

CITY COUNCIL

1520 AVENUE K



DATE: 11/9/2015
CALL TO ORDER: 7:00 p.m.
INVOCATION: Denise Peckham, Executive Pastor
Christ United Methodist Church
PLEDGE OF ALLEGIANCE: American Legion
Harding-Blaine Post 321 Color Guard

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>OUR MISSION - THE CITY OF PLANO IS A REGIONAL AND NATIONAL LEADER, PROVIDING OUTSTANDING SERVICES AND FACILITIES THROUGH COOPERATIVE EFFORTS THAT ENGAGE OUR CITIZENS AND THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u></p> <p>PROCLAMATION: November 11 is Veterans Day, a day to honor all who served.</p> <p>PROCLAMATION: The 2015 Homelessness Awareness Week is November 14 - 22.</p> <p>PROCLAMATION: November is Diabetes Awareness Month.</p> <p>Presentation: The Plano Firefighters Association is presenting a check to Susan G. Komen North Texas.</p> <p>Presentation: The Plano Fire Department is presenting Certificates to several Parks & Recreation employees in recognition of their life-saving acts on October 13.</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>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>CONSENT AGENDA</u> <u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u></p> <p>(a) October 26, 2015</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2015-453-B for the 14th Street Sewer Project to Wilson Contractor Services, LLC, in the amount of \$235,572; and authorizing the City Manager to execute all necessary documents.</p> <p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p> <p>(c) To approve an Engineering Services Agreement by and between the City of Plano and Adams Consulting Engineers, Inc. in the amount of \$67,950 for floodplain analysis and FEMA Conditional Letter of Map Revision services for the White Rock Creek Trail Replacement project; and authorizing the City Manager to execute all necessary documents.</p> <p>(d) To approve a Professional Services Agreement by and between the City of Plano and R-Delta Engineers, Inc. in the amount of \$65,850 for Screening Walls at Spring Creek Parkway; and authorizing the City Manager to execute all necessary documents.</p> <p>(e) To approve a Professional Services Agreement by and between the City of Plano and JQ Infrastructure, LLC in the amount of \$80,305 for Alley Reconstruction – Mountain Pass and Buffalo Bend; and authorizing the City Manager to execute all necessary documents.</p> <p><u>Adoption of Resolutions</u></p> <p>(f) To approve the terms and conditions of a First Amendment to the Economic Development Incentive Agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(g) To designate the name of the Three Cities Trail Connection as Rowlett Trail; and providing an effective date.</p> <p>(h) To relate to the power of the City of Plano City Council to appoint and remove its board and commission appointees; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Adoption of Ordinances</u></p> <p>(i) To amend and restate the Retirement Security Plan generally effective as of January 1, 2016; authorizing its execution by the City Manager; providing a repealer clause, a severability clause, a savings clause, and an effective date.</p> <p>(j) To repeal Ordinance No. 2015-9-7; establishing the number of certain classifications within the Fire Department for fiscal year 2015-16; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective November 9, 2015; and providing a repealer clause, a severability clause and an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The presiding officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The presiding officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano, Texas as Reinvestment Zone No. 140 for tax abatement, consisting of a 9.515 acre tract of land located in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and described in Exhibit "A", attached hereto, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p>	
(2)	<p>Consideration of a Resolution to approve the terms and conditions of an agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Plano Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal/L Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. The Senator Florence Shapiro Council Chambers is accessible by elevator to the lower level. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**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:		11/09/2015		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
PROCLAMATION: November 11 is Veterans Day, a day to honor all who served.				
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:		11/09/2015		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
PROCLAMATION: The 2015 Homelessness Awareness Week is November 14 - 22				
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

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<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/09/2015		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
PROCLAMATION: November is Diabetes Awareness Month.				
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

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Council Meeting Date:		11/09/2015		
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Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: The Plano Firefighters Association is presenting a check to Susan G. Komen North Texas				
FINANCIAL SUMMARY				
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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

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Council Meeting Date:		11/09/2015		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: The Plano Fire Department is presenting Certificates to several Parks & Recreation employees in recognition of their life-saving acts on October 13.				
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 26, 2015**

COUNCIL MEMBERS PRESENT

Harry LaRosiliere, Mayor
Lissa Smith, Mayor Pro Tem
Ben Harris, Deputy Mayor Pro Tem
Angela Miner
Rick Grady
Ron Kelley
Tom Harrison
David Downs

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Jim Parrish, Deputy City Manager
Mark Israelson, Assistant City Manager
Jack Carr, Assistant City Manager
Paige Mims, City Attorney
Lisa C. Henderson, City Secretary

Mayor LaRosiliere called the meeting to order at 5:00 p.m., Monday, October 26, 2015, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was present. Mayor LaRosiliere then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated in order to consult with an attorney and receive Legal Advice and discuss Litigation, Section 551.071; to receive information regarding Economic Development, Section 551.087; Real Estate, Section 552.072 and discuss Personnel, Section 551.074; for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor LaRosiliere reconvened the meeting back into the Preliminary Open Meeting at 5:46 p.m. in the Senator Florence Shapiro Council Chambers.

**Consideration and action resulting from Executive Session discussion
Personnel – Appointments**

Planning and Zoning Commission

Upon a motion made by Mayor Pro Tem Smith and seconded by Council Member Downs, the Council voted 8-0 to appoint John Muns as Chair. The appointment of an interim member was deferred.

Personnel – Appointments

Senior Citizens Advisory Board

Upon a motion made by Council Member Miner and seconded by Mayor Pro Tem Smith, the Council voted 8-0 to appoint Karen Bellessa as Chair.

Comprehensive Monthly Financial Report – September 2015

Director of Finance Tacke advised that the September 2015 report finds General Fund revenues as a percentage of the budget are up .7 percent compared to last year while Water and Sewer revenues are up 6.9 percent. She stated that actual General Fund revenues are up \$17.7 million, primarily due to an increase in collection of ad valorem taxes of \$10,300,000, sales tax increase of \$2.9 million, positive audit adjustments of \$943,000 and increase of building permit revenue of \$3.2 million. She spoke to the improvement in sales tax is due to business to business sales. She advised that General Fund expenditures as a percent of budget are down slightly from last year's expenditures and Water and Sewer expenditures are down slightly from last year's expenditures. General Fund expenditures are up due to a 3% non-civil and civil service pay increase. She advised that the unemployment rate is at 3.5% and sales tax collections were down \$772,000 for the month due to a softening of business to business sales. Ms. Tacke spoke to the real estate recap stating properties were on the market an average of 15 days and sold at 99 percent of asking price. Ms. Tacke advised the Water and Sewer revenues and hotel/motel taxes were up for the month.

Finance Departmental Report

Director of Finance Tacke stated the seven divisions of the Finance Department include Finance Administration, Accounting, Purchasing/Warehouse, Financial Systems, Treasury, Municipal Court Administration, and Customer and Utility Services. She spoke to the Finance Administration's two employee's responsibility for analysis, reporting, supervision, execution of Tax Abatement and Economic Development agreements, and facilitation of the Tax Increment Financing Districts. Ms. Tacke reported the Accounting Division's 16 employees are responsible for timely and accurate recording of the City's transactions including payments, payroll and journal entries, the Comprehensive Annual Financial Report, and establishing and maintaining internal controls. She acknowledged the division's awards and recognitions.

Ms. Tacke spoke to the Purchasing Division's 22 employees being responsible for ensuring the timely availability of needed goods, garnering competition to produce the highest quality goods at the lowest price, and inventory control and asset disposal. She detailed the division's accolades. Ms. Tacke reported the Financial Systems division's two employees are responsible for installation, support, and maintenance of the City's financial software and servers. She stated the Treasury Division's two employees are responsible for cash management, investments, reporting, Comprehensive Monthly Financial Report, unclaimed property reporting, delinquent taxpayer list, and issuance of GO and Municipal Drainage bonds.

Finance Departmental Report (Cont'd.)

Ms. Tacke spoke to the Municipal Court Administration Division's responsibilities of timely and accurate processing of citations and complaints, customer service, collection of fines and fees, efficient docketing and courtroom support. She provided information on revenues collected, state costs, and that the Plano Municipal Court is a benchmark city due to its progressive processes and policies. Ms. Tacke discussed the Customer and Utilities Services Division's 31 employees are responsible for accurately reading meters, responding to customer calls, and collection of utility payments.

Community Paramedic Program Update

Fire Chief Greif introduced Medical Director Dr. Gamber to report on the Community Paramedicine Program. Dr. Gamber spoke to the community risk assessment process, the City's aging demographic, and increase in low priority transports. He discussed the program drivers, parameters, and the pilot program's high utilizer group. Dr. Gamber stated the department has seen a decrease in transports of the patients in the program and an increase in self rated overall health. He spoke to the findings and demographics of the program. Dr. Gamber advised the distribution of referral hospitals is based on the hospitals with congestive heart failure programs.

Dr. Gamber stated the department's outreach expands to county organizes and serves on hospital committees to improve care. He provided information on a new program with Children's Health to manage asthma and the protocols. In response to Council questions, Dr. Gamber stated unique protocols will be determined for each program the community paramedicine includes. Deputy Mayor Pro Tem Harris stated the programs are excellent and cautioned that the City should not become a health care provider. City Manager Glasscock discussed the bundled fees in the future and the reduction of revenue it may cause.

Consent and Regular Agendas

No items were discussed.

Council Items for Discussion/Action on Future Agendas

No items were discussed.

Nothing further was discussed. Mayor LaRosiliere adjourned the meeting at 6:21 p.m.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, City Secretary

**PLANO CITY COUNCIL
REGULAR SESSION
October 26, 2015**

COUNCIL MEMBERS PRESENT

Harry LaRosiliere, Mayor
Lissa Smith, Mayor Pro Tem
Ben Harris, Deputy Mayor Pro Tem
Angela Miner
Rick Grady
Ron Kelley
Tom Harrison
David Downs

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Jim Parrish, Deputy City Manager
Mark Israelson, Assistant City Manager
Jack Carr, Assistant City Manager
Paige Mims, City Attorney
Lisa C. Henderson, City Secretary

Mayor LaRosiliere convened the Council into the Regular Session on Monday, October 26, 2015, at 7:00 p.m. in the Senator Florence Shapiro Council Chambers of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Senior Pastor Sam Fenceroy with Mount Olive Church of Plano led the invocation and Cub Scout Pack 1259 with Hughston and Wells Elementary Schools led the Pledge of Allegiance and Texas Pledge.

Mayor LaRosiliere recognized fire department members that had participated in the International Combat Casualty Care Competition in Spain. He administered oaths of office to incoming board and commission members and presented certificates of appreciation to outgoing board and commission members.

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

CONSENT AGENDA

Upon a motion made by Council Member Downs and seconded by Mayor Pro Tem Smith, the Council voted 8-0 to approve and adopt all items on the Consent Agenda as recommended, and as follows:

Approval of Minutes

September 30, 2015

October 12, 2015

(Consent Agenda Item “A”)

Approval of Expenditures

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

Bid No. 2015-410-B for the purchase of four (4) Ram ½-ton pickups from Grapevine DCJ, LLC (aka Grapevine Dodge Chrysler Jeep) in the amount of \$96,040, the purchase of three (3) Ford ½-ton pickups and four (4) Ford ¾-ton pickups from Sam Pack’s Five Star Ford in the amount of \$194,649, and the purchase of one (1) Chevrolet ½-ton pickup from Caldwell Country Automotive (aka Baby Jack II) in the amount of \$26,346, for Fleet Services to be utilized by various City Departments in the total amount of \$317,035; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Rejection of Bid No. 2015-376-B for Bluebonnet Trail Lighting Improvements at the Dog Park at Jack Carter Park, Project No. 6591, from all bidders. (Consent Agenda Item “C”)

Purchase from an Existing Contract

To approve the purchase of one (1) Jacobsen AR-722 Contour Mower for Fleet Services to be utilized by the Parks and Recreation Department in the amount of \$57,933 from Luber Bros. through an existing TASB/BuyBoard contract and authorizing the City Manager to execute all necessary documents. (TASB/BuyBoard Contract No. 447-14) (Consent Agenda Item “D”)

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

To approve a Professional Services Agreement by and between the City of Plano and Kimley-Horn and Associates, Inc. in the amount of \$160,000 for the Legacy Business Area Transportation Mobility Study, Project No. 6648; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “E”)

Approval of Change Order

To Tiseo Paving Co., increasing the contract by \$196,578 for the Spring Creek Parkway Corridor Project, Change Order No. 1. Original Bid No. 2013-51-B. (Consent Agenda Item “F”)

Approval of Expenditure

To approve expenditures for Urban/Town Center and Special Events Grants recommendations in the total amount of \$304,948 for support of the arts and cultural diversity within the City of Plano. (Consent Agenda Item “G”)

To approve an expenditure for the lease of office space in the amount of \$79,569 from The Shops at Legacy (RPAI) L.P. for the Neighborhood Police Officer (NPO) Unit for a five (5) year term, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "H")

Adoption of Resolutions

Resolution No. 2015-10-10(R): To approve the terms and conditions of a Fourth Amendment to Employment Agreement by and between Bruce D. Glasscock and the City of Plano for City Manager services; authorizing its execution by the Mayor; and providing an effective date. (Consent Agenda Item "I")

Resolution No. 2015-10-11(R): To approve the terms and conditions of an Employment Agreement by and between Paige Mims and the City of Plano for City Attorney services; authorizing its execution by the Mayor; and providing an effective date. (Consent Agenda Item "J")

Resolution No. 2015-10-12(R): To invoke the defense and indemnification provision of Section 2-10 of the City Code of Ordinances; authorizing the City Attorney to retain legal counsel to provide legal representation to the City or its City Council members and to provide legal services related to same as necessary; authorizing the City Manager to execute any necessary documents; and providing an effective date. (Consent Agenda Item "K")

Resolution No. 2015-10-13(R): To repeal Resolution No. 2015-7-4(R) and adopt this resolution nominating J. C. Penney Corporation, Inc. to the Office of the Governor Economic Development and Tourism ("OOGEDT") through the Economic Development Bank ("Bank") for designation as a qualified business and an enterprise project ("Project") under the Texas Enterprise Zone Program under the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code ("Act"); and providing an effective date. (Consent Agenda Item "L")

Resolution No. 2015-10-14(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas, and County of Collin, Texas, for the Legacy Business Area Transportation Study; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "M")

Adoption of Ordinances

Ordinance No. 2015-10-15: To approve the carrying-forward of certain fiscal year 2014-15 funds to fiscal year 2015-16; and providing an effective date. (Consent Agenda Item "N")

Ordinance No. 2015-10-16: To abandon all right, title and interest of the City, in and to a portion of that certain 15-foot Public Utility Easement, recorded in Volume 615, Page 109, of the Deed Records of Collin County, Texas and being situated in the William Beverly Survey, Abstract No. 75, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the owners of the property underlying the easement, Rosewood Property Company (RPC Heritage 190 LLC) and CT Creekside Partners, LP, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. (Consent Agenda Item "O")

END OF CONSENT

Second reading and adoption of Ordinance No. 2015-10-17 to amend Section 3 of Ordinance No. 2003-6-3 and Section I of Ordinance No. 2008-4-42 to extend the non-exclusive franchise granted to Denton County Electric Cooperative, Inc., d/b/a Coserv Electric, a Texas Electric Cooperative Corporation to use the present and future streets, avenues, alleys, roads, highways, sidewalks, easements and other public rights-of-way in the City of Plano, Collin County, Texas, for the purposes of constructing and operating an electric distribution system in the City of Plano which expired on June 9, 2013, ratifying any use since expiration; and providing a repealer clause, a severability clause and an effective date. (First reading held September 14, 2015.) (Regular Item "1")

Assistant City Manager Israelson stated this is the second reading of the ordinance for the extension of the franchise agreement with CoServ Electric and that the original 2003 agreement was for five years with two-five year extensions. He added CoServ Electric has been proceeding as if the agreement was in place and that this ordinance ratifies the lapse of the original agreement. Mr. Israelson reported if this ordinance is adopted the contract will be evaluated in 2017 prior to the 2018 expiration.

Upon a motion made by Council Member Downs and seconded by Council Member Grady, the Council voted 8-0, to amend Section 3 of Ordinance No. 2003-6-3 and Section I of Ordinance No. 2008-4-42 to extend the non-exclusive franchise granted to Denton County Electric Cooperative, Inc., d/b/a Coserv Electric, a Texas Electric Cooperative Corporation to use the present and future streets, avenues, alleys, roads, highways, sidewalks, easements and other public rights-of-way in the City of Plano, Collin County, Texas, for the purposes of constructing and operating an electric distribution system in the City of Plano which expired on June 9, 2013, ratifying any use since expiration; and further to adopt Ordinance No. 2015-10-17.

With no further business, Mayor LaRosiliere adjourned the meeting at 7:23 p.m.

