section 3.1000 (Screening, Fence, and Wall Regulations).

~~13.~~ 7. Fencing: For residential use only, fencing is allowed in the front yard setback up to eight feet in height. Fencing must be a minimum of 50% open.

~~14.~~ 8. Signage:

- a. For buildings fronting S.H. 190 frontage road, Renner Rd., and Shiloh Rd., signage must comply with Section 3.1600 (Sign Regulations) and Section 4.700 (190 Tollway/Plano Parkway Overlay District).
- b. Signage for all other buildings must comply Area A standards within Subsection 3.1605 (Downtown Sign District). Additionally, freestanding, single tenant buildings may have monument signs per Section 4.700 (190 Tollway/Plano Parkway Overlay District).

Multifamily Residential Development Standards

~~15.~~ 1. Maximum Number of Dwelling Units: 1,200 units

~~16.~~ 2. Minimum Density: 35 dwelling units per acre

~~17.~~ 3. Multifamily development shall be exempt from the supplemental regulations of Subsection 3.104 (Multifamily Residence).

Standards Specific to Tracts 1 and 5-10

1. Tract 1 shall be developed in accordance with Retail (R) zoning district area, yard and bulk requirements.

~~18.~~ 2. Uses:

- a. Regional theater use is permitted. ~~Multifamily use is an additional permitted use.~~
- b. Car wash use is prohibited.

~~19.~~ Building Design:

~~a. Buildings fronting to Renner Road or Shiloh Road:~~

- ~~i. The minimum front yard setback shall be 10 feet.~~
- ~~ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 85 feet if parking or drive aisles are located between the building face and the street.~~

~~b. Buildings fronting to Wynwood Drive, Wynhurst Drive, Wyngate Boulevard, or Wynview Drive:~~

- ~~i. There is no minimum front yard setback.~~
- ~~ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.~~

~~c. Buildings fronting required named quasi-public streets:~~

- ~~i. Front yard setbacks are measured from the street easement line.~~
- ~~ii. There is no minimum front yard setback.~~
- ~~iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.~~

Standards Specific to Tract 2

~~20.~~ 1. Uses:

- a. Regional theater use is permitted.
- b. Car wash use is prohibited.

~~24.~~ 2. Building Design:

- a. Buildings fronting to Renner Rd. ~~or Shiloh Rd.:~~
 - i. Minimum front yard setback: 30 feet
 - ii. Maximum front yard setback: None
- b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:
 - i. Minimum front yard setback: None
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

Standards Specific to Tracts 3 and 4

~~22.~~ 1. Uses:

- a. Regional theater use ~~and multifamily use are~~ is additional permitted uses.
- b. Car wash use is prohibited.

~~23. Street Pattern: Tract 4 shall be bisected by a named quasi-public street and shall comply with the streetscape requirements in standard 9 above.~~

~~24.~~ 2. Building Design:

- a. Buildings fronting to Wynwood Dr., or Wynhurst Dr., ~~Wyngate Blvd., or Wynview Dr.:~~
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if

parking or drive aisles are located between the building face and the street.

- b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Maximum Front Yard Setback: 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Standards Specific to Tract 4

1. Uses:

- a. Multifamily use is permitted.
- b. Car wash use is prohibited.
- c. Office, retail, service and restaurant uses may only occupy space within the first floor of multi-story residential buildings. Free standing office, retail, service and restaurant buildings are prohibited.

2. Street Pattern: Tract 4 shall be bisected by a named quasi-public street and shall comply with the streetscape requirements as stated in 'Design Standards 2. Streetscape' above.

3. Building Design:

- a. Buildings fronting to Wynwood Dr., Wynhurst Dr., Wyngate Blvd., or Wynview Dr.:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if parking or drive aisles are located between the building face and the street.
- b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.

- ii. Minimum Front Yard Setback: None
- iii. The maximum front yard setback shall be 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Standards Specific to Tracts 5 & 7

1. Uses:

- a. Multifamily use is permitted.
- b. Car wash use is prohibited.
- c. Retail, service and restaurant uses are prohibited.

2. Building Design:

a. Buildings fronting to Wynwood Dr.:

- i. Minimum Front Yard Setback: None
- ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

b. Buildings fronting required named quasi-public streets:

- i. Front yard setbacks are measured from the street easement line.
- ii. Minimum Front Yard Setback: None
- iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

Standards Specific to Tracts 6, 8, 9 & 10

1. Uses: Car wash use is prohibited.

2. Building Design:

a. Buildings fronting to Renner Rd. or Shiloh Rd.:

- i. The minimum front yard setback shall be 10 feet.

ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 85 feet if parking or drive aisles are located between the building face and the street.

b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:

i. Minimum Front Yard Setback: None

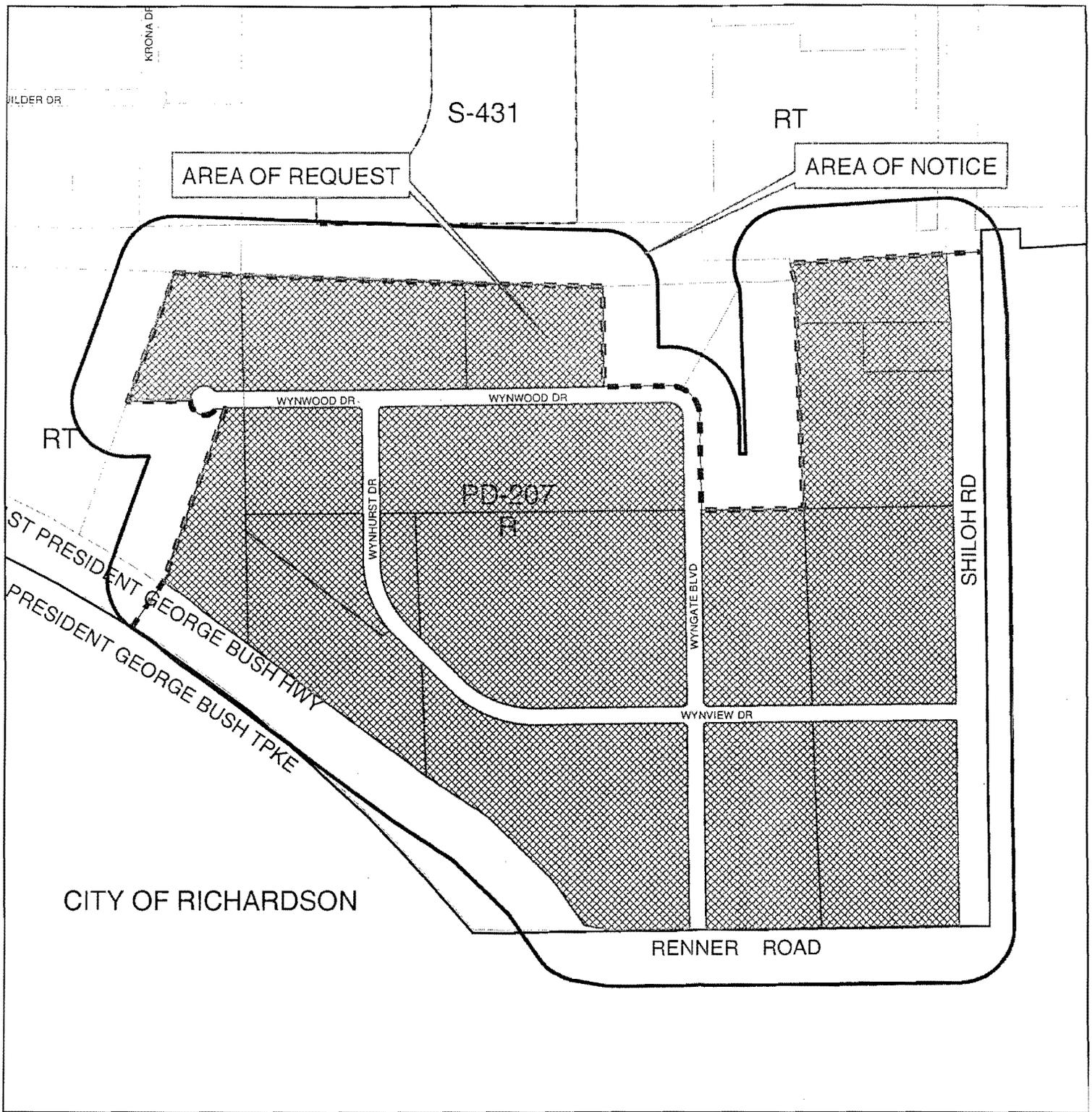
ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

c. Buildings fronting required named quasi-public streets:

i. Front yard setbacks are measured from the street easement line.