Harry LaRosiliere, Mayor

ATTEST

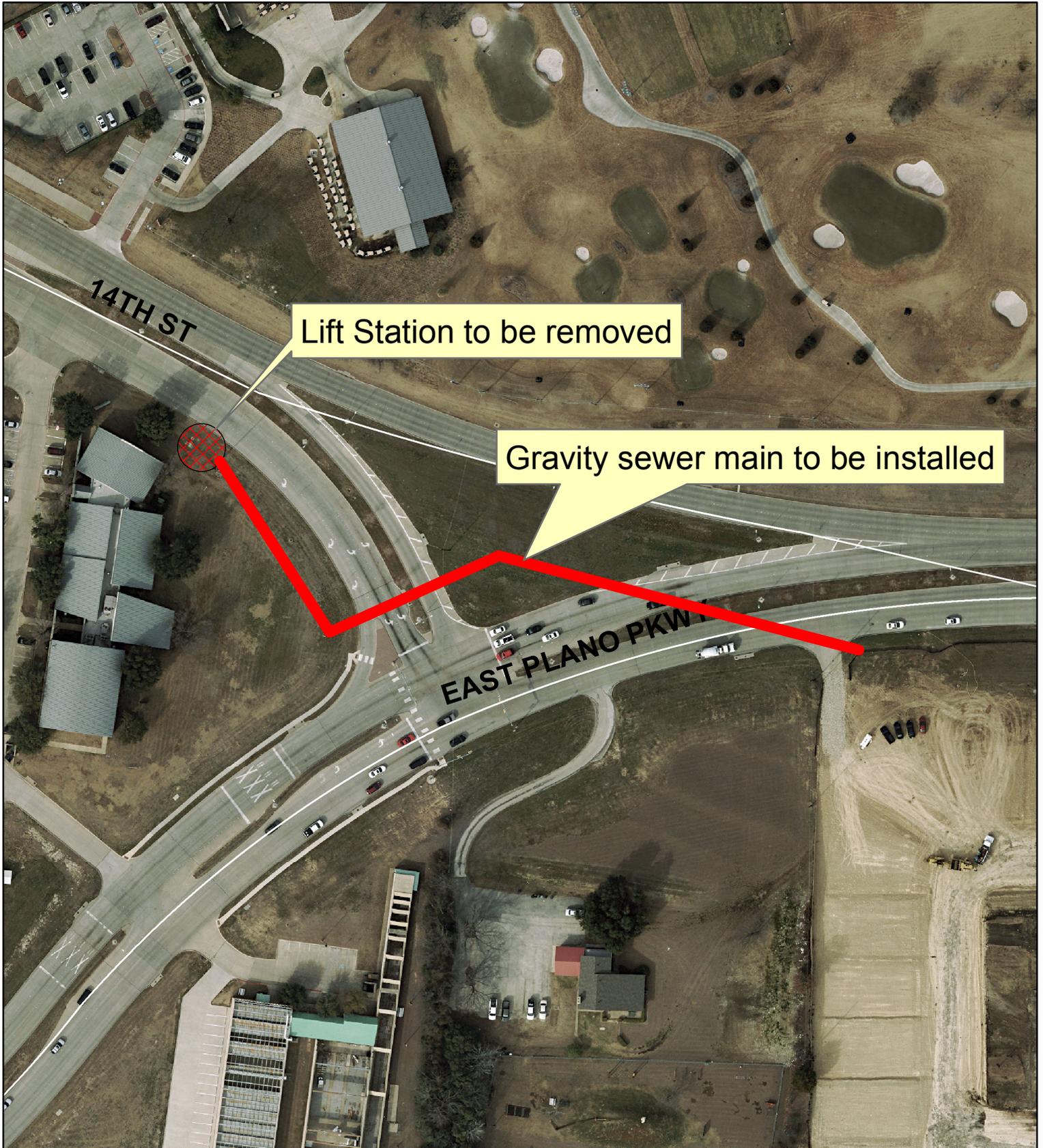
Lisa C. Henderson, City Secretary



**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:		11/09/15		
Department:		Engineering		
Department Head:		B. Caleb Thornhill, PE		
Agenda Coordinator (include phone #):			Kathleen Schonne(7198) Project No. 6343	
CAPTION				
Bid No. 2015-453-B for the 14 th Street Sewer Project to Wilson Contractor Services, LLC, in the amount of \$235,572, 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: 2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	26,502	323,498	0	350,000
Encumbered/Expended Amount	-26,502	-8,668	0	-35,170
This Item	0	-235,572	0	-235,572
BALANCE	0	79,258	0	79,258
FUND(S): SEWER CIP				
<p>COMMENTS: Funding is available for this item in the 2015-16 Sewer CIP. Construction of the 14th Street Sewer project, in the amount of \$235,572, will leave a current year balance of \$79,258 available for future project expenditures on this or other sewer improvement projects.</p> <p>STRATEGIC PLAN GOAL: Constructing improvements to relieve a lift station scheduled for removal relates to the City's goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Staff recommends the bid of Wilson Contractor Services, LLC, in the amount of \$235,572.00, be accepted as the lowest responsible bid, conditioned on timely execution of any necessary contract documents.</p> <p>The second low bid was from Ace Pipe Cleaning, Inc., in the amount of \$248,625.05</p> <p>The engineer's estimate was \$254,000.00.</p> <p>The purpose of this project is to construct a new gravity sewer to relieve the 14th Street lift station which will be removed.</p>				
List of Supporting Documents: Location Map, Bid Recap			Other Departments, Boards, Commissions or Agencies N/A	

14th Street Sewer Project # 6343



Lift Station to be removed

Gravity sewer main to be installed

CITY OF PLANO

Bid No. 2015-453-B

14th Street Sewer – Project No. 6343

Bid Recap

Bid opening Date/Time: October 22, 2015 @ 3:00 PM

Number of Vendors Notified: 7,255

Vendors Submitting “No Bids”: 0

Number of Bids Submitted: 4

<u>Vendor Name</u>	<u>Total Base Bid</u>
Wilson Contractor Services, LLC	\$235,572.00
Ace Pipe Cleaning, Inc.	\$248,625.00
Canary Construction, Inc.	\$273,492.00
Atkins Bros. Equipment Co., Inc.	\$332,779.00

Recommended Vendor(s):
Wilson Contractor Services, LLC \$235,572.00

Corey Isaacs

Corey Isaacs, Buyer II

October 22, 2015

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:		11/9/15		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
Approval of an Engineering Services Agreement by and between the City of Plano and Adams Consulting Engineers, Inc. in the amount of \$67,950 for floodplain analysis and FEMA Conditional Letter of Map Revision services for the White Rock Creek Trail Replacement project and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	131,629	800,000	950,000	1,881,629
Encumbered/Expended Amount	-131,629	-74,882	0	-206,511
This Item	0	-67,950	0	-67,950
BALANCE	0	657,168	950,000	1,607,168
FUND(s): CAPITAL RESERVE FUND				
<p>COMMENTS: Funding for this item is available in the 2015-16 Capital Reserve CIP. Floodplain analysis and other engineering services, in the amount of \$67,950, will leave a current year balance of \$657,168 available for future expenditures related to repairs to Plano's trail system.</p> <p>STRATEGIC PLAN GOAL: Obtaining professional engineering services for capital projects relates to the City's goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>These engineering services are required to comply with FEMA requirements and to ensure that the trail reconstruction in the floodway does not result in any negative impacts to adjacent properties. The total contract fee is \$67,950 which includes the pre-construction services of floodplain modeling and analysis including exhibits and reports. It also includes the post construction services of floodplain analysis, FEMA Conditional Letter of Map Revision application, and associated submittal and review services. The fee is consistent with other park and engineering floodplain analysis projects of this size and scope.</p> <p>Adams Consulting Engineers, Inc. is on the 2014-15 list of qualified consultants for Engineering Services. Project Location Map: http://goo.gl/cvLSSU</p>				

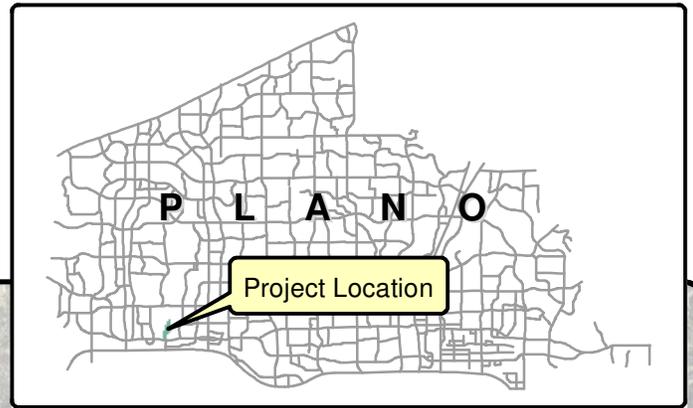


CITY OF PLANO COUNCIL AGENDA ITEM

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

Location Map

White Rock Creek Trail Replacement:
Floodplain Analysis & CLOMR
Project No. 6543.1



WHITE ROCK CREEK TRAIL REPLACEMENT: FLOODPLAIN ANALYSIS & CLOMR

PROJECT NO. 6543.1

ENGINEERING

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **ADAMS CONSULTING ENGINEERS, INC.**, a **TEXAS** Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **WHITE ROCK CREEK TRAIL REPLACEMENT: FLOODPLAIN ANALYSIS & CLOMR** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

Engineer shall perform his or her professional engineering services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional

license. All such professional services shall be performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

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

VII. INDEMNITY

THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF

LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, TO THE EXTENT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM ARISES OUT OF OR IS OCCASIONED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY OBLIGATIONS OWED BY THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, AND REPRESENTATIVES, IN THE PERFORMANCE OF THIS AGREEMENT.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEER'S LIABILITY.

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

City of Plano
Parks Department
Attn: Renee Jordan
P.O. Box 860358
Plano, TX 75086-0358

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

Adams Consulting Engineers, Inc.
Attn: Jimmy Fechter
910 S. Kimball Avenue
Southlake, TX 76092

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

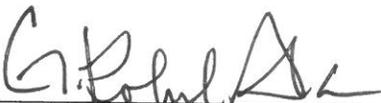
G. Authority to Sign:

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

SIGNED on the date indicated below.

ADAMS CONSULTING ENGINEERS, INC.
A Texas Corporation

DATE: 10.2.15

BY: 
Rob Adams
VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

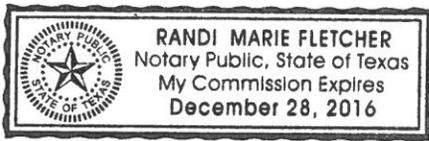
APPROVED AS TO FORM:

Paige Mims
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the 2 day of October, 2015, by **ROB ADAMS, Vice-President**, of **Adams Consulting Engineers, Inc.**, a Texas corporation, on behalf of said corporation.



Randi Fletcher
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2015, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT A

SCOPE OF SERVICES White Rock Creek Trail Replacement: Floodplain Analysis & CLOMR

City of Plano Project No. 6543.1

Project Understanding

Adams has been requested by the City of Plano (City) to provide a design service proposal to produce a revised flood study of White Rock Creek to accommodate the proposed trail renovation project referenced above. We understand that our contract will need to provide for revision of the effective flood study for White Rock Creek, preparation of required documents needed to obtain a Floodplain Development Permit from the City, and preparation of a submittal package needed to obtain a Conditional Letter of Map Revision (CLOMR) for the proposed work.

Scope of Services

Section 1 – Basic Services

A. Research and Data Collection

Adams will conduct one site visit to observe and document the existing conditions along the Creek.

Adams will coordinate with the City of Plano and/or the Federal Emergency Management Association (FEMA) as required to obtain the current effective hydraulic model, and hydraulic work map for White Rock Creek.

Upon receipt of the effective model, Adams will review the effective model and compare the model with the existing site conditions to determine if any revisions to the effective model are needed in order to reflect existing or pre-project site conditions.

B. Floodplain/Floodway Analysis

Adams will perform a floodplain/floodway analysis in accordance with City of Plano standards and the minimum standards of the National Flood Insurance Program (NFIP) as administered by FEMA. This analysis will be the basis for obtaining a Floodplain Development Permit from the City, as well as obtaining a Conditional Letter of Map Revision (CLOMR) from FEMA.

The Floodplain Analysis will include incorporation of any revisions to the effective floodplain and floodway hydraulic models as needed to reflect existing (pre-project) site conditions, creation of proposed conditions floodplain and floodway models to reflect the trail improvements, and comparison of the existing and proposed conditions models in order to verify that there is no increase in base flood elevation or erosive increase in channel flow velocity, or loss of valley storage due to the proposed improvements.

The floodplain/floodway analysis will be based on fully developed watershed flows provided by the City. It is anticipated that no hydrologic modeling to determine fully developed flows will be required from Adams. Any hydrologic modeling required to determine fully developed watershed flows is excluded from this proposal.

The floodplain/floodway analysis will then be submitted to the City for review and any comments originating from that review will be incorporated into the model.

C. Floodplain Development Permit

Adams will prepare a Floodplain Development Permit application and submit the required information to the City.

Items to be submitted to the City will include the application form, construction plans reflecting the proposed grading and trail layout, and the supporting hydraulic models for both the floodplain and floodway.

Adams will address any comments generated by the City upon review of the Floodplain Development Permit submittal.

D. Conditional Letter of Map Revision (CLOMR)

Adams will prepare a submittal package to FEMA in order to request a CLOMR to update the effective Flood Insurance Rate Map (FIRM) to reflect the modifications to the floodway/floodplain proposed in the trail project.

The submittal will include a narrative outlining the existing site conditions, and the proposed revisions to the floodplain and floodway, a certified topographic work map delineating the effective and proposed conditions floodplain and floodway boundaries, the completed FEMA MT-2 application forms, digital files of the hydraulic models used in the analysis, an annotated FIRM to reflect proposed changes to the effective floodplain/floodway resulting from the project, and documentation of the proposed project's compliance with the Endangered Species Act.

The hydraulic models for the floodplain/floodway will be developed using the effective flows in the current Flood Insurance Study (FIS) for Collin County. It is anticipated that hydrologic modeling to determine watershed flows will not be required as part of this project. Any hydrologic modeling required to revise the effective watershed flows is excluded from this proposal.

Adams will address comments from FEMA generated from their subsequent review of the CLOMR application submittal and revise the hydraulic models, work map and narrative as needed.

Section 2 – Reimbursables

- A. Printing, courier costs, mileage, travel expenses, Federal Express, TDLR, etc. (not to exceed \$1000.00)
- B. CLOMR Application Fee to FEMA (currently \$6750, subject to change by FEMA)

Section 3 – Exclusions

- A. Exclusions – The intent of this scope of services is to include only the services specifically listed herein and no others. Services specifically excluded from this scope of services include the following:
 - 1. Hydrologic modeling to determine base or fully developed watershed flows (as discussed above);
 - 2. Endangered Species Compliance Assessment;
 - 3. Field surveying beyond what was included in the original trail project proposal;
 - 4. Boundary surveys;
 - 5. Preparation of easements or right-of-way dedications;
 - 6. Environmental impact statements or assessments;
 - 7. Platting services;
 - 8. Consulting services by others not included in the proposal;
 - 9. Services beyond those described in Section 1 or Section 2;
 - 10. Corps of Engineer permitting;
 - 11. Wetlands determination/delineation;
- B. Information to be provided by the City (subject to availability)
 - 1. The most recent floodplain/floodway models in HEC-RAS format.
 - 2. The watershed flows to be utilized in the required hydraulic models based on fully developed watershed conditions;
 - 3. The City shall coordinate all submittals with other City departments and/or outside consultants, if necessary.

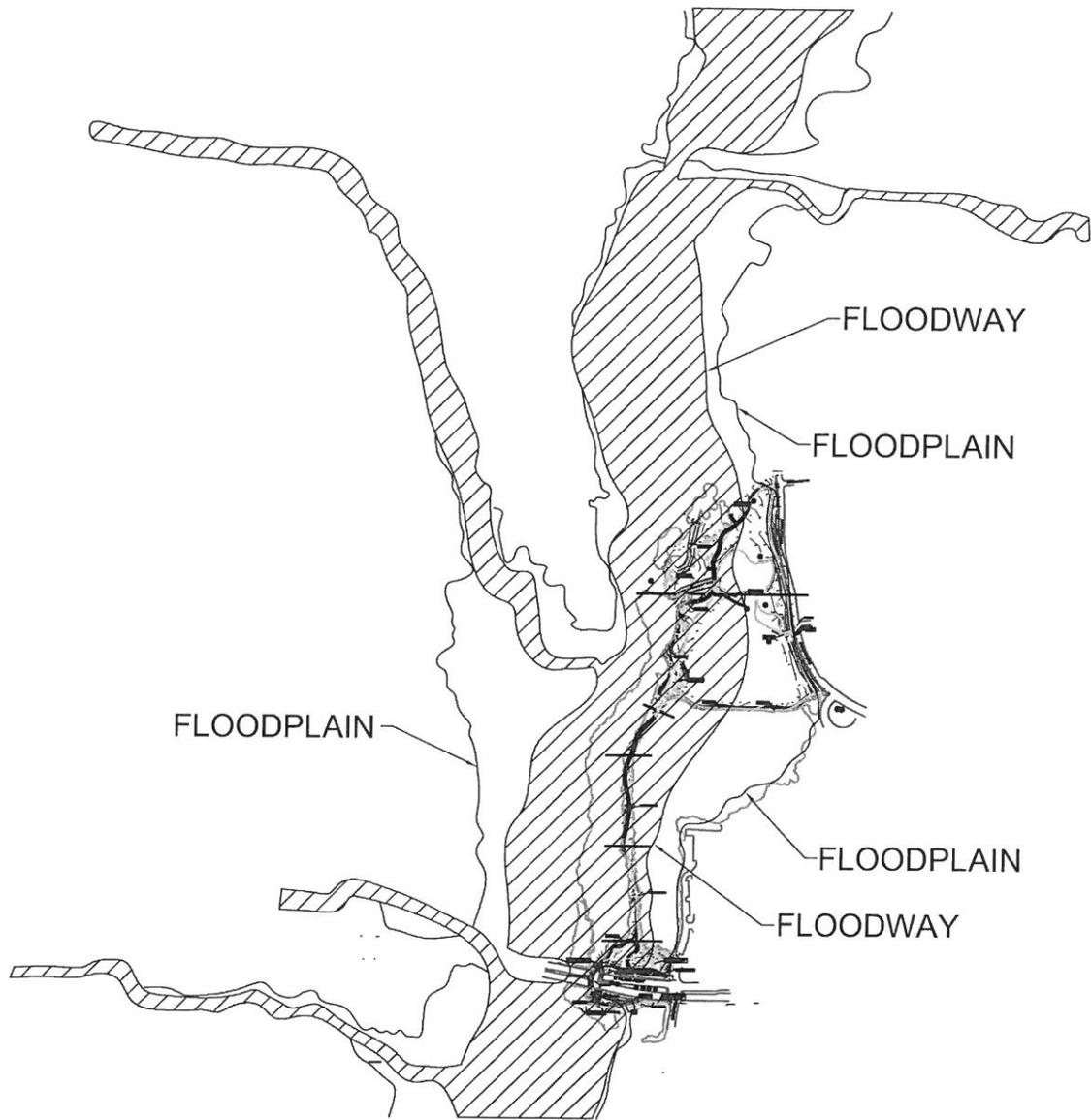


EXHIBIT B**COMPLETION SCHEDULE**
White Rock Creek Trail Replacement: Floodplain Analysis & CLOMR**Schedule**

The work product described in Exhibit A, Scope of Services, will be performed in accordance with the following schedule:

A detailed project schedule based on the actual contract start time showing all tasks and subtasks will be provided for review and approval upon request by the City.

Section 1 – Basic Services

A. Research and Data Collection	1 week
B. Floodplain/Floodway Analysis	4 weeks
C. Floodplain Development Permit	1 week
D. Conditional Letter of Map Revision (CLOMR)	4 weeks

EXHIBIT C**FEE SCHEDULE**
White Rock Creek Trail Replacement: Floodplain Analysis & CLOMR**Fees**

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

Section 1 – Basic Services

A. Research and Data Collection	\$ 5,600.00
B. Floodplain/Floodway Analysis	\$ 22,400.00
C. Floodplain Development Permit	\$ 4,200.00
D. Conditional Letter of Map Revision (CLOMR)	\$ 28,000.00
Total Basic Services	\$ 60,200.00

Section 2 – Reimbursables

A. Printing, Courier Costs, etc.	\$ 1,000.00
B. FEMA CLOMR Application Fee	\$ 6,750.00
Total Reimbursables	\$ 7,750.00

Project Total \$ 67,950.00

EXHIBIT "D"

ENGINEERING

INSURANCE

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

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."
- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

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

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

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

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

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

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

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

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST AND COMPLIANCE WITH CITY OF PLANO'S EQUAL RIGHTS ORDINANCE

A. No Prohibited Interest

I, the undersigned, declare that I am authorized to make this statement on behalf of **Adams Consulting Engineers, Inc.**, a Corporation organized under the laws of the State of Texas, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **Adams Consulting Engineers, Inc.**, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

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

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

B. Equal Rights Compliance

1. Section 2-11(F) of the City Code of Ordinances reads as follows:

"It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or

- employment in, any program established to provide apprenticeship or other training;
- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
- (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or
- (m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

2. I am aware that my company, its directors, officers and employees must comply with Section 2-11(F) of the City Code of Ordinances unless an exclusion applies, as indicated below. Further, I understand that if Section 2-11(F) applies, I am entitled to apply to the City Manager for a waiver from signing this section of the affidavit based on a conflict with state or federal law. The contract will not be executed prior to the waiver issue being resolved.

Having made reasonable inquiry, I affirm that my company, its directors, officers and employees agree to comply with Section 2-11(F); or my company is excluded from this Ordinance based on the following: **[PLEASE CHECK BELOW, IF APPLICABLE]**

_____ A religious organization.

_____ A political organization.

_____ An educational institution.

_____ A branch or division of the United States government or any of its departments or agencies.

_____ A branch or division of the State of Texas or any of its departments, agencies or political subdivisions.

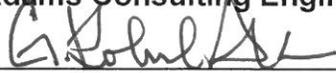
_____ A private club that is restricted to members of the club and guests and not open to the general public.

_____ Is not an "employer" under Section 2-11(F) because it has not had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

[THIS SPACE INTENTIONALLY LEFT BLANK]

I also understand and acknowledge that a violation of Section 11.02 of the City Charter or Section 2-11(F) of the City Code of Ordinances, if applicable, at any time during the term of this contract may render the contract voidable by the City.

Adams Consulting Engineers, Inc.

By: 
Signature

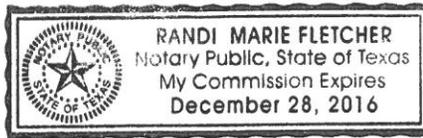
Rob Adams
Print Name

Vice-President
Title

10.2.15
Date

STATE OF TEXAS
COUNTY OF TARRANT

§
§
§



SUBSCRIBED AND SWORN TO before me this 2 day of October, 2015.


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:		11/09/15		
Department:		Engineering		
Department Head:		B. Caleb Thornhill, PE		
Agenda Coordinator (include phone #):			Kathleen Schonne (7198)	
			Project No. 6661	
CAPTION				
To approve a Professional Services Agreement by and between the City of Plano and R-Delta Engineers, Inc., in the amount of \$65,850, for Screening Walls at Spring Creek Parkway; 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: 2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	70,000	600,000	670,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-65,850	0	-65,850
BALANCE	0	4,150	600,000	604,150
FUND(S): STREET IMPROVEMENTS CIP				
<p>COMMENTS: Funding is available for this item in the 2015-16 Street Improvement CIP. Professional engineering services, in the amount of \$65,850, will leave a current year balance of \$4,150 available for future expenditures related to this or other street improvement projects.</p> <p>STRATEGIC PLAN GOAL: Obtaining professional engineering services for CIP projects relates to the City's goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>This project includes research and data collection, preliminary design, final design, bid phase, and construction related professional engineering services for reconstruction of masonry screening wall and reinforced concrete foundation located along the southern side of W. Spring Creek Parkway between Mission Ridge Road and City of Plano Water Tower site (approximately 920 linear feet). Demolition includes landscape planter pony wall (approximately 60 linear feet). This project includes new sidewalk along the north side of the wall and repairs to a portion of the adjacent alley. Consultant was chosen based on evaluation of SF330.</p> <p>The contract fee is for \$65,850.00 and is detailed as follows:</p>				
Basic Services				
1. Research and Data Collection.....			\$200.00	
2. Design Survey			\$8,500.00	
3. Preliminary Design			\$24,200.00	
4. Final Design			\$16,500.00	
5. Bid Phase.....			\$ 2,000.00	
6. Construction Administration.....			\$ 1,500.00	
7. Construction Control Survey.....			<u>\$750.00</u>	
	Total Basic Fee:		\$53,650.00	

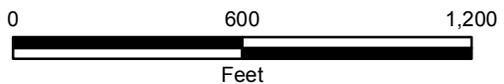
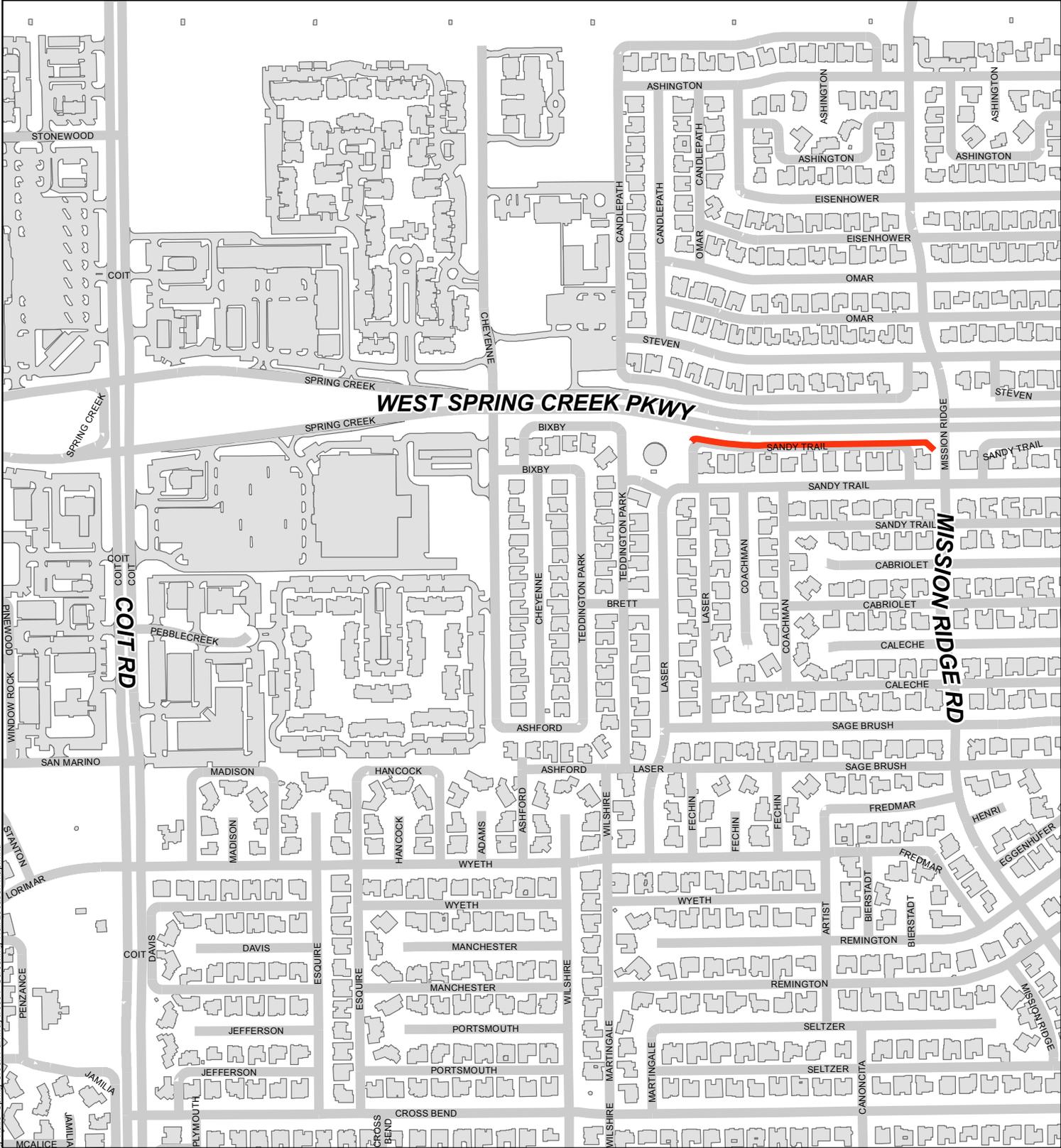


**CITY OF PLANO
COUNCIL AGENDA ITEM**

11.Special Services	
a. Geotechnical Investigation/Report (Terracon)	\$5,200.00
b. Level A Subsurface Utility Engineering (4 Test Holes)	\$4,000.00
c. Landscape Architectural Design	<u>\$3,000.00</u>
Total Special Services:	\$ 12,200.00
Total Fee	\$ 65,850.00

List of Supporting Documents:
Location Map, Agreement

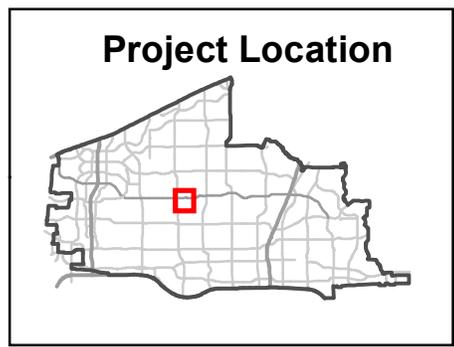
Other Departments, Boards, Commissions or Agencies
N/A



**Screening Walls -Spring Creek Parkway
Project # 6661**



October, 2015
City of Plano GIS Division



SCREENING WALLS – SPRING CREEK PARKWAY

PROJECT NO. 6661

ENGINEERING PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **R-DELTA ENGINEERS, INC.**, a **TEXAS** "S" Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **SCREENING WALLS – SPRING CREEK PARKWAY** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

Engineer shall perform his or her professional engineering services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional

license. All such professional services shall be performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

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

VII. INDEMNITY

THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND

ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, TO THE EXTENT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM ARISES OUT OF OR IS OCCASIONED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY OBLIGATIONS OWED BY THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, AND REPRESENTATIVES, IN THE PERFORMANCE OF THIS AGREEMENT.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEER'S LIABILITY.

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

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

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

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

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

G. Authority to Sign:

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

SIGNED on the date indicated below.

R-DELTA ENGINEERS, INC.
A Texas "S" Corporation

DATE: _____

BY: _____
Frank A. Polma, PE
PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2015, by **FRANK A. POLMA, PE, PRESIDENT** of **R-DELTA ENGINEERS, INC.**, a **TEXAS “S”** corporation, on behalf of said “S” corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2015, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

**EXHIBIT A
SCOPE OF SERVICES**

**SCREENING WALLS – SPRING CREEK PARKWAY
PROJECT No. 6661**

PROJECT DESCRIPTION:

1. Demolition of existing masonry screening wall and reinforced concrete foundation located along the southerly side of W. Spring Creek Parkway between Mission Ridge Road and City of Plano Water Tower site (approximately 920 linear feet). Demolition will also include landscape planter pony wall (approximately 60 linear feet).
2. Construction of double wythe masonry screening wall on drilled shaft foundation system along the existing screen wall alignment. The height and appearance of the new masonry wall shall resemble that of the existing wall being replaced. Portions of the wall foundation beam will act as a retaining wall. The exposed portion of the beam in these areas shall be with a masonry veneer. Construction will also include approximately 60 linear feet of new landscape planter pony wall, approximately 2-feet in height. New brick shall match the existing wall as closely as practical. Project design shall utilize new brick previously purchased by the City of Plano for this project.
3. Removal and reconstruction of leaning residential fence abutting screen wall at Lot 17, Block H of Carriage Hill Phase III.
4. Demolition and replacement of adjacent concrete alley paving to the extent necessary for construction of the screening wall.
5. Demolition and replacement of existing distressed alley paving at east end of project (approximately 75 linear feet of alley replacement)
6. Demolition and reconstruction of concrete sidewalk along entire length of new screening wall.

BASIC SERVICES:

A. Design Standards

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

Geodetic Monumentation Manual

Manual for Right-of-Way Management

Storm Drainage Design Manual

Thorough Fare Standards Rules & Regulations

Manual for the Design of Water & Sanitary Sewer Lines

Standard Construction Details

Barrier Free Ramp Details

NCTCOG Standard Specifications for Public Works Construction

Special Provisions to Standard Specifications for Public Works Construction

Sample Plan Set

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

B. Research and Data Collection –

1. Meet with City of Plano engineering staff and obtain design criteria, pertinent utility plans, site development record drawings, plats and right-of-way maps, existing easement information, and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.

C. Design Survey –

1. Establish a horizontal and vertical control network and project control baseline for the project site. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monuments for use in construction.
3. Survey of right-of-way and property boundary lines abutting or adjacent to the proposed improvements.
4. Tie existing screenwalls, landscape areas, fence lines, trees, edges of pavements, utility surface appurtenances, and all other visible surface features to the project control baselines. Existing utility structures shall be located and referenced by utility name (i.e. Oncor Elec., Verizon Telephone, Atmos Gas, Etc.).
5. Topographic surveying will extend twenty (20) feet minimum beyond the existing screen wall in all directions.
6. Mapping of underground utilities will be based on available public record plans from the City of Plano and field locates provided by DIGG-TESS or other one-call subsurface utility locator service.
7. Vertical topographic information tying pavement, drives, walls, storm drain and sanitary sewer manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project area for the design.
8. Provide cross sections at a fifty-foot (50') interval relative to the project baselines and at all other areas of significance. Cross sections are for

project design review and quantity takeoffs and will be a part of the preliminary and final construction plan sets.

9. When underground utilities are exposed, tie to project control baseline.
10. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

D. Right-of-way and Easement Requirements –

1. Not Applicable

E. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets (22" x 34") at the engineering scale indicated:

- Cover sheet.
- Project layout control sheets. Scale 1"= 20'.
- Quantity sheet (sheet by sheet breakdown of all quantities).
- Typical sections
- Demolition Plans, Scale 1"= 20' (Double Plan)
- Screening Wall Layouts, Scale 1"= 20'
- Alley Paving Reconstruction Plan-Profile
- SWPPP sheets, if necessary, meeting EPA and City of Plano requirements. Scale 1"= 40'. Include the City WORD file form, "City of Plano CIP Projects – SWPPP Operator Requirements" as a sheet in the plans as part of the SWPPP.
- Cross Sections. Scale 1"=10'H;1"=2'V
- Screening Wall Details
- Miscellaneous Details

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

2. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.
3. Prepare outline of any special technical specifications needed for the project (if any).
4. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
5. Submit five (5) sets of preliminary plans, and one (1) set of outline of special technical specifications and preliminary statement of probable construction cost to the City for review.
 - Engineering
 - Public Works
 - Inspectors
 - Transportation
 - File Set

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

F. Final Design –

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details (those not included in the City of Plano Standard Details) into the construction plans and prepare additional details as required.
6. Take off final construction quantities and prepare final construction cost estimates.
7. Submit five (5) sets of pre-final plans and one (1) set of special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.
8. Incorporate City final comments into the plans and bid documents.
9. Provide an electronic PDF format half size set of final utility coordination drawings (11" x 17" sheets to scale) to the City for distribution to the franchise utility companies affected by the construction. Utility coordination drawings shall include the cover sheet, typical sections, screen wall layouts and details, cross sections.
10. Submit three (3) sets of final black line prints, three (3) bound copies of the bid documents and one (1) unbound original bid document set to the City of Plano and one MSWORD electronic copy of the final Bid Schedule.
11. Submit one (1) set of final black line prints and one (1) bound copy of the bid documents to the designated Material Testing Laboratory.

G. Bid Phase Services –

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
3. Furnish plans and bid documents for up to five (5) plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
4. Assist City staff in conducting a pre-bid conference, if required.

5. Prepare and distribute addenda to bid documents as necessary.
6. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
7. Submit a CD-ROM disk of the bid set plans in a PDF format.
8. Provide bid tabulation to the City of Plano within four working days of the bid letting.
9. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
10. Assist City staff in a pre-construction conference.
11. Furnish eleven (11) full size and four (4) half size sets of final construction plans and seven (7) sets of the contract documents manual to the City for construction.