ii. Minimum Front Yard Setback: None

iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

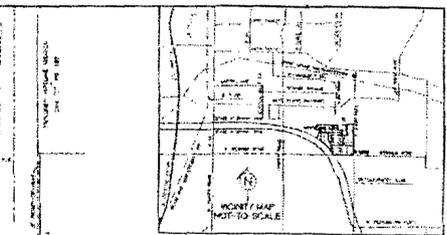
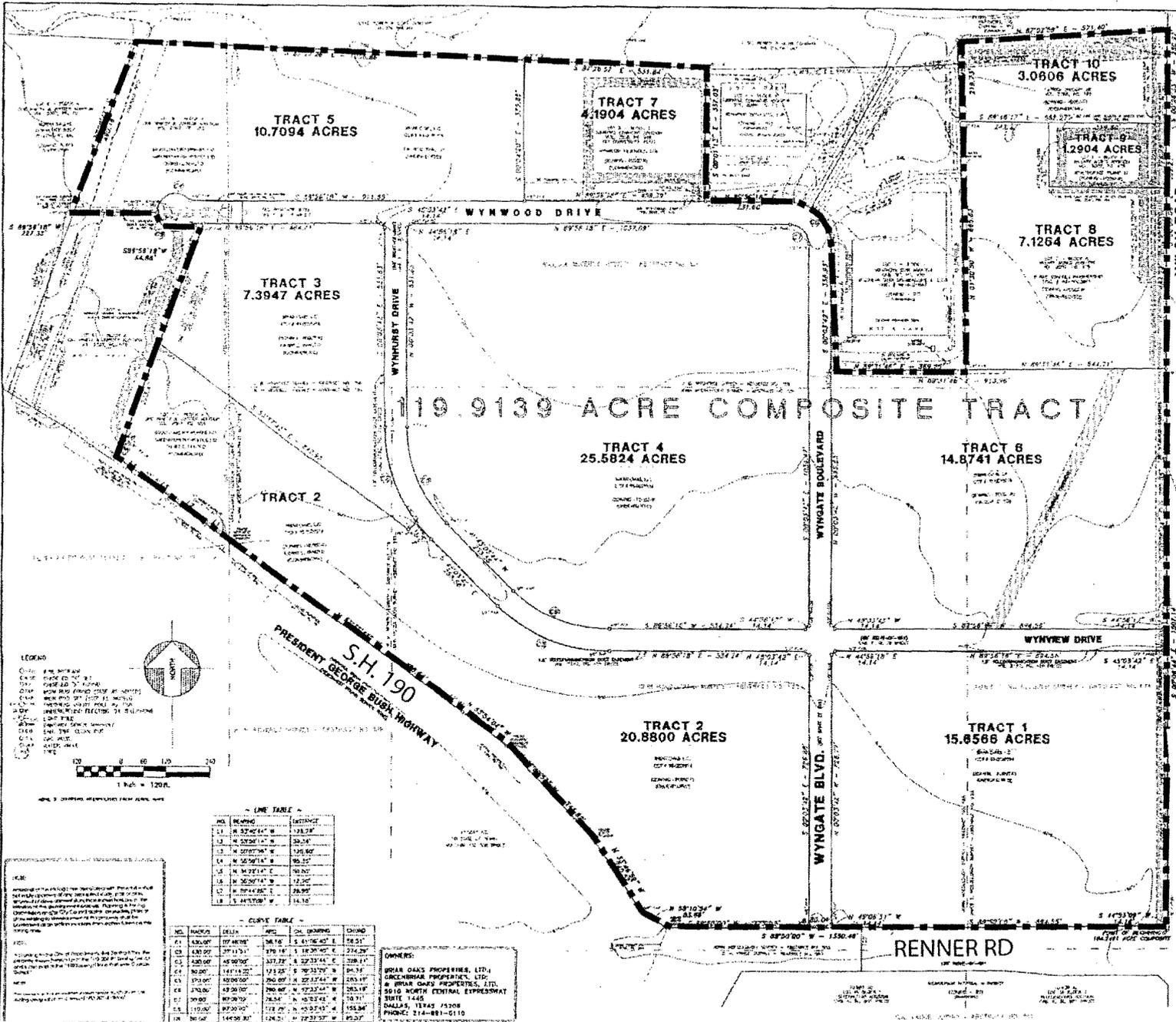


Zoning Case #: 2010-15

Existing Zoning: PLANNED DEVELOPMENT-207-RETAIL/
190 TOLLWAY/PLANO PARKWAY OVERLAY DISTRICT



○ 200' Notification Buffer



LEGAL DESCRIPTION

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT A

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT B

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT C

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EXHIBIT D

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EXHIBIT E

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EXHIBIT F

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EXHIBIT G

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT H

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT I

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT J

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT K

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT L

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EXHIBIT M

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT N

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT O

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EXHIBIT P

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EXHIBIT Q

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EXHIBIT R

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EXHIBIT S

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT T

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EXHIBIT U

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EXHIBIT V

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EXHIBIT W

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EXHIBIT X

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EXHIBIT Y

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

EXHIBIT Z

That certain 119.9139 acre composite tract, more or less, bounded and contained within the larger parcel of land described as follows: ...

LINE TABLE

NO.	BEARING	DISTANCE
11	N 52°42'47" W	128.37'
12	N 22°24'14" W	30.24'
13	N 50°27'34" W	125.80'
14	N 25°24'14" W	30.24'
15	N 32°21'14" E	70.00'
16	N 35°24'14" W	12.20'
17	N 11°14'36" E	28.35'
18	S 41°27'00" W	14.16'

CURVE TABLE

NO.	PIVOTAL ANGLE	ARC	CHORD	CHORD BEARING	CHORD DISTANCE
01	43.00°	107.483'	56.78'	S 41°26'42" E	78.51'
02	43.00°	377.113'	170.18'	S 18°20'42" E	274.29'
03	43.00°	45.907'	177.72'	S 52°32'44" E	328.14'
04	30.20°	147.142'	123.25'	S 10°32'20" W	34.74'
05	151.00°	45.907'	280.00'	S 14°22'44" W	283.17'
06	174.00°	43.307'	280.00'	N 72°32'44" W	283.17'
07	30.20°	80.307'	28.34'	N 15°22'42" E	70.71'
08	119.00°	80.307'	178.25'	N 15°22'42" W	158.34'
09	30.20°	147.142'	123.25'	S 22°32'20" W	82.27'