H. Construction Administration –

1. When requested, provide periodic site visits (estimate 1 per week if requested) by the design engineer in response to questions during construction with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. Prepare plan and quantity revisions as required for change orders. The City of Plano will prepare the actual change order and get it executed by the contractor.
4. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and two (2) CD-ROM disks containing scanned images of the 22" x 34" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

I. Construction Control Survey –

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

SPECIAL SERVICES:

A. Geotechnical Investigation and Reporting –

1. Obtain geotechnical report and recommendations for proposed wall design.

B. Subsurface Utility Engineering Level A

1. Provide test holes to expose existing subsurface utilities via vacuum excavation when necessary to verify utility horizontal and vertical position at potential conflicts – estimated fee based on a maximum of six (6) test holes

C. Landscape Architectural Design

1. Provide landscape plan, details, and specifications for replacement of landscape materials at screen wall planter area

**EXHIBIT B
COMPLETION SCHEDULE**

**SCREENING WALLS – SPRING CREEK PARKWAY
PROJECT No. 6661**

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

**EXHIBIT C
PAYMENT SCHEDULE**

**SCREENING WALLS – SPRING CREEK PARKWAY
PROJECT No. 6661**

WORK STAGE SUBMITTAL OR COMPLETION	TOTAL
1. Research and Data Collection	\$ 200.
2. Design Survey	8,500.
3. Preliminary Design	24,200.
4. Final Design	16,500.
5. Bid Phase	2,000.
6. Construction Administration	1,500.
7. Construction Control Survey	<u>750.</u>
Total Basic Fee	\$ 53,650.
9. Special Services –	
a. Geotechnical Investigation/Report (Terracon):	5,200.
b. Level A Subsurface Utility Engineering (4 Test Holes)	4,000.
c. Landscape Architectural Design	<u>3,000.</u>
Total Special Services	\$ 12,200.
Total Fee	<u>\$ 65,850.</u>

EXHIBIT "D"
ENGINEERING
INSURANCE

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

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."
- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

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

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

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

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

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

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

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

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST AND COMPLIANCE WITH CITY OF PLANO'S EQUAL RIGHTS ORDINANCE

A. No Prohibited Interest

I, the undersigned, declare that I am authorized to make this statement on behalf of **R-Delta Engineers, Inc.**, a "S" Corporation organized under the laws of the State of Texas, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **R-Delta Engineers, Inc.**, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

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

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

B. Equal Rights Compliance

1. Section 2-11(F) of the City Code of Ordinances reads as follows:

"It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or

- employment in, any program established to provide apprenticeship or other training;
- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
- (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or
- (m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

2. I am aware that my company, its directors, officers and employees must comply with Section 2-11(F) of the City Code of Ordinances unless an exclusion applies, as indicated below. Further, I understand that if Section 2-11(F) applies, I am entitled to apply to the City Manager for a waiver from signing this section of the affidavit based on a conflict with state or federal law. The contract will not be executed prior to the waiver issue being resolved.

Having made reasonable inquiry, I affirm that my company, its directors, officers and employees agree to comply with Section 2-11(F); or my company is excluded from this Ordinance based on the following: **[PLEASE CHECK BELOW, IF APPLICABLE]**

_____ A religious organization.

_____ A political organization.

_____ An educational institution.

_____ A branch or division of the United States government or any of its departments or agencies.

_____ A branch or division of the State of Texas or any of its departments, agencies or political subdivisions.

_____ A private club that is restricted to members of the club and guests and not open to the general public.

_____ Is not an “employer” under Section 2-11(F) because it has not had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

[THIS SPACE INTENTIONALLY LEFT BLANK]

I also understand and acknowledge that a violation of Section 11.02 of the City Charter or Section 2-11(F) of the City Code of Ordinances, if applicable, at any time during the term of this contract may render the contract voidable by the City.

R-Delta Engineers, Inc. _____

By: _____
Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2015.

Notary Public, State of Texas



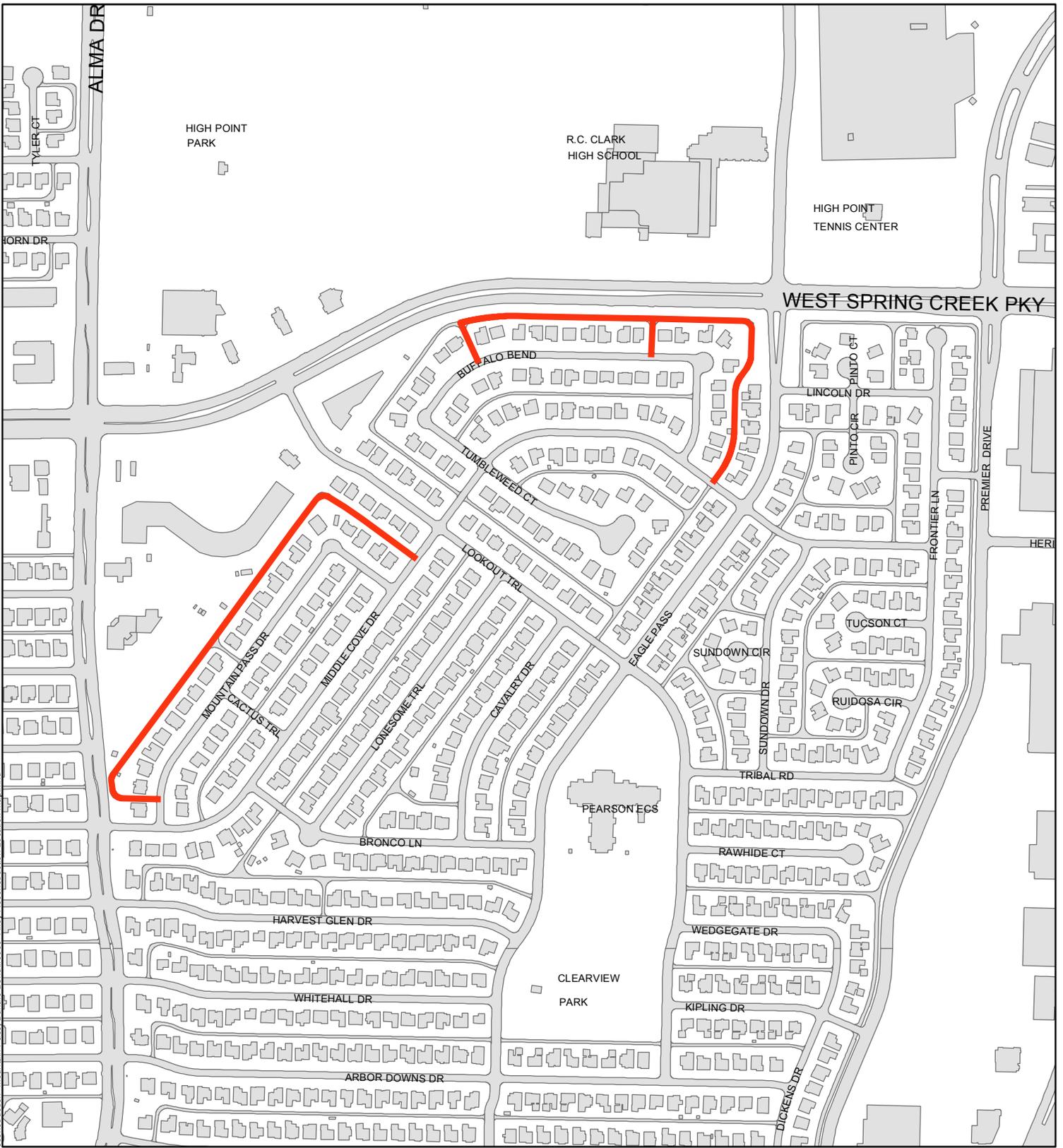
**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/09/15		
Department:		Engineering		
Department Head:		B. Caleb Thornhill, PE		
Agenda Coordinator (include phone #): Kathleen Schonne (7198)				Project No. 6660
CAPTION				
To approve a Professional Services Agreement by and between the City of Plano and JQ Infrastructure, LLC, in the amount of \$80,305, for Alley Reconstruction – Mountain Pass and Buffalo Bend; 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: 2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	85,000	600,000	685,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-80,305	0	-80,305
BALANCE	0	4,695	600,000	604,695
FUND(S): STREET IMPROVEMENTS CIP				
<p>COMMENTS: Funding is available for this item in the 2015-16 Street Improvements CIP. Professional engineering services, in the amount of \$80,305, will leave a current year balance of \$4,695 available for future expenditures related to this or other street improvement projects.</p> <p>STRATEGIC PLAN GOAL: Obtaining professional engineering services for CIP projects relates to the City's goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>This agreement is for design services for Alley Reconstruction at two locations. Buffalo Bend alley from intersection of Middle Cove Drive to turn-out east of Tumbleweed Drive-Approximately 2000 Linear feet and Mountain Pass Drive alley from intersection of Middle Cove Drive to turn-out to Mountain Pass Drive - Approximately 1950 Linear feet . The consultant was selected based on their "015-262-X - Civil Design - Roadway/Residential Design" submission. The contract fee is for \$80,305.00.00 and is detailed as follows:</p>				
BASIC SERVICES				
GENERAL MANAGEMENT AND DESIGN STANDARDS			\$ 2,660.00	
RESEARCH AND DATA COLLECTION			\$ 1,480.00	
PRELIMINARY DESIGN			\$24,125.00	
FINAL DESIGN			\$19,270.00	
BID PHASE SERVICES			\$ 4,195.00	
CONSTRUCTION PHASE SERVICE			\$ 4,415.00	
CONSTRUCTION CONTROL SERVICE			\$ 1,500.00	
SUB-TOTAL FOR BASIC			\$ 57,645.00	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

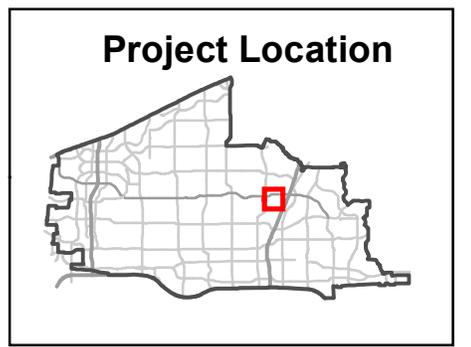
SPECIAL SERVICES	
SURVEY	\$ 14,160.00
ROW /EASEMENT PREPARATION	\$2,250.00
SUE INVESTIGATIONS	\$6,250.00
SUB-TOTAL FOR SPECIAL SERVICE	= \$22,660.00
TOTAL FEE	= \$80,305.00
List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map	N/A
Professional Services Agreement	



husainh_10/19/2015 Z:\ENGINEER\Husain Hamza\6660-Alley Reconstruction-Mountain Pass, Buffalo Bend\6660-Alley Reconstruction Location Map.mxd



Feet
Alley Reconstruction
Mountain Pass and Buffalo Bend
Project No. 6660



October, 2015
 City of Plano GIS Division

ALLEY RECONSTRUCTION – MOUNTAIN PASS AND BUFFALO BEND

PROJECT NO. 6660

ENGINEERING PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **JQ INFRASTRUCTURE, LLC**, a **LIMITED LIABILITY COMPANY**, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **ALLEY RECONSTRUCTION – MOUNTAIN PASS AND BUFFALO BEND** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

Engineer shall perform his or her professional engineering services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license. All such professional services shall be performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

III. Schedule of Work

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

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

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

VII. INDEMNITY

THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, TO THE EXTENT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM ARISES OUT OF OR IS OCCASIONED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY OBLIGATIONS OWED BY THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, AND REPRESENTATIVES, IN THE PERFORMANCE OF THIS AGREEMENT.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEER'S LIABILITY.

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

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

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

JQ Infrastructure, LLC
Attn: C. Raajan Mehta, PE
2105 Commerce Street, Ste. 200
Dallas, TX 75201

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

G. Authority to Sign:

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

SIGNED on the date indicated below.

JQ INFRASTRUCTURE, LLC
A Limited Liability Company

DATE: _____

BY: _____
C. Rajaan Mahta, PE
PRINCIPAL PARTNER

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2015, by **C. RAAJAN MEHTA, PE, PRINCIPAL PARTNER**, of **JQ INFRASTRUCTURE, LLC**, a **LIMITED LIABILITY COMPANY**, on behalf of said limited liability company.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2015, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT A

SCOPE OF SERVICES

ALLEY RECONSTRUCTION - MOUNTAIN PASS AND BUFFALO BEND PROJECT NO. 6660

PROJECT DESCRIPTION:

Reconstruction of alleys at two locations. Buffalo Bend alley from intersection of Middle Cove Drive to turn-out east of Tumbleweed Drive – Approximately 2,000 LF. and Mountain Pass Drive alley from intersection of Middle Cove Drive to turn-out to Mountain Pass Drive – Approximately 1,950 LF.

BASIC SERVICES:

A. Project Management and Design Standards

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

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

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

B. Research and Data Collection –

1. Meet with City of Plano engineering staff and obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other information available for the project area.

C. Design Survey –

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie right-of-way lines and corners, property lines and corners, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control baseline. Existing utility structures shall be located and referenced by utility name (i.e. T.U. Elec., GTE Telephone, Lone Star Gas, Etc.).
4. Vertical topographic information tying pavement, drives, walls, manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
5. Provide alley cross sections at a fifty-foot (50') interval relative to the project baseline. Cross sections are for project design review and quantity takeoffs and may not be a part of the final construction plan set.
6. When underground utilities are exposed, tie to project control baseline.
7. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

Right-of-way and Easement Requirements –

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

D. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets at the engineering scale indicated:
 - Cover sheet.
 - Project layout control sheet(s).
Scale 1"= 100'.
 - General notes and quantity sheet with individual quantities for each sheet included in the plans.
 - Typical sections and detail sheets.
 - Construction phasing and temporary traffic control sheets.
Scale 1"= 20'.

- Paving plan & profile sheets for street improvements. Horizontal scale 1"= 20'; vertical scale 1"= 2'.
- Drainage area maps for street improvements. Scale 1"= 100'.
- Storm drains improvement plan & profile sheets. Scale 1"= 20'.
- SWPPP sheets meeting EPA and City of Plano requirements. Scale 1"= 40'.
- Constriction erosion control plans and city of Plano SWPPP sheet meeting TCEQ and city of Plano requirements Erosions control plans may be shown on the plan/profile sheets.

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

3. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.
4. Prepare outline of any special technical specifications needed for the project (if any).
5. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
6. Submit four (4) sets of preliminary plans, outline of special technical specifications and preliminary statement of probable construction cost to the City for review.
 - Engineering
 - Public Works
 - Inspectors
 - Other
7. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.
8. Provide eight (8) sets of 11" x 17" plans for utility coordination for distribution to local utility companies to obtain information regarding impacts to their facilities. Sets will include only:
 - Cover
 - Typical sections
 - Paving and Profiles

E. Final Design –

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details into the construction plans and prepare additional details as required.
6. Take off final construction quantities and prepare final construction cost estimates.
7. Submit three (3) sets of pre-final plans, special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.

8. Incorporate City final comments into the plans and bid documents and provide one electronic copy.
9. Submit two (2) sets of blackline final plans and on MS Word formatted electronic copy of the bid documents including special technical specifications and bid schedule to the City of Plano.

F. Bid Phase Services –

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Bidding will be done through Bid Sync.
3. Assist City staff in conducting a pre-bid conference, if required.
4. Prepare and distribute addenda to bid documents as necessary.
5. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
6. Submit a CD-ROM disk of the bid set plans in a PDF format.
7. Provide bid tabulation to the City of Plano within four working days of the bid letting.
8. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
9. Assist City staff in a pre-construction conference.
10. Furnish thirteen sets of final construction plans and three sets of the contract documents manual to the City for construction.

G. Construction Administration –

1. Provide up to four (4) periodic site visits by the design engineer with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. Review up to two (2) Contractor change order requests and provide recommendation to the City of Plano.
4. Assist the City staff in conducting the final inspection.
5. Recommend final acceptance of work when acceptable.
6. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and a CD-ROM disk containing scanned images of the 24" x 36" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

H. Construction Control Survey –

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

SPECIAL SERVICES:

A. Right-of-Way and Easement Surveying –

1. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for right-of-way on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
2. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for temporary construction easements on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
3. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for up to three (3) easements on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
4. Prepared exhibits with the field notes first and drawings second.
5. Set new iron pins at all new corners, PC's and PT's of new right-of-way.

B. Sub-Surface Utility Engineering

1. Conduct up to five (5) Level "A" sub-surface utility engineering investigations.
2. Work includes excavation to a maximum depth of 5 ft. below grade and survey data gathering of the exposed utilities.

EXHIBIT B

SCHEDULE OF WORK

ALLEY RECONSTRUCTION - MOUNTAIN PASS AND BUFFALO BEND PROJECT NO. 6660

Activity	Completion Time (Calendar Days)
1. Notice to Proceed	1
2. Research and Data Collection	7
3. Design Survey	21
4. Preliminary Design	56
5. City Review	14
6. Final Design (Pre-Final Submittal)	14
7. City Review	14
9. Final Design/ Documents for Bidding	7
10. City Review	7
11. Advertise for Bids/Receive Bids	28
12. Recommendation	2
13. Prepare Council Agenda	14
14. Council Award	1
15. Prepare/Execute Contract	28
16. Schedule Preconstruction	7
17. Notice to Proceed	1
18. Construction	120

**EXHIBIT C
COMPENSATION AND METHOD OF PAYMENT**

**ALLEY RECONSTRUCTION - MOUNTAIN PASS, BUFFALO BEND
PROJECT NO. 6660**

Task

Basic Services

A General Management and Design Standards	\$ 2,660.00
B Research and Data Collection	\$ 1,480.00
F Preliminary Design	\$ 24,125.00
G Final Design	\$ 19,270.00
H Bid Phase Services	\$ 4,195.00
I Construction Phase Services	\$ 4,415.00
J Construction Control Survey	\$ 1,500.00

Sub-total for Basic= \$ 57,645.00

Special Services

C Survey	\$ 14,160.00
SS A ROW/Easment Preparation	\$ 2,250.00
SS B SUE Investigations	\$ 6,250.00

Sub-totoal for Special Services= \$ 22,660.00

TOTAL FEE = \$ 80,305.00

Note: Preliminary and Final Design Include Drainage Study of Off Site
Drainage that contributes to Alley Drainage Conveyance and Outfalls

EXHIBIT "D"
ENGINEERING
INSURANCE

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

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."
- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

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

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

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

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

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

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

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

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST AND COMPLIANCE WITH CITY OF PLANO'S EQUAL RIGHTS ORDINANCE

A. No Prohibited Interest

I, the undersigned, declare that I am authorized to make this statement on behalf of **JQ Infrastructure, LLC**, a Limited Liability Company organized under the laws of the State of Texas, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **JQ Infrastructure, LLC**, 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."

B. Equal Rights Compliance

1. Section 2-11(F) of the City Code of Ordinances reads as follows:

"It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or

- employment in, any program established to provide apprenticeship or other training;
- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
- (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or
- (m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

2. I am aware that my company, its directors, officers and employees must comply with Section 2-11(F) of the City Code of Ordinances unless an exclusion applies, as indicated below. Further, I understand that if Section 2-11(F) applies, I am entitled to apply to the City Manager for a waiver from signing this section of the affidavit based on a conflict with state or federal law. The contract will not be executed prior to the waiver issue being resolved.

Having made reasonable inquiry, I affirm that my company, its directors, officers and employees agree to comply with Section 2-11(F); or my company is excluded from this Ordinance based on the following: **[PLEASE CHECK BELOW, IF APPLICABLE]**

_____ A religious organization.

_____ A political organization.

_____ An educational institution.

_____ A branch or division of the United States government or any of its departments or agencies.

_____ A branch or division of the State of Texas or any of its departments, agencies or political subdivisions.

_____ A private club that is restricted to members of the club and guests and not open to the general public.

_____ Is not an “employer” under Section 2-11(F) because it has not had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

[THIS SPACE INTENTIONALLY LEFT BLANK]



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:		11/09/15			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Paula Date X 8306					
CAPTION					
A Resolution of the City of Plano, Texas, approving the terms and conditions of a First Amendment to the Economic Development Incentive Agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association; authorizing its execution by the City Manager or his 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:	2017-18 through 2027-28	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	43,292,637	0	43,292,637
Encumbered/Expended Amount		0	0	-24,866,155	-24,866,155
This Item		0	-420,000	0	-420,000
BALANCE		0	42,872,637	-24,866,155	18,006,482
FUND(s): ECONOMIC DEVELOPMENT INCENTIVE FUND					
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.					
SUMMARY OF ITEM					
A request from Capital One, National Association, a national banking association, for a First Amendment to the Economic Development Incentive Agreement, approved by City Council on November 8, 2010, to provide for additional incentives to facilitate expansion.					
https://goo.gl/3phKvC					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution First Amendment to the Economic Development Incentive Agreement					

A Resolution of the City of Plano, Texas, approving the terms and conditions of a First Amendment to the Economic Development Incentive Agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed First Amendment to the Economic Development Incentive Agreement by and between the City of Plano (“City”) and Capital One, National Association, a national banking association (“Company”), a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “First Amendment”); and

WHEREAS, City and Company entered into an Economic Development Incentive Agreement, as approved by the City Council of the City of Plano, on November 8, 2010; and

WHEREAS, the Company has complied with the terms of the initial Economic Development Incentive Agreement and now desires to expand its business in the City by building and occupying additional office space and transferring or creating additional job equivalents; and the parties desire to amend said Economic Development Incentive Agreement to provide additional incentives to facilitate the expansion; and

WHEREAS, upon full review and consideration of the First Amendment, 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 First Amendment, 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 First Amendment 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 First Amendment.

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

DULY PASSED AND APPROVED this the 9th day of November, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

<p>THE STATE OF TEXAS §</p> <p>§</p> <p>§</p> <p>§</p> <p>COUNTY OF COLLIN §</p>	<p><u>First Amendment to the Economic Development Incentive Agreement by and between City of Plano, Texas and Capital One, National Association, a national banking association</u></p>
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This First Amendment to the Economic Development Incentive Agreement (hereinafter “First Amendment”) is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation (hereinafter “City”), and **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association (hereinafter “Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, City and Company entered into an Economic Development Incentive Agreement, as approved by the City Council of the City of Plano, on November 8, 2010 (hereinafter “Agreement”) to promote economic development, stimulate commercial activity and enhance the tax base of the City; and

WHEREAS, Company plans to add Twenty-Nine Million Dollars (\$29,000,000) of Real Property improvements and add Six Million Dollars (\$6,000,000) of Business Personalty Property; and

WHEREAS, the Company agrees to construct and occupy Building 7, consisting of a minimum of 200,000 square feet of commercial office space at Company’s Plano campus and transfer or create up to 700 additional Job Equivalents to be located at the Property; and

WHEREAS, City and Company desire to amend said Agreement to provide an additional grant to help Company in the above-referenced expansion.

NOW THEREFORE, the Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this First Amendment and the Agreement, priority of interpretation shall be in the following order: First Amendment, Agreement.

IN CONSIDERATION of the foregoing, and for other good and valuable consideration, the parties agree as follows:

I.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term and for purposes of this Agreement, Article I of the Agreement is amended to read in its entirety as follows:

“Article I Definitions

“Baseline Job Equivalents” shall mean Four Thousand (4,000) full-time Job Equivalents positions required at the Company’s Campus, which include the Company’s 1,200 Job Equivalents from Company’s Phase I and Phase II that were required with the prior agreements. The Baseline Job Equivalents shall be used as benchmark for calculating additional Job Equivalent requirements for purposes of the grant payments pursuant to Article III Subsection (f) and (g) herein.

“Campus” shall mean all Company facilities identified as Buildings 1, 2, 3, 4, 5, 6, 7 and Company’s Conference Center, located at 8036 Dominion Parkway, in Plano, Texas, 75024.

“Commencement Date” shall mean the completion of construction of Phase 3 or March 31, 2012, whichever occurs first.

“Company” shall mean Capital One, National Association, and all of its affiliates.

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

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

“Job Equivalent” shall mean one or more job positions (at the Company or one of its affiliates) assigned to the Property which individually or when combined total 2,080 hours annually. For purposes of this First Amendment, Job Equivalents shall not include the initial Four Thousand (4,000) Baseline Job Equivalents located at the Campus.

“Real Property” or “Property” shall mean Building 3 at 7941 Preston Road, Plano, Texas, 75024 and Building 7 at the southeast corner of Dominion Parkway and Headquarters Drive, as described in Exhibit “D”.

II.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article II of the Agreement is amended to read in its entirety as follows:

**“Article II
Term**

The term of the existing Agreement and this First Amendment shall begin on the Commencement Date and continue through December 31, 2027.”

III.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article III of the Agreement is amended to read in its entirety as follows:

**“Article III
Obligations of Company**

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

- (a) Construct Building 3 consisting of new commercial office space of 135,000 square feet on the Property on or before March 31, 2012; and
- (b) Create or transfer 200 Job Equivalents to the Property on or before July 1, 2012; and
- (c) Maintain the 200 Job Equivalents for which a grant was paid pursuant to this Agreement for the remainder of the term of this Agreement; and
- (d) Construct Building 7 consisting of new commercial office space of 200,000 square feet on the Property on or before December 31, 2017; and
- (e) Maintain Four Thousand (4,000) as the number of Baseline Job Equivalents at the Campus throughout the term of this First Amendment; and
- (f) Subject to maintaining the required Baseline Job Equivalents, Company shall transfer or create a minimum of 400 additional Job Equivalents to the Property on or before December 31, 2017 and maintain the 400 additional Job Equivalents for a minimum of 180 days prior to grant payment and continue to maintain those Job Equivalents throughout the term of the Agreement and First Amendment; and
- (g) By December 31, 2018, and subject to maintaining the required number of Baseline Job Equivalents in addition to the Job Equivalents added pursuant to Article III, Section (f) herein, Company may transfer or create up to 300 additional Job Equivalents to the Property, for a combined total of up to 4,700 Job Equivalents at the Campus, and maintain those additional Job Equivalents throughout the term of the Agreement and First Amendment; and

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

IV.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article IV of the Agreement is amended to read in its entirety as follows:

“Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company the following incentives:

(a) A cash grant of up to One Hundred Thousand Dollars (\$100,000) for the reimbursement of permit, building inspection, engineering and planning fees paid to the City by Company for the construction of the Improvements on the Property. Such grant shall be payable by the City within thirty (30) days of request thereof but not later than October 1, 2012. (Subsequently, Company has received a reimbursement of Eighty-Six Thousand Eight Hundred Twelve Dollars and Sixty-Nine Cents (\$86,812.69) for this category.)

(b) A cash grant of One Hundred Twenty Thousand Dollars (\$120,000) from the City under this Agreement payable within thirty (30) days after the City's receipt of the Initial Certification substantially in the form attached hereto as Exhibit "A", that the Company has met its obligations as set forth in Article III (a) and (b) above (such payment referred to as the "Initial Grant Payment"). (Subsequently, Company has received a grant payment of One Hundred Twenty Thousand Dollars (\$120,000) for this category.)

(c) The Company shall be entitled to a second grant payment ("Additional Grant Payment") equal to Six Hundred Dollars (\$600) times the additional Job Equivalents, in excess of 200, assigned to the Property before March 31, 2014 and maintained for the remaining term of the Agreement. Such Additional Grant Payment shall not exceed One Hundred and Eighty Thousand Dollars (\$180,000). Payment shall be made thirty (30) days after receipt of the verification substantially in the form of the verification attached hereto as Exhibit "A". (Subsequently, Company has received a second grant payment of One Hundred Eighty Thousand Dollars (\$180,000) for this category.)

(d) By December 31, 2017 and subject to maintaining the required number of Baseline Job Equivalents at the Campus, Company shall transfer or create a minimum of 400 Job Equivalents at the Real Property for a total minimum of 4,400 Job Equivalents at the Campus to be eligible to receive a third cash grant payment ("Third Grant") of Two Hundred Forty Thousand Dollars (\$240,000). The Third Grant payment will not be pro-rated and will not be paid before July 1, 2018. **Company must submit the Initial Certification for Third Grant form attached hereto as Exhibit "C", certifying compliance with the obligations under Article III, Sections (d), (e) and (f), not earlier than July 1, 2018 and not later than October**

1, 2018. A failure to provide this form by that date is an event of default, and if not cured, results in an immediate and complete forfeiture of the remaining grant payments under Article IV, Sections 4.01 (d) and (e). City will make the payment within thirty (30) days of receipt of the Initial Certification for Third Grant unless the City reasonably objects to the certification; and

(e) By December 31, 2018, and subject to Company maintaining the required number of Baseline Job Equivalents and Job Equivalents required pursuant to Section 4.01 (d) herein, Company may add up to an additional 300 Job Equivalents for a total of up to 4,700 Job Equivalents at the Campus to be eligible to receive a fourth grant payment (“Fourth Grant”) of up to One Hundred Eighty Thousand Dollars (\$180,000) which may be pro-rated at Six Hundred Dollars (\$600) for each Job Equivalent up to the maximum amount allowed herein. **Company must submit the Annual Certification form attached hereto as Exhibit “B1” certifying the number of Job Equivalents added pursuant to Article III, Section (g) and compliance with Article III, Sections (e) and (f) not later than January 31, 2019. A failure to provide this form by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the Fourth Grant payment.** City will make the payment within thirty (30) days of receipt of the January 31, 2019 annual certification if Company qualifies for a Fourth Grant payment pursuant to this Section 4.01 (e), unless City reasonably objects to the certification. In no event will the City make the Fourth Grant payment prior to January 1, 2019.

4.02 **Refunds.** Except as otherwise indicated, the Company shall be entitled to the grant award in accordance with the following requirements and schedule:

(a) In the event the Company fails to perform its obligations as set forth in Article III for the full term of this Agreement, Company shall, as liquidated damages, refund to the City the full amount of this grant. In the event the Company allows the Job Equivalents at the Property to fall below the number of Job Equivalents for which it has received a grant payment, 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 the following:

(i) If Company’s Job Equivalents drop below the range of Four Thousand Seven Hundred (4,700) down to Four Thousand One (4,001) Job Equivalents for more than 180 consecutive days during the term of this Agreement, the Company shall refund to the City an amount equal to Six Hundred Dollars (\$600) for each lost Job Equivalent; and

(ii) If the Company’s Baseline Job Equivalents drop below the range of Four Thousand (4,000) to Three Thousand Five Hundred One (3,501) Job Equivalents for more than 180 consecutive days during the term of this Agreement, the Company shall refund the City an amount equal to Seven Hundred Seventy-Three Dollars (\$773) for each lost Job Equivalent.

For purposes of determining whether the City is due a refund under this section, an officer of the Company shall certify to the City by January 31, 2016 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 substantially in the form of the attached as Exhibit “B1”. All refunds under this Agreement shall be due within sixty (60) days of written demand 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 paid to Company as 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.”

V.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article VI Section 6.04 Notice is amended to read as follows:

“Article VI Miscellaneous

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: Mr. Bruce D. Glasscock
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

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

If intended for the Company:
Capital One, National Association
c/o Capital One Services, LLC
Attention: Chief Counsel, Transactions
1680 Capital One Drive
McLean, VA 22101

With a copy to:
Capital One, National Association
c/o Capital One Services, LLC
Attention: Real Estate Administration - Office
8050 Dominion Parkway
Plano, TX 75024

VI.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Exhibit "B" of the Agreement is hereby replaced with the attached Exhibit "B1".

VII.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Exhibit "C" is hereby added as an exhibit to the Agreement.

VIII.

Beginning on the effective date of the execution of this First Amendment and continuing through the remaining term of the Agreement, Exhibit "D" is hereby added as an exhibit to the Agreement.

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

ATTEST:

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

Lisa C. Henderson, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____

EXHIBIT "B1"

ANNUAL CERTIFICATION OF COMPLIANCE

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

_____ a. I hereby certify that Capital One, National Association, a national banking association, is in compliance with each applicable term as set forth in the Agreement and the transferred or added number of Job Equivalents has not fallen below the number for which Capital One, National Association, a national banking association, has received a grant payment in accordance with the terms and conditions set out in Article IV, Section 4.01 of the Agreement and the First Amendment. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____.

_____ b. I hereby certify that Capital One, National Association, a national banking association, is not in compliance with each applicable term as set forth in the Agreement and the transferred or added number of Job Equivalents has fallen below the number for which Capital One, National Association, a national banking association, has received a grant payment. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____ and that that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.02 of the Agreement and the First Amendment.

_____ c. **(FOR USE IN JANUARY 2019 ONLY IF APPLICABLE)** I hereby certify that Capital One, National Association, a national banking association, is in compliance with all terms and conditions of the Agreement and that as of December 31, 2018, Capital One, National Association, a national banking association, has added ____ total number of Job Equivalents (not to exceed 300), in addition to the 4,400 existing Job Equivalents, and is entitled to receive a fourth (4th) grant payment in accordance with Article IV, Section 4.01 (g) of the First Amendment. I further certify that as of December 31 of the prior year, the total number of Job Equivalents was _____.

ATTEST:

CAPITAL ONE, NATIONAL ASSOCIATION, a national banking association

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date

NOTE: This form is due by January 31 of each year beginning on January 31, 2016 and as long as this Agreement is in effect and should be mailed to:

This Certificate of Compliance should be mailed to:

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

EXHIBIT "C"

INITIAL CERTIFICATION FOR THIRD GRANT

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

_____ a. I hereby certify that Capital One, National Association, has transferred or created the additional 400 Job Equivalents at the Real Property by December 31, 2017 in addition to maintaining the 4,000 Baseline Job Equivalents at the Campus, and is entitled to receive a third (3rd) grant payment in accordance with Article IV, Section 4.01(d) of the First Amendment to the Agreement. I further certify that as of December 31, 2017, the total number of Job Equivalents was _____.

_____ b. I hereby certify that Capital One, National Association, has failed to transfer or create the additional 400 Job Equivalents in addition to maintaining the 4,000 Baseline Job Equivalents at the Campus by December 31, 2017, and is not entitled to receive a third (3rd) grant payment in accordance with Article IV, Section 4.01(d) of the First Amendment to the Agreement. The actual number of Job Equivalents is _____.