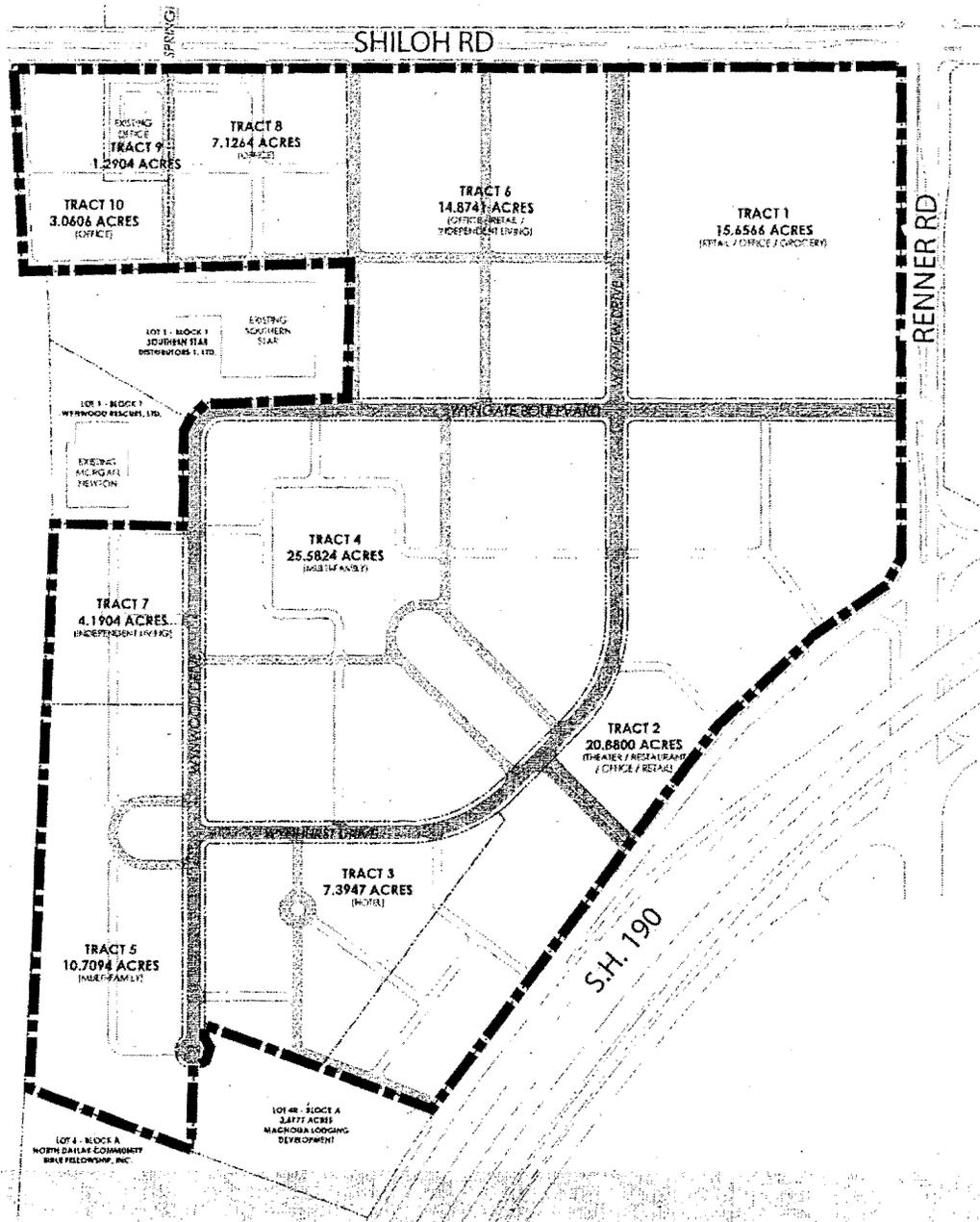
OWNERS:

BRIAR OAKS PROPERTIES, LTD.
 CIRCULAR PROPERTIES, LTD.
 & BRIAR OAKS PROPERTIES, LTD.
 2616 NORTH CENTRAL EXPRESSWAY
 SUITE 1445
 DALLAS, TEXAS 75208
 PHONE: 214-881-0110

ZONING EXHIBIT
119.9139 ACRES
 ZONING CASE 4204-15
 TURNPIKE COMMONS BLOCK 1 LOT 3
 CITY OF PLANO, COLLIN COUNTY, TEXAS

BY: DAVID PETRE
 REGISTERED PROFESSIONAL
 LAND SURVEYOR, LICENSE NO. 1705
 11015 MURRAY ROAD
 DALLAS, TEXAS 75229
 P.O. BOX 4500
 TX (214) 356-4500

DATE: 04/26/11 10:16
 12:48:11 PM
 9481 1 of 1

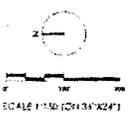


PROJECT DATA

MULTI-FAMILY: 1270 U
 INDEPENDENT LIVING: 423 U
 OFFICE: 150,000 SF
 OFFICE / RETAIL: 200,000 SF
 RETAIL: 48,000 SF
 RESTAURANT: 50,000 SF
 HOTEL: 250,000 SF
 THEATER: 50,000 SF
 GROCERY: 28,000 SF

STREET LEGEND

- PROPERTY LINE
- FIRE LANE
- QUASH-PUBLIC STREET
- PUBLIC STREET



THE PURPOSE OF THIS REVISED CONCEPT PLAN IS TO RELOCATE THE MULTI-FAMILY TRACTS TO THE CENTER AND NORTH SIDE OF THE MASTER PLAN



PROJECT SITE INFORMATION

TURNPIKE COMMONS BLOCK 1 LOT 3
 SH 190 @ RENNER RD. PLANO, TEXAS
 119.9137 ACRES OUT OF THE
 JOHN MCCOLLOUGH SURVEY, ABSTRACT NO. 585
 JAMES T. MCCOLLOUGH SURVEY, ABSTRACT NO. 633
 CITY OF PLANO, COLLIN COUNTY, TEXAS

OWNER

TURNPIKE COMMONS PLANO, LLC
 C/O DALBRIAR CORPORATION
 5910 N. Central Expressway, Suite 1445
 Dallas, Texas 75206
 (214) 891-6110

OWNER'S REPRESENTATIVE

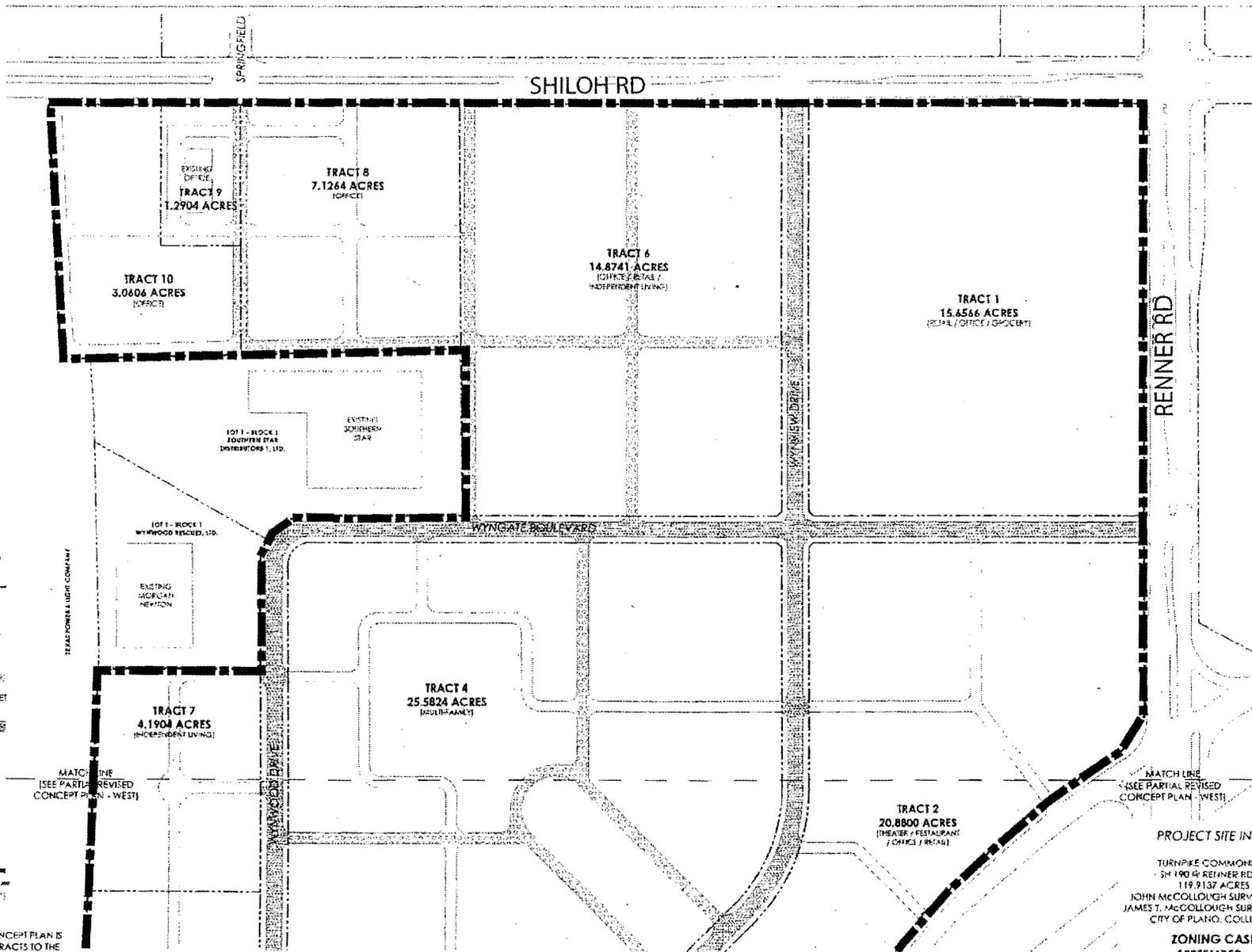
DAVID HICKS COMPANY
 2323 N. Houston Street, Suite 704
 Dallas, Texas 75219
 (214) 720-9177