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

This Certification must be returned no earlier than July 1, 2018 and no later than October 1, 2018.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "D"
LEGAL DESCRIPTION

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and being part of that tract of land described in Special Warranty Deed to Capital One National Association as recorded in Document Number 20081008001203900, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being part of Lot 4, Block 1 of the Revised Conveyance Plat of CAPITAL ONE ADDITION LOT 4, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 42-43, O.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Half" (hereafter referred to as "with cap") found at an interior corner on the north line of said Lot 4, same being the southwest corner of Lot 2, Block A of the Conveyance Plat of NETWORK ASSOCIATES, LOT 2, BLOCK A, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2006, Page 535, O.P.R.C.C.T.;

THENCE North 49 degrees 30 minutes 24 seconds West, along the common line between the northeast line of said Lot 4 and the southwest line of said Lot 2, a distance of 147.09 feet to the POINT OF BEGINNING of the herein described tract of land;

THENCE departing said common line, and over and across said Lot 4, the following bearings and distances:

South 40 degrees 29 minutes 33 seconds West, a distance of 74.93 feet to the beginning of a non-tangent curve to the left with a radius of 234.23 feet and a chord that bears South 88 degrees 19 minutes 13 seconds West, a distance of 106.21 feet;

Southwesterly, along said curve, through a central angle of 26 degrees 12 minutes 34 seconds, an arc distance of 107.15 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 251.15 feet and a chord that bears North 89 degrees 52 minutes 27 seconds West, a distance of 154.53 feet;

Northwesterly, along said curve, through a central angle of 35 degrees 50 minutes 09 seconds, an arc distance of 157.08 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears South 63 degrees 01 minutes 14 minutes West, a distance of 45.25 feet;

Southwesterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

South 16 degrees 48 minutes 16 seconds West, a distance of 183.77 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears South 28 degrees 11 minutes 44 seconds East, a distance of 45.25 feet;

Southeasterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

South 73 degrees 12 minutes 33 seconds East, a distance of 15.64 feet to the beginning of circular curve to the left with a radius of 62.00 feet and a chord that bears South 79 degrees 53 minutes 41 seconds East, a distance of 14.44 feet;

Southeasterly, along said curve, through a central angle of 13 degrees 22 minutes 16 seconds, an arc distance of 14.47 feet to the point of reverse curvature of a circular curve to the right with a radius of 567.37 feet and a chord that bears South 84 degrees 59 minutes 11 seconds East, a distance of 31.57 feet;

Southeasterly, along said curve, through a central angle of 03 degrees 11 minutes 17 seconds, an arc distance of 31.57 feet to a point for corner;

South 16 degrees 47 minutes 24 seconds West, a distance of 420.55 feet to a point for corner on the southwesterly line of said Lot 4, same being located on the northeasterly right-of-way line of Dominion Parkway (a 92 foot wide right-of-way at this point), said point being the beginning of a non-tangent curve to the right with a radius of 1,004.00 feet and a chord that bears North 49 degrees 43 minutes 51 seconds West, a distance of 634.30 feet;

THENCE Northwesterly, along the common line between the southwesterly line of said Lot 4, and the northeasterly right-of-way line of said Dominion Parkway, and along said curve, through a central angle of 36 degrees 49 minutes 43 seconds, an arc distance of 645.35 feet to a 1/2-inch iron rod with cap found for corner;

THENCE North 31 degrees 18 minutes 59 seconds West, continuing along said common line, a distance of 46.07 feet to a 1/2-inch iron rod with cap found for the southwest corner of a corner clip on the northeasterly right-of-way line of said Dominion Parkway;

THENCE North 12 degrees 43 minutes 53 seconds East, departing said common line, and along said corner clip, a distance of 35.94 feet to a 1/2-inch iron rod with cap found for corner on the southeast right-of-way line of Headquarters Drive (a 121-foot wide right-of-way) as recorded in Cabinet M, Page 327, M.R.C.C.T. and the northwest line of said Lot 4, said corner being the beginning of a non-tangent curve to the left with a radius of 1,760.50 feet and a chord that bears North 45 degrees 53 minutes 48 seconds East, a distance of 640.20 feet;

THENCE Northeasterly, along the common line between the northwest line of said Lot 4 and the southeast right-of-way line of said Headquarters Drive, and along said curve, through a central angle of 20 degrees 57 minutes 07 seconds, an arc distance of 643.78 feet to a 1/2-inch iron rod with cap set for the beginning of non-tangent curve to the right with a radius of 1,639.50 feet and a chord that bears North 37 degrees 57 minutes 25 seconds East, a distance of 145.10 feet;

THENCE Northeasterly, continuing along said common line, and along said curve, through a central angle of 05 degrees 04 minutes 21 seconds, an arc distance of 145.15 feet to a 1/2-inch iron rod with cap found for the northwest corner of said Lot 4, same being the most westerly corner of said Lot 2;

THENCE South 49 degrees 30 minutes 24 seconds East, departing said common line, and along the common line between the northeast line of said Lot 4, and the southwest line of said Lot 2, a distance of 517.20 feet to the POINT OF BEGINNING AND CONTAINING 414,471 square feet or 9.515 acres of land, more or less.

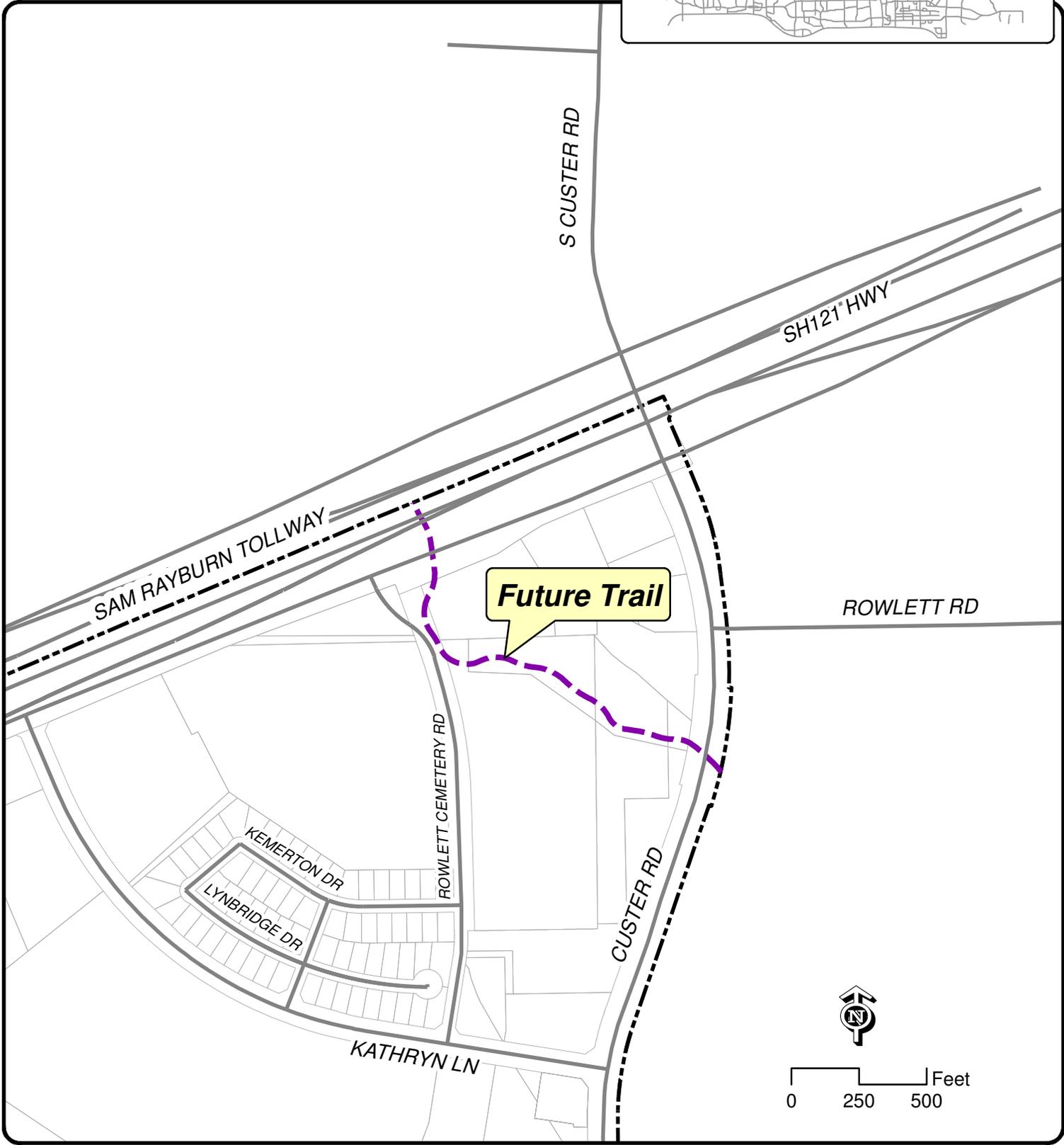
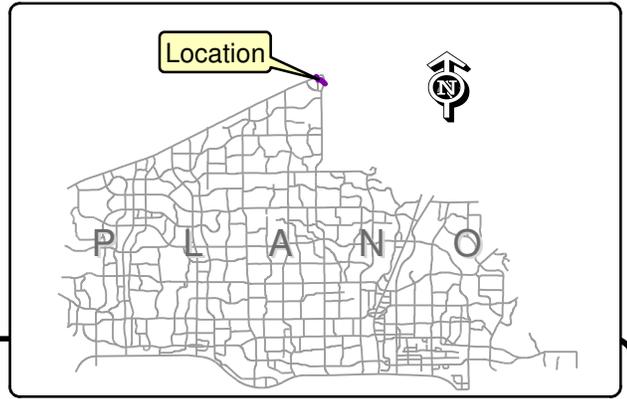


CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/9/15		
Department:		Parks & Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): Susan Berger (7255)				
CAPTION				
A Resolution of the City of Plano, Texas, designating the name of the Three Cities Trail Connection as Rowlett Trail 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:	2015-16	Prior Year (CIP Only)	Current Year	Future Years
		0	0	0
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): N/A				
COMMENTS: This item has no financial impact.				
STRATEGIC PLAN GOAL: Naming trails to provide consistency with existing trails in other communities relates to the City's goals of a Financially Strong City with Service Excellence and Partnering for Community Benefit.				
SUMMARY OF ITEM				
<p>The City Council of the City of Plano is solely responsible for naming all City-owned facilities, structures and improvements. Because the Three Cities Trail Connection is a half mile segment in Plano located between Frisco and Allen and connects residents into approximately two miles of existing trail in Allen called Rowlett Trail, staff recommends the trail be named Rowlett Trail.</p> <p>Project Location Map: https://goo.gl/maps/EmyWp6y6JqE2</p>				
List of Supporting Documents: Location Map Resolution			Other Departments, Boards, Commissions or Agencies	

Location Map

Rowlett Trail-
(Frisco) Sam Rayburn Tollway
to (Allen) Custer Road



A Resolution of the City of Plano, Texas, designating the name of the Three Cities Trail Connection as Rowlett Trail; and providing an effective date.

WHEREAS, the Plano Three Cities Trail Connection was planned for the purpose of serving the citizens of Plano as an active transportation and recreation amenity providing a connection through Plano to the cities of Frisco and Allen; and

WHEREAS, the half-mile trail segment in Plano connects to an existing two-mile segment in the City of Allen named Rowlett Trail; and

WHEREAS, maintaining consistent names for park trails across city lines encourages the use, accessibility, and awareness of the park trail; and

WHEREAS, the City Council of the City of Plano is authorized to name parks in the City of Plano.

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

Section I. The City Council of the city of Plano hereby designates the name of the trail as Rowlett Trail.

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

DULY PASSED AND APPROVED this the 9th day of November, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, 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:		11/9/2015			
Department:		Policy and Government Relations			
Department Head		Mark Israelson			
Agenda Coordinator (include phone #): Andrea Park X5113					
CAPTION					
A Resolution of the City of Plano, Texas, relating to the power of the City of Plano City Council to appoint and remove its board and commission appointees; 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:	2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(S): N/A					
COMMENTS: This item has no financial impact.					
STRATEGIC PLAN GOAL : Proclaiming all board and commission appointees of the Plano City Council serve at the will of the City Council relates to the City's goals of a Financially Strong City with Service Excellence and Partnering for Community Benefit.					
SUMMARY OF ITEM					
A Resolution relating to the power of the City of Plano City Council to appoint and remove its board and commission appointees.					
List of Supporting Documents: Resolution			Other Departments, Boards, Commissions or Agencies		

A Resolution of the City of Plano, Texas, relating to the power of the City of Plano City Council to appoint and remove its board and commission appointees; and providing an effective date.

WHEREAS, cities regularly appoint community representatives to serve on boards and commissions, both internal and external to the City; and

WHEREAS, the power to appoint representatives assists City Councils in their ability to effectively govern their communities; and

WHEREAS, the power to appoint and remove board or commission members appointed by the Plano City Council is specifically provided in Section 3.07 of the City of Plano home rule charter; and

WHEREAS, situations arise occasionally where it is in the best interest of the City for the City Council to remove its appointed representatives from boards and commissions whether serving as internal or external representatives; and

WHEREAS, it is in the best interest of the City of Plano, as a Member City of North Texas Municipal Water District (NTMWD), to clarify the governance issue by and between Plano, the NTMWD and other NTMWD Member Cities; and

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

Section I. The recitals set forth above are adopted herein as if fully set forth at length.

Section II. The City of Plano City Council proclaims that all board and commission appointees of the Plano City Council, including its appointees to the North Texas Municipal Water District Board of Directors, serve at the will of the City Council.

Section III. The City of Plano City Council requests that the North Texas Municipal Water District Board (the NTMWD Board) place an item on their agenda for consideration and approval at their December 2015 regular meeting acknowledging that the NTMWD Board Members serve at the will of their respective appointing Member Cities.

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

DULY PASSED AND APPROVED this the 9th day of November, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, 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:		11/09/2015		
Department:		Human Resources		
Department Head		Shanté Akafia		
Agenda Coordinator (include phone #): Frank Haller x7296				
CAPTION				
An Ordinance of the City of Plano, Texas amending and restating the Retirement Security Plan generally effective as of January 1, 2016; authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2015-16	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): N/A				
COMMENTS: The review of the Retirement Security Plan (RSP) Document has been completed and requires City Council approval. This item has no financial impact. STRATEGIC PLAN GOAL: Periodic legal reviews of the Retirement Security Plan Document relates to the City's goal of a Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Outline of the Retirement Security Plan (RSP) Document changes.				
List of Supporting Documents: Memo, Ordinance, Exhibit "A"			Other Departments, Boards, Commissions or Agencies	



Memorandum

Date: November 9, 2015
To: Bruce Glasscock – City Manager
From: Shante Akafia, Director of Human Resources/Risk Management
Subject: Outline of Changes to the Retirement Security Plan (RSP) Document

Background

On January 1, 1983, The City of Plano withdrew from the Federal Social Security system and created the Retirement Security Plan (RSP), a defined benefit pension trust fund, to provide retirement benefits for all full-time employees of the City. The Plan was created by City ordinance and is administered by a committee. The Plan document describes the Plan's terms and conditions related to the operations and administration of the Plan.

As a best practice, the RSP Plan document is periodically reviewed and the amended version is submitted to City Council for approval. The amended RSP Plan document will also be submitted to the Internal Revenue Service (IRS) Employee Plan Determination Letter program. This program allows the IRS to give tax-exempt status to qualified plan. The IRS is cutting back on this program on January 1, 2017 to review new and terminating plans. Therefore, the City of Plano will make one last submittal prior to the cutback of this program in order to have the most recent Plan document reviewed as a tax exempt plan.

Process

Human Resources staff, Legal staff, the Plan actuary, the Plan counsel, and the RSP Committee collaborated and reviewed the Plan document and made numerous changes, mostly ensuring that the Plan document reflects current operating practices, regulations and ensuring that the language is clear to the average reader. The following is a summary of the changes to be adopted:

- **Clarifying language in document:**
 - Disability defined as “totally and permanently disabled” as determined by the City’s 3rd party Long-Term Disability carrier
 - Updated Plan Document to reflect actual process of LTD carrier determining disability status, not Committee determining disability status
 - Language added to clarify that no death benefit would be received if an annuity option was already selected
 - Language added to clarify that if an employee dies prior to “retiring,” that there is no death benefit through RSP
 - Death benefits as an employee are provided for under the City life insurance policy
 - Several non-substantive changes were made to enhance the RSP’s readability
 - Multiple references to the term “Employee” were changed to the more precise term “Participant”

- References to the term “Employer” were removed, in favor of using the term “City” consistently throughout the document
 - A number of outdated provisions that are no longer needed to administer the plan were deleted
- Actuarial recommendations and changes:
 - Removing specific mention of actuarial assumptions used in Plan Document
 - With proposed changes, City Council can adjust actuarial factors as needed without the need to formally amend the RSP each time
 - Increased the limit for mandatory annuity distributions to a value of \$25,000 (previously \$12,000)
- Limiting liability for Plan and Committee:
 - Section 9.6 was added to the RSP to address disputes and claims
 - The new provision would require participants to apply for pension benefits within a year of becoming entitled to receive them
 - The new provision also requires participant or beneficiary to bring any lawsuit related to a claim dispute within two years of the plan’s determination regarding benefit rights
 - Finally, the provision would allow the Committee to develop and impose more specific claims procedures as needed (This change is intended to provide maximum flexibility for handling potential disputes)
 - Section 11.2, referring to the liability of benefit payments, was revised to clarify that the City, Plan Trustee, Committee members, and City employees, Officer and Officials will not be liable under any circumstances to pay benefits due under the plan
- Electronic notices:
 - Section 13.5 of the RSP was revised to allow required notices to be provided electronically, as long as it would be permitted by IRS regulations

These proposed changes were discussed at the last Retirement Security Plan Committee meeting on October 15, 2015, with the presence of the Director of Finance, Director of Budget, Director of Human Resources/Risk Management, the Deputy City Manager – Administrative Services and the Plan’s actuaries. The RSP Committee voted unanimously to take forth the revised Plan document to City Council for approval.

An Ordinance of the City of Plano, Texas, amending and restating the Retirement Security Plan generally effective as of January 1, 2016; authorizing its execution by the City Manager or his authorized designee; providing a repealer clause, a severability clause, a savings clause, and an effective date.

WHEREAS, the City Council of the City of Plano has established the City of Plano, Texas Retirement Security Plan (“Plan”) for the benefit of its eligible employees and their beneficiaries; and

WHEREAS, the employer previously amended the Plan to provide clarification and incorporate new legislation; and

WHEREAS, the employer further desires to amend and restate the Plan to be generally effective as of January 1, 2016 to adopt new processes for added efficiency and reflect certain practices currently in place; and

WHEREAS, the City Council has been presented a proposed City of Plano, Texas Retirement Security Plan as Restated January 1, 2016, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference; and

WHEREAS, upon full review and consideration of the amendments to the Plan as shown in Exhibit “A” and all matters attendant and related thereto, the City Council is of the opinion that the City of Plano Retirement Security Plan as Restated January 1, 2016 should be approved, and that the City Manager, or his authorized designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the City of Plano Retirement Security Plan as Restated January 1, 2016, attached hereto as Exhibit “A,” 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, is hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the City of Plano Retirement Security Plan as Restated January 1, 2016 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 Plan.

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

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

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

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

DULY PASSED AND APPROVED this 9th day of November, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

**CITY OF PLANO, TEXAS,
RETIREMENT SECURITY PLAN**

Restated January 1, 2016

(except as otherwise indicated herein)

Table of Contents

ARTICLE 1. INTRODUCTION	1
1.1 Purpose	1
1.2 Effect of Restatement.	1
ARTICLE 2. DEFINITIONS AND CONSTRUCTION	2
2.1 Definitions.....	2
2.2 Construction	5
ARTICLE 3. SERVICE AND PARTICIPATION.....	7
3.1 Credited Service	7
3.2 Participation.....	7
3.3 Rehires	7
3.4 Military Service.....	7
ARTICLE 4. CONTRIBUTIONS	9
4.1 Contributions by Employer	9
4.2 Contributions by Employees	9
ARTICLE 5. REQUIREMENTS FOR RETIREMENT BENEFITS.....	10
5.1 Normal and Late Retirement.....	10
5.2 Early Retirement	10
5.3 Disability Retirement	10
5.4 Deferred Vested Retirement	11
5.5 Required Minimum Distributions	11
ARTICLE 6. AMOUNT OF RETIREMENT BENEFITS	17
6.1 Normal and Late Pension.	17
6.2 Early Pension.....	17
6.3 Disability Pension.....	17
6.4 Deferred Vested Pension.....	17
6.5 Cost-of-Living Adjustment.....	18
6.6 Maximum Annual Benefit Under Code Section 415.	18
ARTICLE 7. DEATH BENEFITS	21
7.1 Death After Commencement of Normal, Late, Early or Deferred Vested Pension.	21
7.2 Death Pending Payment.	21
7.3 Vested Terminated Participant Death Benefits.	21
7.4 Other Death Benefits.	22
ARTICLE 8. OTHER OPTIONAL FORMS OF PAYMENT.....	24
8.1 Other Options.	24
8.2 Other Benefits Cancelled by Option.	25
8.3 Designation of Beneficiary.	25
8.4 Election of Optional Form of Payment.	25
8.5 Withholding Tax.....	25
8.6 Direct Rollover Options for Eligible Rollover Distributions.	25

ARTICLE 9. ADMINISTRATION	28
9.1 Appointment of Committee.	28
9.2 Committee Powers and Duties.....	28
9.3 Duties and Powers of the Plan Administrator.....	29
9.4 Rules and Decisions.	29
9.5 Unclaimed Benefits.....	29
9.6 Application for Pension Benefits.	29
ARTICLE 10. TRUSTEE AND/OR INVESTMENT MANAGER(S)	31
10.1 Appointment of Trustee.	31
10.2 Appointment of Investment Manager(s).....	31
10.3 Responsibility of Trustee.....	31
10.4 Responsibility of Investment Manager(s).	31
ARTICLE 11. GUARANTEES AND LIABILITIES	32
11.1 Non-guarantee of Employment.	32
11.2 Rights to Trust Assets.....	32
11.3 Non-alienation of Benefits.....	32
ARTICLE 12. AMENDMENT AND TERMINATION	33
12.1 Right to Amend.	33
12.2 Right to Terminate and Withdraw.	33
12.3 Allocation and Liquidation of Trust Fund.	33
12.4 Manner of Distribution.....	34
12.5 Amounts Returnable to the Employer.	34
12.6 Vesting Upon Termination.	34
ARTICLE 13. MISCELLANEOUS.....	35
13.1 Payment in Case of Incapacity.....	35
13.2 Recovery of Overpayments.....	35
13.3 Savings Clause.....	35
13.4 Governing Law.....	35
13.5 Notices.....	35
APPENDIX A - MINIMUM PENSION FOR CERTAIN ELIGIBLE PARTICIPANTS	A-1

ARTICLE 1. INTRODUCTION

1.1 Purpose. The purpose of the City of Plano, Texas, Retirement Security Plan (the "Plan") is to provide retirement and incidental death benefits for those employees of the City of Plano, Texas (the "City") who complete a period of service with the City and otherwise become eligible for such benefits in accordance with the terms and provisions hereof. Benefits provided by the Plan will be paid from a Trust Fund established by the City.

The Plan has been established and shall be maintained for the exclusive benefit of the eligible employees of the City and their beneficiaries. Except as hereinafter provided, no part of the Trust Fund can ever revert to the City or be used for or diverted to purposes other than the exclusive benefit of Participants in the Plan and their beneficiaries.

1.2 Effect of Restatement. This amended and restated Plan applies for purposes of determining benefits on and after the Effective Date except as otherwise specified herein. Those provisions of the Plan that are effective as of a date before the Effective Date, and that were not otherwise in effect under the Plan before the Plan's amendment and restatement by this instrument shall nonetheless be applied to determine rights hereunder after the effective date of such provision unless specified otherwise herein. Unless it is inconsistent with the terms of the Plan, any action taken or election made by the Committee or by a Participant, Employee, former Employee, or beneficiary under the Plan before the Plan's amendment and restatement by this instrument shall be regarded as having been taken or made under the Plan as amended and restated and as in effect hereunder unless and until changed in accordance with the terms of the Plan.

ARTICLE 2. DEFINITIONS AND CONSTRUCTION

2.1 Definitions. Where the following words and phrases appear in the Plan, they shall have the respective meanings set forth below, unless their context clearly indicates to the contrary:

- (a) Accrued Benefit. The benefit determined under the Plan, expressed in the form of a monthly benefit commencing at Normal Retirement Date which is applicable to a Participant at any time under the provisions of the Plan.
- (b) Actuarial (or Actuarially) Equivalent. Equality in value of the aggregate amounts expected to be received under different forms of payment, based upon mortality and interest rate assumptions, as defined below:
 - (1) Interest rate assumption – The interest rate used for purposes of computing optional forms of benefit payments shall be Eight Percent (8%).
 - (2) Mortality assumption – The mortality assumption used for purposes of computing optional forms of benefit payments, and for purposes of computing any adjustments called for under the terms of the Plan for benefits commencing other than at Normal Retirement Date when such adjustment is not otherwise provided for in the Plan, shall be taken from the 1983 Group Annuity Mortality Table (GATT mortality) using a unisex rate that is 50% male and 50% female.

Notwithstanding anything to the contrary above, effective January 1, 2016, assumptions used to determine Actuarial Equivalency will be adopted by the City Council from time to time, as set forth in a written ordinance or similar documentation. Such assumptions will be adopted based on the recommendations of the Committee, made in consultation with the Plan's Actuary. The amount of benefits payable from the Plan, based on such actuarial assumptions, will not be subject to employer discretion. In addition, the applicable mortality table used for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the Code will be the mortality table prescribed in Section 417(e)(3)(B) of the Code.

- (c) Actuary. An individual or firm providing actuarial services to the Plan.
- (d) Average Monthly Compensation: The result obtained by dividing the total Compensation paid to an Employee during a considered period by the number of months in the considered period. The considered period shall be the thirty-six (36) consecutive calendar months within the last one hundred twenty (120) completed calendar months of Credited Service which yield the highest Average Monthly Compensation. In the event the Employee has completed fewer than thirty-six (36) consecutive months of Credited Service, the considered period shall be all completed months in which Compensation was paid. For the purpose of computation of "Average Monthly Compensation," the Compensation of an Employee during any month may be determined by deeming such Employee to

have earned one-twelfth (1/12) of his or her Compensation for a calendar year during each month.

- (e) City. The City of Plano, Texas.
- (f) City Council. The Plano City Council.
- (g) City Manager. The Chief Executive Officer of the City of Plano, Texas, appointed by the City Council.
- (h) Code. The Internal Revenue Code of 1986, as amended.
- (i) Committee. The persons appointed to administer the Plan in accordance with Article 9. For the avoidance of doubt, references to the Committee's duties and responsibilities throughout the Plan are intended to include duties or responsibilities that have been delegated by the Committee to the City's Human Resources Department or another individual or entity.
- (j) Compensation. The base salary or wages paid to an Employee by the City for services exclusive of any overtime pay, longevity pay, standby pay, bonuses and severance payments, such as accrued vacation or sick pay. The term "Compensation" shall also include any contribution made by an Employee participating in a salary reduction eligible deferred compensation plan (under Section 457(b) of the Code) sponsored by the City.
 - (1) Compensation taken into account during each of the twelve (12) consecutive month periods used in determining Average Monthly Compensation under (d) above, shall not exceed the current limit in effect under Section 401(a)(17) of the Code for the calendar year in which each such twelve (12) month period begins (\$265,000 for 2015). The limit on annual Compensation in the preceding sentence shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year. However, the Accrued Benefit determined in accordance with this provision shall not be less than the Accrued Benefit determined on December 31, 1992.
 - (2) In the event that Compensation under the Plan is determined based on a period of time that contains fewer than twelve (12) calendar months, the Code Section 401(a)(17) annual Compensation limit for that period of time shall be equal to the Code Section 401(a)(17) annual Compensation limit for the calendar year during which such period of time begins multiplied by the fraction in which the numerator is the number of full months in such period of time and the denominator is twelve (12).
 - (3) Any provisions herein to the contrary notwithstanding, an Employee's accrued benefit as of December 31, 1993 shall not be reduced due to the Code Section 401(a)(17) annual Compensation limit imposed effective as of January 1, 1994 on the amount of his Compensation. In the event that the Code Section 401(a)(17) annual Compensation limit is reduced

effective as of any date subsequent to January 1, 1994, a Participant's accrued benefit immediately prior to the date that such reduction becomes effective shall not be reduced due to the reduction in such limit.

- (k) Disability. A Participant's total and permanent disability, to be determined in accordance with the definition of total and permanent disability under the long-term disability policy adopted by the City, by the insurance carrier or other third party that administers benefits under such policy. Such total and permanent disability will be considered to have ended if such carrier or other third party determines that the Participant is no longer totally and permanently disabled within the meaning of such policy. A Disabled Participant will be required to provide written documentation in support of his continued Disability as may be reasonably requested by the Plan (or its representative) from time to time, but no more frequently than twice in any calendar year.
- (l) Effective Date. January 1, 2016, except as may otherwise be indicated herein. The Plan's original effective date was January 1, 1983.
- (m) Employee. Any person who receives compensation from the City for regular, full-time services other than persons under separate employment contract; provided, however, that the term "Employee" shall not include any person:
 - (1) as to any service for which he would be eligible to be included in and for which he is entitled to receive credit in the Teacher Retirement System of Texas, the Employees Retirement System of Texas, the Judicial Retirement System of Texas, the Texas County and District Retirement System, or any other pension fund or retirement system supported wholly or partly at public expense, but not including participation in the Texas Municipal Retirement System (TMRS);
 - (2) who is elected to office by vote of the people, it being further specifically provided, however, that a voluntary fireman or elected official who meets the definition of Employee in some capacity other than as a voluntary fireman or elected official shall be considered as an "Employee" for purposes of the Plan to the extent of such other capacity.
- (n) Employer. The City of Plano, Texas.
- (o) Highly Compensated Employee. An employee who is a "highly compensated employee" within the meaning of Section 414(q) of the Code.
- (p) Investment Manager(s). An investment advisor registered under the Investment Advisors Act of 1940, a bank (as defined in that Act), or an insurance company qualified to perform investment management services under State law in more than one State.
- (q) Leave of Absence. Any absence from Service authorized by the City under the City's standard personnel practices for reasons other than termination of employment, death, discharge or Retirement.

- (r) Normal Form. The life annuity form of payment provided for under Section 5.1, 5.2, or 5.4 of the Plan, as applicable, that applies to a Participant who does not elect to receive an optional form of payment described in Article 8 of the Plan.
- (s) Normal Retirement Date. The later of a Participant's sixty-fifth (65th) birthday or the date on which the Participant completes five (5) years of Credited Service.

Any benefits which are to commence as of a Participant's Normal Retirement Date shall not actually commence until the first day of the month coinciding with or next following said Normal Retirement Date.
- (t) Participant. An Employee who participates in the Plan in accordance with Section 3.2 and whose benefit has not been fully distributed or forfeited.
- (u) Pension. A series of monthly amounts which are payable to a person who is entitled to receive benefits under the Plan.
- (v) Plan. City of Plano, Texas, Retirement Security Plan, as amended from time to time.
- (w) Plan Administrator:. Such person or persons as designated by the City Manager, and who shall have the duties and powers described in Article 9.
- (x) Plan Year. The twelve (12) month period beginning on January 1st and ending on December 31st.
- (y) Retirement. Termination of employment after a Participant has fulfilled all Service requirements for a Pension. Retirement shall be considered as commencing on the day immediately following a Participant's termination date.
- (z) Service. A period or periods of employment of an Employee by the City used in determining eligibility or the amount of benefits as described in Article 3 hereof.
- (aa) TMRS. Texas Municipal Retirement System.
- (bb) Trust or Trust Fund. The fund maintained in accordance with the terms of the Plan.
- (cc) Trustee. The Corporation or individuals selected by the City Council to administer the Trust.
- (dd) U.S. Consumer Price Index. As of any date, the Consumer Price Index for all items for the prior calendar year as reported in the Monthly Labor Review for each calendar month by the United States Department of Labor. The Index to be used shall be the annual average over such calendar year which is most recent and designated in said Monthly Labor Review as "Consumer Price Index for Urban Wage Earners and Clerical Workers -- U.S. City Average -- All Items."

2.2 Construction. The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender; the singular may include the plural; and vice versa, unless the context clearly indicates to the contrary. The words "hereof," "herein," "hereunder"

and other similar compounds of the word "hereof shall, unless otherwise specifically stated, mean and refer to the entire Plan, not to any particular provision or Section. The word "including" and words of similar import when used in the Plan shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified. Article and Section headings are included for convenience of reference and are not intended to add to, or subtract from, the terms of the Plan. The Plan and Trust shall each form a part of the other by reference and terms shall be used herein interchangeably.

ARTICLE 3. SERVICE AND PARTICIPATION

3.1 Credited Service. Credited Service is the period of employment used in determining both eligibility for benefits and the amount of benefits. A Participant's Credited Service shall be all his full-time employment with the City as an Employee that is taken into account under TMRS, excluding any periods of unpaid Leave of Absence. Credited Service shall also include any employment with the City as an Employee that is not taken into account under TMRS if: (a) the Employee was not then eligible to make contributions to TMRS, and (b) any such employment was part of a continuous uninterrupted period of employment that was continuing on the Effective Date. Credited Service shall cease accruing upon an Employee's separation from the service of the City or upon the completion of twenty-five (25) years of Credited Service, whichever first occurs.

If an Employee incurs a period of separation which is equal to or longer than one year, then he shall lose all his prior Credited Service. An Employee who incurs a period of separation of less than one year shall retain all prior Credited Service.

Effective January 1, 2002, for purposes of the five (5) year Credited Service requirement in the definition of Normal Retirement Date and in determining eligibility for commencement of Early Pensions and Deferred Vested Pensions, and for purposes of the twenty (20) year Credited Service requirement for an Early Pension, all prior employment taken into account under TMRS will be counted, regardless of whether such employment is with the City.

3.2 Participation. Employees who were Participants in the Plan immediately prior to the Effective Date and who are employed by the City on the Effective Date shall remain Participants as of the Effective Date. Each other Employee hired on or after the Effective Date shall become a Participant in the Plan as of his date of hire.

3.3 Rehires. Participants who, after receiving an RSP payment, are rehired within a one year period from the date of termination, thus retaining RSP service credit, will have the benefit value from the first date of termination subtracted from the benefit value due at the second termination date in accordance with actuarial practices.

3.4 Military Service.

(a) Absence from the active service of the City because of engagement in qualified military service will not terminate the service of the Employee and will be treated under the Plan as a leave of absence granted by the City if the Employee is entitled under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") to reemployment by the City upon the completion of his period of service and if he returns to the active service of the City within the period of time during which he has reemployment rights under USERRA. The following special provisions apply to such an Employee:

(1) Each period of qualifying military service of the Employee shall, upon such reemployment, be counted toward determining the Employee's service with the City for all purposes of the Plan, including determining the amount of the Employee's Accrued Benefit and the vested percentage in his Accrued Benefit.

- (2) For all purposes under the Plan, an Employee shall be treated as having received Compensation from the City based on the rate of Compensation the Employee would have received during the period of qualifying military service, or if that rate is not reasonably certain, on the basis of the Employee's average rate of Compensation during the twelve (12)-month period immediately preceding such period.
- (b) To the extent provided under Code Section 401(a)(37) and effective as of January 1, 2007, in the case of an Employee whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor(s) of such Employee shall be entitled to any additional benefit (other than benefit accruals) that would have been provided under the Plan had the Employee resumed and then terminated employment on account of death.
- (c) An Employee who receives a differential wage payment (within the meaning of Code Section 414(u)(12)(D)) from the City with respect to a period during which the Employee is performing uniformed service while on active duty for a period of more than thirty (30) days, shall be treated as an Employee of the City, and the differential wage payment shall be treated as Compensation for all purposes under the Plan (including Section 6.6). Compensation recognized under this Section 3.4(c) shall not duplicate Compensation already recognized under Section 2.1(j) or Section 3.4(a)(2), and therefore if the same item of Compensation is recognized under this Section and Section 2.1(j) or Section 3.4(a)(2), such item of Compensation shall be recognized under only one Section.

ARTICLE 4. CONTRIBUTIONS

4.1 Contributions by Employer. The City, acting under the advice of the Actuary for the Plan, intends to make contributions to the Trust in such amounts and at such times as are required to maintain the Plan on a sound actuarial basis. All contributions made by the City to the Trust shall be used to pay benefits under the Plan or to pay expenses of the Plan and Trust and shall be irrevocable, except for any residual amounts after satisfying all liabilities of the Plan. Forfeitures arising because of severance of employment before a Participant becomes eligible for a Pension or for any other reason shall be applied to reduce the costs of the Plan, not to increase the benefits otherwise payable to other Participants.

4.2 Contributions by Employees. Employees are neither required nor permitted to make contributions under the Plan.

ARTICLE 5. REQUIREMENTS FOR RETIREMENT BENEFITS

5.1 Normal and Late Retirement. A Participant shall be eligible for a Normal Pension if his employment with the City is terminated on his Normal Retirement Date. A Participant shall be eligible for a Late Pension if his employment with the City is terminated after his Normal Retirement Date. Payment of a Normal or Late Pension shall commence as of the first day of the month coinciding with or next following the Participant's date of Retirement and, unless an optional form of payment becomes effective and payable under the provisions of Article 8 hereof, shall be made in the form of an annuity for the life of the Participant only subject to the minimum payment term of sixty (60) months pursuant to Section 7.1.

5.2 Early Retirement. A Participant shall be eligible for an Early Pension if his employment with the City is terminated before his Normal Retirement Date and either (a) on or after his sixtieth (60th) birthday and completion of five (5) or more years of Credited Service or (b) after his completion of twenty (20) or more years of Credited Service.

Unless the Participant requests otherwise, payment of an Early Pension shall commence as of the Participant's Normal Retirement Date if he is then living. If the Participant requests the commencement of his Early Pension as of the first day of the month coinciding with or next following his Retirement, or as of the first day of any subsequent month which precedes his Normal Retirement Date, his Pension shall commence as of the beginning of the month so requested, but the amount thereof shall be reduced as provided in Section 6.2. Unless an optional form of payment becomes effective and payable under the provisions of Article 8 hereof, payment shall be made in the form of an annuity for the life of the Participant only subject to the minimum payment term of sixty (60) months pursuant to Section 7.1.