ARCHITECT

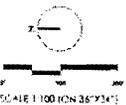
BGO ARCHITECTS
 4144 N. Central Expressway, Suite 855
 Dallas, Texas 75204
 (214) 520-8878

ZONING CASE #: 2010-15
 SEPTEMBER, 29th, 2010

**OVERALL REVISED CONCEPT PLAN
 TURNPIKE COMMONS BLOCK 1, LOT 3**



- STREET LEGEND**
- PROPERTY LINE
 - FIRE LANE
 - QUASI-PUBLIC STREET
 - PUBLIC STREET



THE PURPOSE OF THIS REVISED CONCEPT PLAN IS TO RELOCATE THE MULTI-FAMILY TRACTS TO THE CENTER AND NORTH SIDE OF THE MASTER PLAN



PROJECT SITE INFORMATION
 TURNPIKE COMMONS BLOCK 1 LOT 3
 SH 190 & RENNER RD, PLANO, TEXAS
 119.9137 ACRES OUT OF THE
 JOHN MCCOLLOUGH SURVEY, ABSTRACT NO. 585
 JAMES T. MCCOLLOUGH SURVEY, ABSTRACT NO. 633
 CITY OF PLANO, COLLIN COUNTY, TEXAS
ZONING CASE #: 2010-15
SEPTEMBER . 29th . 2010

**PARTIAL REVISED CONCEPT PLAN - EAST
 TURNPIKE COMMONS BLOCK 1, LOT 3**

MATCH LINE
(SEE PARTIAL REVISED
CONCEPT PLAN - EAST)

RENNER RD

MATCH LINE
(SEE PARTIAL REVISED
CONCEPT PLAN - EAST)

TRACT 7
4.1904 ACRES
(INDEPENDENT LIVING)

TRACT 4
25.5824 ACRES
(MULTIFAMILY)

TRACT 2
20.8800 ACRES
(THEATER / RESTAURANT
/ OFFICE / RESALE)

TRACT 5
10.7094 ACRES
(MULTIFAMILY)

TRACT 3
7.3947 ACRES
(HOTEL)

S.H. 190

LOT 4B - BLOCK A
3.4777 ACRES
MAGNOLIA LODGING
DEVELOPMENT

LOT 4 - BLOCK A
NORTH DALLAS COMMUNITY
BRIE FELLOWSHIP, INC.

STREET LEGEND

- PROPERTY LINE
- FIRE LANE
- QUASI-PUBLIC STREET
- PUBLIC STREET

TEXAS POWER & LIGHT COMPANY



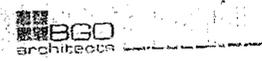
PROJECT SITE INFORMATION

TURNPIKE COMMONS BLOCK 1 LOT 3
 SH 190 @ RENNER RD. PLANO, TEXAS
 119.9137 ACRES OUT OF THE
 JOHN McCOLLOUGH SURVEY, ABSTRACT NO. 585
 JAMES T. McCOLLOUGH SURVEY, ABSTRACT NO. 633
 CITY OF PLANO, COLLIN COUNTY, TEXAS

ZONING CASE #: 2010-15
 SEPTEMBER, 29th, 2010

PARTIAL REVISED CONCEPT PLAN - WEST
TURNPIKE COMMONS BLOCK 1, LOT 3

THE PURPOSE OF THIS REVISED CONCEPT PLAN IS
 TO RELOCATE THE MULTI-FAMILY TRACTS TO THE
 CENTER AND NORTH SIDE OF THE MASTER PLAN



Zoning Case 2010- 15

An Ordinance of the City of Plano amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-207-Retail on 119.9± acres out of the James T. McCullough Survey, Abstracts No. 633 and No. 585, the W. M. Beverly Survey, Abstract No. 136, the Hezekiah Douglas Survey, Abstract No. 272, and the J. B. Rountree Survey, Abstract No. 759, located at the northwest corner of Shiloh Road and Renner Road in the City of Plano, Collin County, Texas, to modify the development standards and definitions, and to limit uses within certain areas of the district; 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 25th day of October, 2010, for the purpose of considering amending Planned Development-207-Retail on 119.9± acres out of the James T. McCullough Survey, Abstracts No. 633 and No. 585, the W. M. Beverly Survey, Abstract No. 136, the Hezekiah Douglas Survey, Abstract No. 272, and the J. B. Rountree Survey, Abstract No. 759, located at the northwest corner of Shiloh Road and Renner Road in the City of Plano, Collin County, Texas, to modify the development standards and definitions, and to limit uses within certain areas of the district; 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 25th day of October, 2010; and

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

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

Section I. The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to amend Planned Development-207-Retail on 119.9± acres out of the James T. McCullough Survey, Abstracts No. 633 and No. 585, the W. M. Beverly Survey, Abstract No. 136, the Hezekiah Douglas Survey, Abstract No. 272, and the J. B. Rountree Survey, Abstract No. 759, located at the northwest corner of Shiloh Road and Renner Road in the City of Plano, Collin County, Texas, to modify the development standards and definitions, and to limit uses within certain areas of the district, said property being described in the legal description on Exhibit "A" attached hereto.

Section II. The change granted in Section I is granted subject to:

Restrictions

The permitted uses and standards shall be in accordance with the Retail (R) zoning district unless otherwise specified herein.

General Standards

1. The zoning exhibit shall be adopted as part of the ordinance.
2. Maximum Lot Coverage: 50%; increased to 70% if structured parking is provided
3. Maximum Floor to Area Ratio: 1.75:1
4. Maximum Height: Five story (75 feet) for buildings with multifamily residential use; 20 story for all other buildings
5. Minimum Side Yard: None, except as required by building or fire codes
6. Minimum Rear Yard: None, except as required by building or fire codes
7. Parking Regulations:
 - a. The minimum required parking shall be as follows:
 - Multifamily - One Bedroom or Less: One parking space per unit
Two Bedrooms: One and one-half parking spaces per unit
Three Bedrooms or More: Two spaces per unit
 - Freestanding Restaurant: One space per 100 square feet of floor area
 - Hotel: See Section 3.1100 (Off-Street Parking and Loading)
 - Theater: See Section 3.1100 (Off-Street Parking and Loading)
 - All Other Nonresidential Uses: One space per 300 square feet of floor area.

- b. On-street parking may count toward required parking and shall be permitted on both sides of interior public and quasi-public streets and fire lanes, except where prohibited for vehicular, fire, or pedestrian safety. On-street parking may be parallel, angle, or 90° to the street. Where on-street parking is provided, islands shall be placed as a break to delineate travel lanes. An island break of a minimum six feet in width shall be placed no less than every 150 feet of continuous on-street parking.
- c. No off-street loading spaces are required. Off-street loading for the loading and unloading of merchandise and goods must not occur in public streets or fire lanes, but may occur in parking areas or private drive aisles. Designated off-street loading spaces for nonresidential uses, if provided, may not be located adjacent to or across a street or alley from buildings containing residential uses unless the loading dock is screened by solid metal gates, masonry screening walls, overhead doors, buildings, or any combination of these.
- d. Except for freestanding restaurants, no parking is required for outdoor patio and sidewalk dining areas or other public seating areas and open space.

Design Standards

1. Street Pattern: The maximum block length shall be 500 feet. Public streets, quasi-public streets, and/or fire lanes may be used to obtain this required block length.
2. Streetscape:
 - a. Along Wynwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, sidewalks with a minimum width of six feet shall be placed no more than six feet from back of curb. Street trees shall be provided at a rate of one tree per 50 linear feet of street.
 - b. Outdoor patio and sidewalk dining, as well as other public seating areas, are permitted within public rights-of-way provided accessible pathways are maintained.
3. Quasi Public Streets definition: Quasi-public streets are privately owned and maintained drives open to public access. A fire lane shall be located within all quasi-public streets. Lots may derive required street frontage from quasi-public streets and may be platted to the centerline of quasi-public streets.
4. Building Design:
 - a. Nonresidential buildings, except for parking garages, shall have a minimum of 40% of the ground floor comprised of window area. Buildings

fronting S. H. 190 frontage road, Renner Rd., and Shiloh Rd. are exempt from this requirement. For the purposes of this standard, ground floor is defined as that portion of a building from the street-level finish floor elevation and extending 12.5 feet above the street-level finish floor elevation.

- b. Canopies, balconies, stoops, bay windows, awnings, and other building projections may encroach up to five feet into the public right-of-way provided accessible pathways are maintained.

5. Landscaping and Open Space:

- a. Except as stated in standard 5.b. below, landscaping shall be provided per Section 3.1200 (Landscaping Requirements) and Section 4.700 (190 Tollway/Plano Parkway Overlay District) except as follows:
 - i. No landscape edge is required along Wynwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, except for lots located within Tract 1.
 - ii. Landscape edge width may be reduced to 10 feet along Shiloh Rd., north of Wynview Dr.
- b. A minimum five-foot landscape edge shall be provided between all surface parking lots and public and quasi-public streets, except for lots located within Tract 1. Street trees shall be provided at a rate of one tree per 50 linear feet of street.
- c. A minimum of two acres of open space shall be provided and shall be open to the public at all times. Open space shall have a minimum dimension of 80 feet.

6. Screening:

- a. The rear and service sides of nonresidential buildings oriented toward residential use or open space shall be screened as provided in Section 3.1000 (Screening, Fence, and Wall Regulations).
- b. Refuse and recycling containers shall not be located within 30 feet of a public or quasi-public street, unless internal to the building, and shall be screened from view from streets and open space in accordance with Section 3.1000 (Screening, Fence, and Wall Regulations).

- 7. Fencing: For residential use only, fencing is allowed in the front yard setback up to eight feet in height. Fencing must be a minimum of 50% open.

8. Signage:

- a. For buildings fronting S.H. 190 frontage road, Renner Rd., and Shiloh Rd., signage must comply with Section 3.1600 (Sign Regulations) and Section 4.700 (190 Tollway/Plano Parkway Overlay District).
- b. Signage for all other buildings must comply Area A standards within Subsection 3.1605 (Downtown Sign District). Additionally, freestanding, single tenant buildings may have monument signs per Section 4.700 (190 Tollway/Plano Parkway Overlay District).

Multifamily Residential Development Standards

1. Maximum Number of Dwelling Units: 1,200 units
2. Minimum Density: 35 dwelling units per acre
3. Multifamily development shall be exempt from the supplemental regulations of Subsection 3.104 (Multifamily Residence).

Standards Specific to Tract 1

1. Tract 1 shall be developed in accordance with Retail (R) zoning district area, yard and bulk requirements.
2. Uses:
 - a. Regional theater use is permitted.
 - b. Car wash use is prohibited.

Standards Specific to Tract 2

1. Uses:
 - a. Regional theater use is permitted.
 - b. Car wash use is prohibited.
2. Building Design:
 - a. Buildings fronting to Renner Rd.
 - i. Minimum front yard setback: 30 feet
 - ii. Maximum front yard setback: None

- b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:
 - i. Minimum front yard setback: None
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

Standards Specific to Tract 3

1. Uses:

- a. Regional theater use is permitted.
- b. Car wash use is prohibited.

2. Building Design:

- a. Buildings fronting to Wynwood Dr., or Wynhurst Dr:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if parking or drive aisles are located between the building face and the street.
- b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Maximum Front Yard Setback: 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Standards Specific to Tract 4

1. Uses:
 - a. Multifamily use is permitted.
 - b. Car wash use is prohibited.
 - c. Office, retail, service and restaurant uses may only occupy space within the first floor of multi-story residential buildings. Free standing office, retail, service and restaurant buildings are prohibited.
2. Street Pattern: Tract 4 shall be bisected by a named quasi-public street and shall comply with the streetscape requirements as stated in 'Design Standards 2. Streetscape' above.
3. Building Design:
 - a. Buildings fronting to Wynwood Dr., Wynhurst Dr., Wyngate Blvd., or Wynview Dr.:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if parking or drive aisles are located between the building face and the street.
 - b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. The maximum front yard setback shall be 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Standards Specific to Tracts 5 & 7

1. Uses:
 - a. Multifamily use is permitted.

- b. Car wash use is prohibited.
 - c. Retail, service and restaurant uses are prohibited.
2. Building Design:
- a. Buildings fronting to Wynwood Dr.:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.
 - b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

Standards Specific to Tracts 6, 8, 9 & 10

- 1. Uses: Car wash use is prohibited.
- 2. Building Design:
 - a. Buildings fronting to Renner Rd. or Shiloh Rd.:
 - i. The minimum front yard setback shall be 10 feet.
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 85 feet if parking or drive aisles are located between the building face and the street.
 - b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:
 - i. Minimum Front Yard Setback: None

- ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.
- c. Buildings fronting required named quasi-public streets:
- i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

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

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

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

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

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

PASSED AND APPROVED THIS THE 25TH DAY OF OCTOBER, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ZC 2010-15

BEING all that certain lot, tract, or parcel of land situated in the James T. McCullough Survey, Abstract No. 633, the James T. McCullough Survey, Abstract No. 585, the W.M. Beverly Survey, Abstract No. 136, the Hezekiah Douglas Survey, Abstract No. 272, and the J.B. Rountree Survey, Abstract No. 759, in the City of Plano, Collin county, Texas, and being a portion of a 152.3951 acre tract of land conveyed by deed to J.C. Williams Company, Inc. recorded in Volume 1720, Page 855, Deed Records of Collin County, Texas; and also being conveyed to Briar Oaks, L.C., by deed recorded in Instrument Number 93-0024803, Tract 2, Exhibit C, of the Deed Records of Collin County, Texas; and also being conveyed to Briar Oaks, L.C., by deed recorded in Instrument Number 93-0024803, Tract D, Exhibit C, of the Deed Records of Collin County, Texas; and also being all of Lot 7 and Lot 8, Block A of One Ninety & Jupiter Addition, an addition to the City of Plano, Collin County, Texas, as recorded in Volume 2007, Page 559, of the Map Records of Collin County, Texas; and also being all of Lot 2, Block 1 of Turnpike Commons Addition, an addition to the City of Plano, Collin County, Texas, as recorded in Volume 2006, Page 849, of the Map Records of Collin County, Texas; and also being all of Lot 1 and Lot 2, Block A of Hillary Acres Addition, an addition to the City of Plano, Collin County, Texas, as recorded in Volume 2007, Page 479, of the Map Records of Collin County, Texas; and also being all that certain tract of land conveyed to Patrick E. Hillary by deed recorded in Volume 2206, Page 185 of the Deed Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for a corner clip at the intersection of Shiloh Road (105 foot right-of-way) with the north right-of-way line of Renner Road (variable width right-of-way) as dedicated by plat thereof recorded in Cabinet F at Slide 78 of the Plat Records of Collin County, Texas;

THENCE South 44° 53' 09" West for a distance of 14.16 feet to a 1/2-inch iron rod found on the north right-of-way line of Renner Road (variable width right-of-way);

THENCE South 89° 50' 00" West along the north right-of-way line of Renner Road, at a distance of 894.55 feet passing a 1/2-inch iron rod found for a corner clip at the intersection of Renner Road with the east right-of-way line of the aforementioned Wyngate Boulevard as dedicated by plat thereof recorded in Cabinet F at Slide 78 of the Plat Records of Collin County, Texas, at a distance of 974.76 feet passing a 1/2-inch for a corner clip at the intersection at the west right-of-way line of the said Wyngate Boulevard with said Renner Road, and continuing on with the north right-of-way line of said Renner Road for a total distance of 1,350.48 feet to a brass monument in concrete found for the southeast corner of a 13.5017 acre tract of land conveyed by deed to the State of Texas for State Highway No. 190 as recorded in Volume 3106 at 508 of the Deed Records of Collin County, Texas;

THENCE North 58° 10' 54" West along the northeasterly right-of-way line of State Highway No. 190 for a distance of 83.68 feet to a 1/2-inch iron rod found for corner;

THENCE North 33° 46' 59" West and continuing along the northeasterly right-of-way line of State Highway No. 190 for a distance of 240.52 feet to a brass monument in concrete found for corner;

THENCE North 43° 07' 57" West and continuing along the northeasterly right-of-way line of State Highway No. 190 for a distance of 341.82 feet to a broken concrete monument found for corner;

THENCE North 53° 54' 04" West and continuing along the northeasterly right-of-way line of State Highway No. 190 for a distance of 149.64 feet to a 5/8-inch iron rod with red cap found for corner;

THENCE North 53° 37' 43" West and continuing along the northeasterly right-of-way line of State Highway No. 190 for a distance of 788.53 feet to a broken concrete monument found for corner in the West line of the aforementioned 152.3951 acre tract and also being the southeast corner of Lot 7 in Block A of One-Ninety and Jupiter Addition, an addition to the city of Plano, Texas, according to the lat thereof recorded in Volume 2007 at Page 559 of the Plat Records of Collin County, Texas;

THENCE North 53° 40' 44" West and continuing along the northeasterly right-of-way line of State Highway No. 190 for a distance of 126.76 feet to a 1/2-inch iron rod found for corner;

THENCE North 55° 50' 14" West and continuing along the northeasterly right-of-way line of State Highway No. 190 for a distance of 39.34 feet to a 1/2-inch iron rod found for corner;

THENCE North 50° 07' 36" West, and continuing along the new northeasterly right-of-way line of State Highway No. 190 as widened by Plat recorded in Volume 2007 and Page 559 of the Plat Records of Collin County, Texas, for a distance of 120.60 feet to a 1/2-inch iron rod found for corner;

THENCE North 55° 50' 14" West, and continuing along the northeasterly right-of-way line of State Highway No. 190 as widened by Plat recorded in Volume 2007 and Page 559 of the Plat Records of Collin County, Texas, for a distance of 95.35 feet to a 1/2-inch iron rod found for corner in the common line of aforementioned Lot 7 and Lot 4R of Block A of aforementioned One-Ninety & Jupiter Addition;

THENCE North 34° 22' 14" East and departing the new northeasterly right-of-way line of State Highway No. 190 as widened by Plat recorded in Volume 2007 and Page 559 of the Plat Records of Collin County, Texas, and along the common line of said Lot 4R and Lot 7 for a distance of 50.50 feet to a 1/2-inch iron rod found for corner;

THENCE North 55° 50' 14" West, and along the common line of said Lot 4R and Lot 7 for a distance of 12.20 feet to a 1/2-Inch iron rod found for corner;

THENCE North 20° 25' 58" East, and along the common line of said Lot 4R and Lot 7 for a distance of 613.49 feet to a 1/2-inch iron rod found for corner in the south right-of-way line of Wynwood Drive (60 foot right-of-way);

THENCE South 89° 56' 18" West along said south right-of-way line of Wynwood Drive (60 foot right-of-way) and the common North line of said Lot 4R for a distance of 34.88 feet to the beginning of the arc of a curve to the right, said curve having a radius of 50.00 feet, a delta angle of 144° 58' 30" and a chord bearing North 72° 32' 57" West, at a distance of 95.37 feet;

THENCE in a northwesterly direction for a distance 126.51 feet along the arc of said curve to the right to a 1/2-inch iron rod found for corner at a common corner of said Lot 4R and said Lot 8, Block A of One Ninety & Jupiter Addition;

THENCE South 89° 56' 18" West and departing said Wynwood Drive (60 foot right-of-way) along the common line of said Lot 4R and Lot 8 for a distance of 227.33 feet to a 1/2-inch iron rod found for the northwest corner of said Lot 4R, the common southwest corner of said Lot 8, and the common northwest corner of a 0.979 acre tract of land conveyed to Magnolia Lodging Development by deed recorded in Instrument Number 20070601000736900 of the Deed Records of Collin County, Texas;

THENCE North 20° 29' 47" East and departing said north line of Lot 4R and following along the west line of Lot 8 in Block A of the One Ninety and Jupiter Addition, for a distance of 490.18 feet to a 1/2-inch iron rod found for corner at the northwest corner of said Lot 8, same being in the southerly line of a tract of land described in a deed to Texas Power & Light Company, as recorded in Volume 576, page 367, of the Deed Records of Collin County, Texas;

THENCE South 87° 27' 28" East along the southerly line of said Texas Power & Light Company tract for a distance of 1,056.86 feet to a 1/2-inch iron rod found for corner at the northwest corner of a tract of land described in a deed to Wm Realty Partners LP, as recorded in Document No. 97-0082444, of the Deed Records of Collin County, Texas, and being the common northwest corner of Lot 2 in Block 1 of the Turnpike Commons Addition, an addition to the City of Plano, Collin County, Texas, as recorded in Volume 2006, page 849, of the Map Records of Collin County, Texas;

THENCE South 87° 26' 57" East and continuing along the southerly line of said Texas Power & Light Company tract for a distance of 531.84 feet to a 1/2-inch iron rod found for corner at the northeast corner of said Lot 2 and the common northwest corner of Lot 1, Block 1, Turnpike Commons Addition, as recorded in Volume 2006, Page 849, of the Map Records of Collin County, Texas;

THENCE South 00° 01' 13" East departing said southerly line of Texas Power & Light Company tract and along the common line of said Lot 1 and Lot 2, Block 1, Turnpike Commons Addition for a distance of 357.03 feet to a 1/2-inch iron rod found for corner at the Southeast corner of said Lot 2, Block 1, Turnpike Commons Addition, same being in the North right-of-way line of aforesaid Wynwood drive (60 foot right-of-way);

THENCE North 89° 56' 18" East and departing said Lot 2, Block 1, Turnpike Commons Addition and following along the north right-of-way line of aforesaid Wynwood Drive (60 foot right-of-way), for a total distance of 231.60 feet to a point for corner at the beginning of the arc of a curve to the right, said curve having a radius of 110.00 feet, a delta angle of 90° 00' 00" and a chord bearing South 45° 03' 42" East at a distance of 155.56 feet;

THENCE continuing along the north right-of-way line of aforesaid Wynwood Drive (60 foot right-of-way) in a southeasterly direction, passing the southeast corner of said Lot 1, Block 1, Turnpike Commons Addition and the common westerly northwest corner of Lot 1, Block 1 of the Southern Star Addition, an addition to the City of Plano, as recorded in Cabinet 'K', page 870, of the Map Records of Collin County, Texas, and continuing on for a total arc distance of 172.79 feet to a corner in the east right-of-way line of aforesaid Wyngate Boulevard (60 foot right-of-way);

THENCE South 00° 03' 42" East and continuing along the east right-of-way line of said Wyngate Boulevard for a distance 338.93 feet to a 1/2-inch iron rod found for corner at the southerly southwest corner of said Lot 1, Block 1 of said Southern Star Addition;

THENCE North 89° 31' 46" East departing said east right-of-way line of Wyngate Boulevard (60 foot right-of-way) for a distance of 369.25 feet to the southeast corner of said Southern Star Addition, said corner also being the southwest corner of a tract of land described in a deed to Tiphany Equities Partnership, as recorded in Document No. 93-0023851, of the Deed Records of Collin County, Texas, and also being the common southwest corner of Lot 2, Block A, Hillary Acres Addition, an addition to the City of Plano, as recorded in Volume 2007, Page 479, of the Map Records of Collin County, Texas;

THENCE North 01° 30' 50" West and along the common line of said Lot 1, Block 1, Southern Star Addition and said Lot 2, Block A, Hillary Acres Addition for a distance of 665.83 feet to a 1/2-inch iron rod found for corner at the northwest corner of said Lot 2 and a common southwest corner of that certain tract of land conveyed to Patrick E. Hillary by deed recorded in Volume 2206, Page 185 of the Deed Records of Collin County Texas;

THENCE North 01° 40' 45" West and departing said Lot 2, Block A, Hillary Acres Addition, passing the northeast corner of said Lot 1, Block 1, Southern Star Addition and common corner of aforesaid Texas Power & Light Company tract, as recorded in Volume 576, Page 367, of the Deed Records of Collin County, Texas, and continuing on

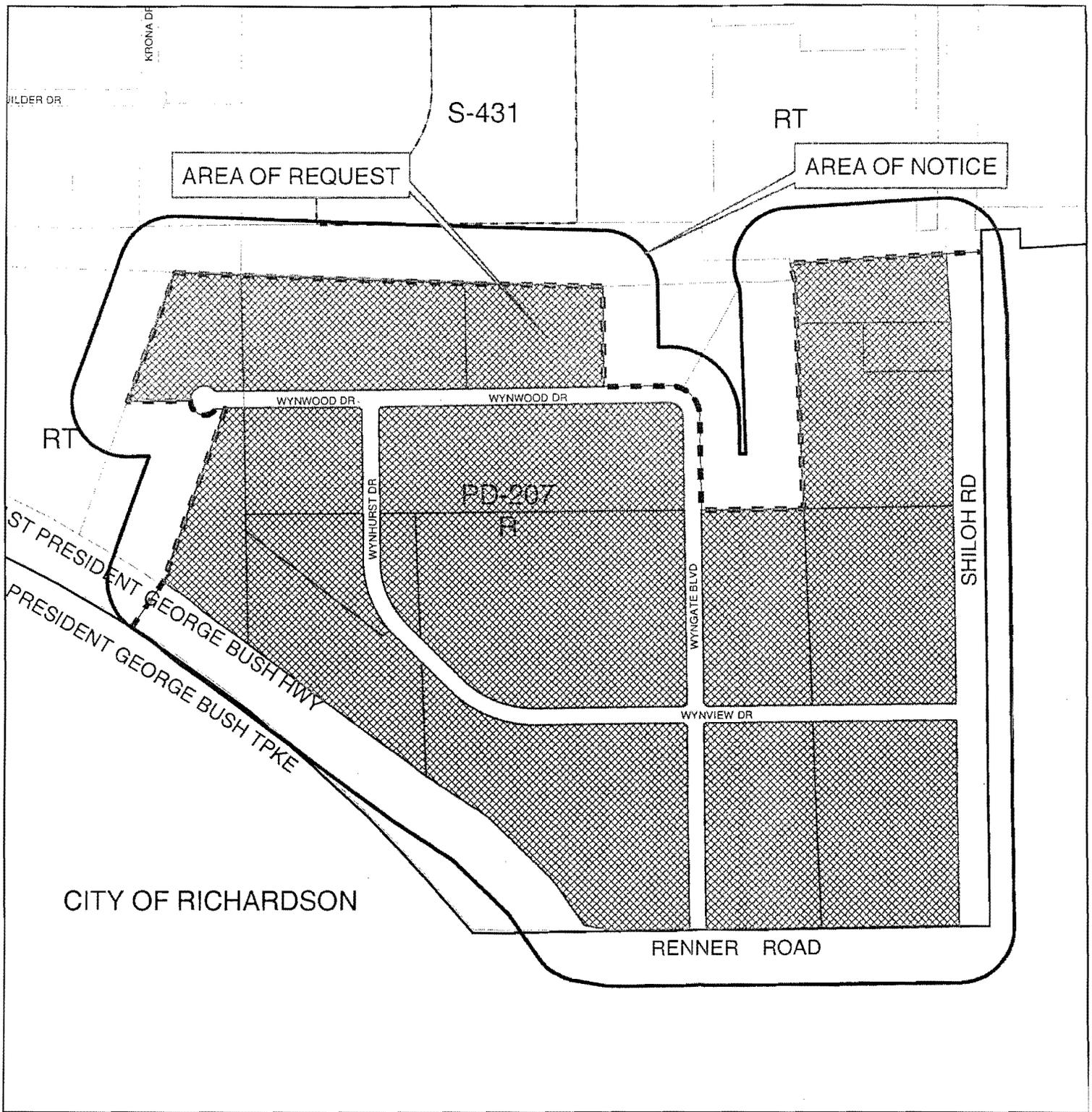
for a total distance of 219.73 feet to a 1/2-inch iron rod found for corner at the northwest corner of said Patrick E. Hillary tract;

THENCE North 87° 02' 59" East for a distance of 571.40 feet to a 1/2-inch iron rod found for corner at the northeast corner of said Patrick E. Hillary tract, same being in the west right-of-way line of aforesaid Shiloh Road;

THENCE South 00° 26' 33" West and following along the west right-of-way line of said Shiloh Road for a distance of 250.97 feet to a 1/2-inch iron rod found for corner at the southeast corner of said Patrick E. Hillary tract and the common northeast corner of Lot 1, Block A, Hillary Acres Addition, as recorded in Volume 2007, Page 479, of the Map Records of Collin County, Texas;

THENCE South 00° 00' 06" East and continuing along the west right-of-way line of said Shiloh Road, passing a 1/2-inch iron rod found at the southeast corner of said Lot 1 and a common easterly northeast corner of aforesaid Lot 2, Block A, Hillary Acres Addition, and continuing on for a total distance of 669.21 feet to a 1/2-inch iron rod found for corner at the southeast corner of said Lot 2;

THENCE South 00° 06' 44" East and continuing along the west right-of-way line of said Shiloh Road (105 foot right-of-way) at a distance of 702.05 feet passing a 1/2-inch iron rod found in the northerly end of a corner clip at the intersection of said west right-of-way line of Shiloh Road, (105 foot right-of-way) and said north right-of-way line of Wynview Drive (60 foot right-of-way), at a distance of 782.04 feet passing a 1/2-inch iron rod found at the southerly end of a corner clip at the intersection of said west right-of-way line of Shiloh Road and said south right-of-way line of Wynview Drive, and continuing on along said West right-of-way line of said Shiloh Road (105 foot right-of-way) for a total distance of 1,507.14 feet to the POINT OF BEGINNING and CONTAINING 119.9139 acres of land, more or less.

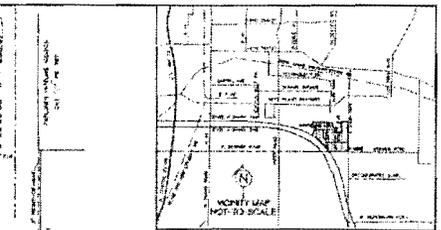
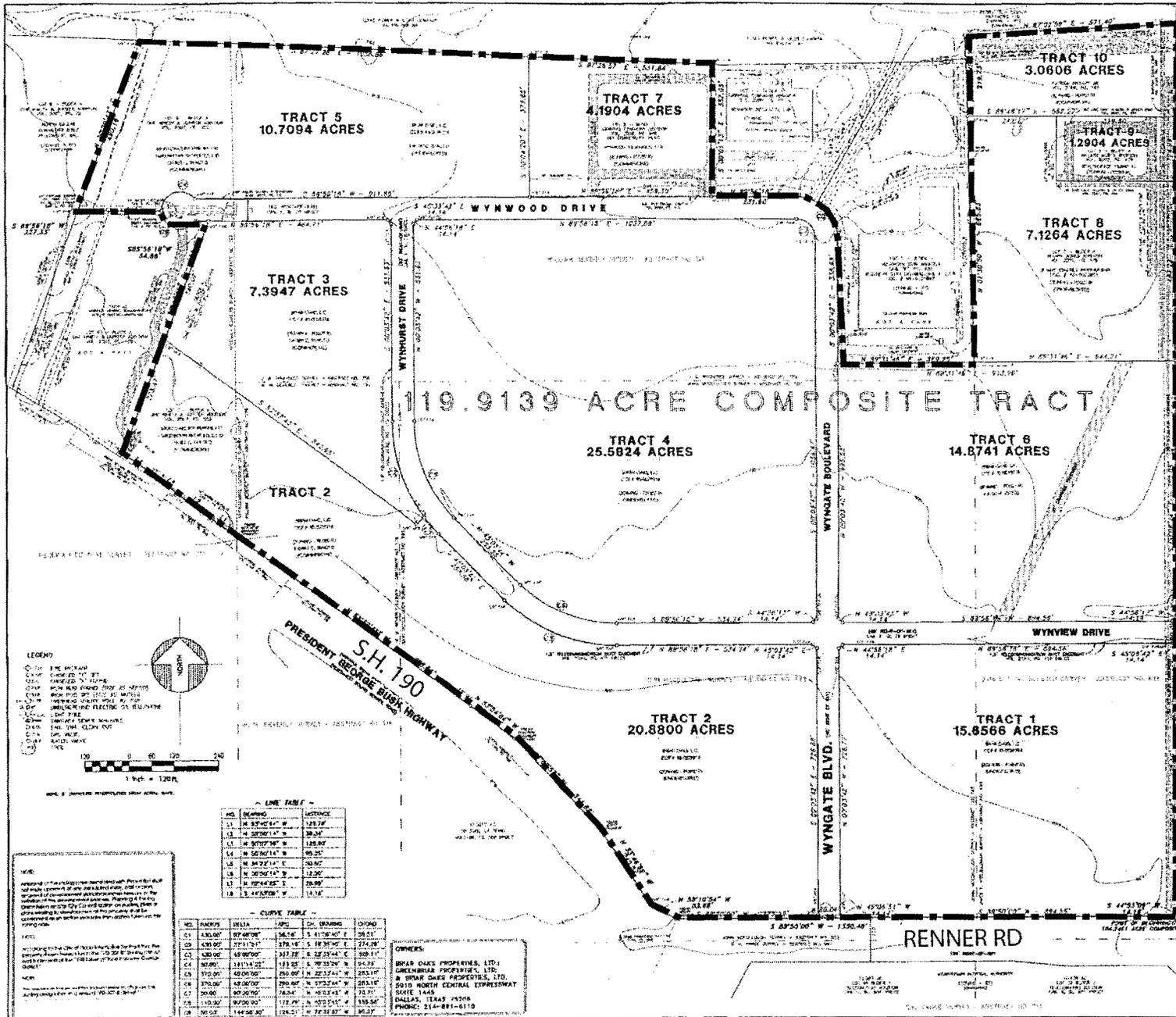


Zoning Case #: 2010-15

Existing Zoning: PLANNED DEVELOPMENT-207-RETAIL/
190 TOLLWAY/PLANO PARKWAY OVERLAY DISTRICT



○ 200' Notification Buffer



119.9139 ACRE COMPOSITE TRACT

TRACT 1
15.8566 ACRES

TRACT 2
20.8800 ACRES

TRACT 3
7.3947 ACRES

TRACT 4
25.5824 ACRES

TRACT 5
10.7094 ACRES

TRACT 6
14.8741 ACRES

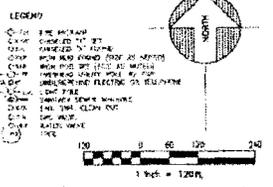
TRACT 7
4.1904 ACRES

TRACT 8
7.1264 ACRES

TRACT 9
2.904 ACRES

TRACT 10
3.0606 ACRES

119.9139 ACRE COMPOSITE TRACT



LINE TABLE

NO.	BEARING	DISTANCE
11	N 87°40'14" W	128.74
12	N 87°00'14" W	30.24
13	N 87°00'14" W	128.87
14	N 87°00'14" W	90.25
15	N 87°00'14" W	128.87
16	N 87°00'14" W	128.87
17	N 87°00'14" W	78.99
18	N 87°00'14" W	14.13

CURVE TABLE

NO.	PIVOT	BELTA	LOPE	2d. BOUND.	CHORD
01	430.00'	97.60°00'	56.16'	S 41°58'40" E	58.51'
02	430.00'	271°17'17"	379.18'	S 18°36'30" E	274.28'
03	430.00'	48°00'00"	317.73'	S 22°33'41" E	269.11'
04	30.00'	181°15'15"	11.92'	S 70°52'00" W	11.92'
05	370.00'	48°00'00"	290.00'	N 22°13'44" W	283.18'
06	370.00'	48°00'00"	290.00'	N 57°54'44" W	283.18'
07	30.00'	90°00'00"	78.24'	N 40°53'41" W	78.24'
08	110.00'	90°00'00"	172.00'	N 40°53'41" W	148.56'
09	30.00'	144°00'00"	178.51'	S 22°33'41" W	162.31'

OWNERS

SHIRAZ OAKS PROPERTIES, LTD.
 CINCINNATI PROPERTIES, LTD.
 SHIRAZ OAKS PROPERTIES, LTD.
 2615 NORTH CENTRAL EXPRESSWAY
 SUITE 1448
 DALLAS, TEXAS 75206
 PHONE: 214-881-6110

ZONING EXHIBIT
119.9139 ACRES
 ZONING CASE #104-15
 TURNPIKE COMMONS BLOCK 1 LOT 3
 CITY OF PLANO, COLLIN COUNTY, TEXAS

BY: DAVID PETER
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 1929
 11025 HENRY ROAD
 DALLAS, TEXAS 75229
 TEL: (214) 356-4200
 FAX: (214) 396-4600

DATE: 01/24/15 2:05
 SCALE: 1" = 100'
 NAD: 83
 UTM: 18Q
 UTM: 18Q
 UTM: 18Q