5.3 Disability Retirement. A Participant shall be eligible for a Disability Pension if his employment with the City is terminated by reason of Disability. Payment of a Disability Pension shall commence as of the first day of the month coinciding with or next following such termination of employment. A Disabled Participant's last Disability Pension payment shall be made as of the earliest of the first day of the month in which (a) such Disability ceases, (b) the death of the retired Participant occurs, and (c) the Normal Retirement Date of the retired Participant occurs. If Disability continues to the Participant's Normal Retirement Date, his Pension thereafter will be a Normal Pension (in a sixty (60) month certain and life form) determined according to Section 6.3(b) hereof. If Disability ceases prior to the Participant's Normal Retirement Date, no Disability Pension shall continue to be paid to or for him. A Participant may elect, in lieu of the Disability Pension provided hereunder (including any Pension payable after his Normal Retirement Date under Section 6.3(b) hereof), to receive an Early Pension if he had met the requirements for an Early Pension on the date of his Retirement for Disability.

A Participant who is otherwise entitled to receive a Disability Pension under this Section 5.3 must apply to the Plan for such Disability Pension within six (6) months after the date of termination of his service due to Disability.

If the retired Participant's Disability ceases prior to his Normal Retirement Date, and such Participant is reemployed by the City, the Pension payable upon his subsequent Retirement shall be determined based on his Credited Service and Compensation prior to the date of his previous retirement, as well as his Credited Service and Compensation during the period of his reemployment. If the retired Participant's Disability ceases prior to his Normal

Retirement Date, and he is not reemployed by the City as an Employee, but had met the requirements for an Early or Deferred Vested Pension on the date of his retirement for Disability described in this Section 5.3, he shall be entitled to receive, commencing on the first day of the month coinciding with or next following his Normal Retirement Date, a Pension equal in amount to the Early or Deferred Vested Pension to which he would have been entitled, as of the date of his Disability, considering his Compensation and Credited Service as if he had had no Disability; provided, however, if the Participant had completed five (5) years of Credited Service and requests the commencement of his Early or Deferred Vested Pension as of the first day of any subsequent month which precedes his Normal Retirement Date, his Pension shall commence as of the beginning of the month so requested, but the amount thereof shall be reduced in accordance with Section 6.2 or 6.4 hereof, based on the number of years by which the starting date of the Pension payment precedes the Participant's Normal Retirement Date.

If a retired Participant's Disability is determined to have ended and payment of a Disability Pension has ceased, but it is subsequently determined by the insurance carrier or other third party administrator described in Section 2.1(k) of the Plan that such Disability has continued or recurred, then the City, in its sole discretion, may reinstate Disability Pension payments to such Participant in accordance with this Section 5.3, after receiving proper documentation of such Participant's Disability from such insurance carrier or third party administrator.

5.4 Deferred Vested Retirement. A Participant shall be eligible for a Deferred Vested Pension if his employment with the City is terminated, for reasons other than death or Normal, Late, Early or Disability Retirement, on or after the completion of five (5) or more years of Credited Service. Payment of a Deferred Vested Pension shall commence as of the first day of the month coinciding with or next following the Participant's Normal Retirement Date if he is then living, unless a Participant requests commencement as of the first day of the month coinciding with or next following his sixtieth (60th) birthday, in which case the amount thereof shall be subject to reduction as provided in Section 6.4. Such a request must be received by the Committee at least thirty (30) days before the first Pension payment is due. Unless an optional form of payment becomes effective and payable under the provisions of Article 8 hereof, payment shall be made in the form of an annuity for the life of the Participant only subject to the minimum payment term of sixty (60) months pursuant to Section 7.1.

5.5 Required Minimum Distributions. All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code. Notwithstanding the other provisions of this Section 5.5, other than the immediately preceding sentence, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(a) Time and Manner of Distribution.

- (1) Mandatory Commencement. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest, if any under

Section 7.4, will be distributed, or begin to be distributed, no later than as follows:

- (A) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one half (70½), if later.
- (B) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (C) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest, if any, will be distributed in accordance with the applicable terms of the Plan by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (D) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this paragraph (a)(2), other than subparagraph (a)(2)(A), will apply as if the surviving spouse were the Participant.

For purposes of this paragraph (a)(2) and paragraph (d), distributions are considered to begin on the Participant's Required Beginning Date (or, if paragraph (a)(2)(D) applies, the date distributions are required to begin to the surviving spouse under paragraph (a)(2)(A)). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (a)(2)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (3) Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with paragraphs (b), (c), and (d) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury Regulations that apply to individual accounts.

(b) Determination of Amount to be Distributed Each Year.

- (1) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
- (A) the annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year;
 - (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in paragraphs (c) or (d);
 - (C) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 - (D) payments will either be non-increasing or increase only as follows:
 - (i) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (ii) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in paragraph (c) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p); or
 - (iii) to pay increased benefits that result from a Plan amendment.
- (2) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under paragraph (a)(2)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.
- (3) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first

distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(c) Requirements For Annuity Distributions That Commence During Participant's Lifetime.

(1) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) Period Certain Annuities. Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this paragraph (c)(2), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(d) Requirements For Minimum Distributions Where Participant Dies Before The Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed,

beginning no later than the time described in paragraphs (a)(2)(A) or (B), over the life of the designated beneficiary or over a period certain not exceeding:

- (A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
- (B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest, if any, will be completed in accordance with the applicable terms of the Plan by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this paragraph (d) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to paragraph (a)(2)(A).

(e) Definitions.

(1) Designated beneficiary. The individual who is designated as the beneficiary under Section 8.3 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury Regulations.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (a)(2).

(3) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

- (4) Required Beginning Date. In the case of a Participant who terminates employment prior to attaining age seventy and one half ($70\frac{1}{2}$), the Required Beginning Date is April 1 of the calendar year following the calendar year in which the former employee attains age seventy and one half ($70\frac{1}{2}$). In the case of a Participant who continues in employment after attaining age seventy and one half ($70\frac{1}{2}$), the Required Beginning Date is April 1 of the calendar year following the calendar year in which the Participant retires.

ARTICLE 6. AMOUNT OF RETIREMENT BENEFITS

6.1 Normal and Late Pension. Subject to the minimum pension under Section 6.1A of Appendix A (if applicable), a Participant who meets the requirements for a Normal Pension and retires on his Normal Retirement Date shall receive a monthly amount equal to Seven-Tenths of One Percent (.7%) of his Average Monthly Compensation, multiplied by his Credited Service from January 1, 1983, not to exceed twenty-five (25) years.

Subject to the minimum pension under Section 6.1A of Appendix A (if applicable), a Participant who meets the requirements for a Normal Pension and retires after his Normal Retirement Date shall receive a Late Pension which shall be computed as for a Normal Pension in accordance with the provisions of this Section 6.1 above, considering his Average Monthly Compensation and Credited Service to his actual date of Retirement.

6.2 Early Pension. Subject to the minimum pension under Section 6.2A of Appendix A (if applicable), a Participant who meets the requirements for an Early Pension shall receive a monthly amount equal to his Accrued Benefit. A Participant's Accrued Benefit shall be equal to Seven-Tenths of One Percent (.7%) of his Average Monthly Compensation, multiplied by his Credited Service from January 1, 1983, not to exceed twenty-five (25) years.

If payment of an Early Pension commences prior to the Participant's Normal Retirement Date, the amount determined above shall be reduced by one-fifteenth (1/15th) for each of the first five (5) years and one-thirtieth (1/30th) for each of the next five (5) years (and on an Actuarially Equivalent basis thereafter) by which the starting date of Pension payments precedes the Participant's Normal Retirement Date.

6.3 Disability Pension. A Participant who meets the requirements for a Disability Pension shall receive a monthly amount payable prior to Normal Retirement Date computed as set forth in (a) below and a monthly amount payable on or after Normal Retirement Date as set forth in (b) below computed as follows:

- (a) Disability Pension Payable Prior to Normal Retirement Date. An amount equal to Sixty Percent (60%) of the greater of the Participant's monthly base rate of pay exclusive of overtime pay, longevity pay, standby pay, bonuses and severance payments, or Average Monthly Compensation, as of the month prior to his termination of employment by reason of Disability, **reduced by** the amount of disability benefit to which he is entitled under TMRS.
- (b) Disability Pension Payable on and After Normal Retirement Date. An amount equal to the Normal Pension that would have been payable to the Participant, in accordance with the provisions of Section 6.1 hereof, if he had continued in active employment with the City until his Normal Retirement Date, assuming his Compensation had continued at the same rate as in effect at the date of his Disability Retirement until his Normal Retirement Date, and no increases occurred in the Social Security or TMRS benefits, if applicable. This pension will not be less than the Disability Pension commencing prior to his Normal Retirement Date determined under paragraph (a) above.

6.4 Deferred Vested Pension. A Participant who meets the requirements for a Deferred Vested Pension shall receive a non-forfeitable right to his Accrued Benefit (computed

in accordance with the provisions of Section 6.2 hereof). If the Participant has fewer than five (5) years of Credited Service, the Accrued Benefit will be adjusted by the following schedule:

<u>Years of Credited Service</u>	<u>Non-forfeitable Percentage</u>
Less than 5	0%
5 or more	100%

A Participant who reaches his Normal Retirement Date shall also have a 100% vested and non-forfeitable right to his Accrued Benefit hereunder.

If a Participant is eligible and payment of a Deferred Vested Pension commences prior to the first day of the month coincident with or next following the Participant's sixty-fifth (65th) birthday, the amount determined above shall be reduced by one-fifteenth (1/15th) for each year by which the starting date of Pension payments precedes such first day of the month.

6.5 Cost-of-Living Adjustment. The monthly amount of Pension payable to a retired Participant, provided such Participant had received such payments for at least twelve (12) months, shall be adjusted annually, as of each April 1st, to reflect increases in the U.S. Consumer Price Index. Such annual increase, if any, shall be limited to a maximum change of four percent (4%). In no event shall any cost of living adjustment under this Section 6.5 be applied to increase the amount of monthly pension (or other alternative form of payment) payable to the spouse or beneficiary of a Participant after the Participant's death.

6.6 Maximum Annual Benefit Under Code Section 415. Notwithstanding any other provision contained herein to the contrary, the benefits payable to a Participant from the Plan, shall be subject to the limitations of Code Section 415. For purposes of this Section, the term "Limitation Year" shall mean the year used in applying the limitations of Code Section 415, which year shall be a Plan Year. The benefits payable to a Participant from the Plan shall in all events comply with the provisions of Code Section 415 and the applicable Treasury Regulations published thereunder, the provisions of which are specifically incorporated herein by reference. To the extent any portion of this Section 6.6 conflicts with such Regulations, the provisions of such Regulations shall govern.

Any annual Pension payable to a Participant hereunder (including any annual Pension paid to such Participant from another defined benefit plan of the City) shall not exceed subsection (a) below, subject to subsections (b) through (d) below.

- (a) Defined Benefit Dollar Limitation. The "defined benefit dollar limitation" will be equal to the limit set forth in Section 415(b)(1)(A) of the Code (\$210,000 for 2015), to be adjusted in accordance with Section 415(d) of the Code, as applied to a benefit payable in the form of a straight life annuity. Adjustments to the limitation required under Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.
- (b) Maximum Permissible Benefit. The "maximum permissible benefit" is the defined benefit dollar limitation adjusted where required, as provided in paragraph (1) and, if applicable, in paragraph (2) or (3) below.
 - (1) If the Participant has fewer than ten (10) years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction,

(A) the numerator of which is the number of years (or part thereof) of participation in the Plan and (B) the denominator of which is ten (10).

- (2) If the benefit of a Participant begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age sixty-two (62) (adjusted under paragraph (1) above, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as the lesser of (A) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in Section 2.1(b) of the Plan and (B) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent (5%) interest rate and the applicable mortality table as defined in Section 2.1(b) of the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (2) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
- (3) If the benefit of a Participant begins after the Participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age sixty-five (65) (adjusted under paragraph (1) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as the lesser of (A) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in Section 2.1(b) of the Plan and (B) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent (5%) interest rate assumption and the applicable mortality table as defined in Section 2.1(b) of the Plan. For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored.
- (4) With respect to the limitations of this Section, for purposes of adjusting the annual Pension to a straight life annuity, if the annual Pension is paid in any form other than a non-decreasing life annuity payable for a period not less than the life of a Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse, then the equivalent annual Pension shall be the greatest of (A) the equivalent annual Pension computed using the Plan interest rate and Plan mortality table (or other tabular factor); (B) the equivalent annual Pension computed using five and one-half percent (5.5%) and the applicable mortality table as defined in Section 2.1(b); or (C) the equivalent annual Pension computed using the applicable interest rate under Treasury Regulation Section 1.417(e)-1(d)(3) and the applicable mortality table under Treasury Regulation Section 1.417(e)-1(d)(2), divided by 1.05.

Notwithstanding anything to the contrary above, the provisions of this Section 6.6(b) shall not apply to (1) income received as a pension, annuity, or similar allowance as a result of a Participant's disability due to personal injuries or sickness, or (2) amounts received as a result of a Participant's death by the Participant's beneficiaries, survivors, or estate.

- (c) In no event shall a Participant's maximum annual Pension allowable under this Section be less than the annual amount of Pension (including early Pension and qualified joint and survivor annuity amounts) duly accrued by such Participant (under Code Section 415 limitations then in effect) as of the last day of the Limitation Year beginning in 1982, or as of the last day of the Limitation Year beginning in 1986, whichever is greater (disregarding any Plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount).

ARTICLE 7. DEATH BENEFITS

7.1 Death After Commencement of Normal, Late, Early or Deferred Vested Pension.

If a Participant, on the date of his death, was receiving a Normal, Late, Early, or Deferred Vested Pension hereunder (including a Normal Pension that has commenced to a Disabled Participant at his Normal Retirement Date), and had elected to receive Pension payments in an optional form provided for under Article 8 of the Plan, any remaining benefits payable to the beneficiary or beneficiaries of such Participant will be paid in accordance with such election. To the extent that a deceased Participant was receiving such Pension payments in the Normal Form, and such deceased Participant had not received sixty (60) monthly payments of such Pension, the beneficiary or beneficiaries of such Participant shall be eligible to receive a Death Benefit in the form of a monthly Pension, which will be equal to the monthly Pension that the Participant was receiving on the date of his death. Payment of such Death Benefit shall commence on the first day of the month coinciding with or next following the Participant's date of death. The last payment of such Death Benefit shall be made as of the first day of the month in which sixty (60) monthly payments have been made in the aggregate to the Participant and his beneficiary or beneficiaries.

7.2 Death Pending Payment. If a Participant has completed at least ten (10) years of Credited Service, terminates employment with the City, and dies after attainment of age sixty (60), but before the date of commencement of his Pension, his surviving spouse, or if none, his surviving child or children under the age of eighteen (18), shall be entitled to receive a benefit hereunder. Such benefit shall be a monthly Pension payable for a period of sixty (60) months equal to the Pension the Participant would have received under Section 6.4 hereof had he commenced payment on the first day of the month coinciding with or next following the Participant's date of death. With the approval of the Committee, this benefit may be paid in a lump sum amount equal to the Actuarially Equivalent lump sum value of the sixty (60) monthly payments otherwise provided. If this benefit becomes payable to a minor child or children, and more than one such child is eligible, the benefit determined above shall be divided in equal parts among such children.

7.3 Vested Terminated Participant Death Benefits.

- (a) In the event that a terminated Participant entitled to a deferred vested benefit under the Plan above dies prior to his commencement date of benefits and without his having received the value of his benefit in accordance with Article 6 of the Plan, his surviving spouse, if any, will be entitled to receive a monthly retirement income. This monthly income, payable for life, will be in an amount that is the Actuarial Equivalent of the accrued monthly retirement income as of the Participant's Normal Retirement Date that would have been payable to such surviving spouse, commencing on the Early Pension commencement date under the 50% Joint and Survivor Option, if such surviving spouse is then living. It is determined as if:
- (1) the terminated Participant had survived to his earliest Early Pension commencement date or immediately if he has already survived to that date; and

- (2) the terminated Participant had died immediately after such commencement of payments under the 50% Joint and Survivor Option described in Section 8.1(e).
- (b) Alternatively, if there is no surviving spouse at the time of the vested terminated Participant's death, the Participant's dependent child or children, including legally adopted children, if any, will be entitled to receive a monthly income, provided he has not received the value of his benefit from the Plan. A dependent child will be defined as any child under the age of 18, any child under the age of twenty-three (23) and a full-time student at an educational institution, or any child, regardless of age, that is considered permanently disabled on a nondiscriminatory basis. Determinations regarding a child's permanent disability will be made by the insurance carrier or other third party administrator described in Section 2.1(k), in a manner similar to the one that applies under the long-term disability policy described in such Section. The benefit payable to the dependent child or children described above shall be a monthly Pension determined in accordance with Article 6 of the Plan and equal to the income the Participant would have received under the Plan, if:
 - (1) the terminated Participant had survived to his earliest Early Pension commencement date or immediately if he had already survived to that date; and
 - (2) the terminated Participant had died immediately after such commencement of payments under the Five (5) Year Certain and Life Option described in Section 8.1(c).

If this benefit becomes payable to a minor child or children, and more than one such child is eligible, the benefit determined above shall be divided in equal parts among such children.

- (c) With the approval of the Committee, the death benefit may be paid in a lump sum amount equal to the Actuarially Equivalent lump sum value of the payments otherwise provided.
- (d) No vested terminated death benefit shall be payable with respect to any Participant who does not have either a spouse or dependent child at the time of death. For the avoidance of doubt, such Participant's interest under the Plan will terminate as of the date of death, and no further benefits will be payable from the Plan with respect to such Participant.

7.4 Other Death Benefits. No other benefits shall be payable hereunder upon the death of a Participant, other than those payable under an optional form of payment described in Section 8.1 and except as provided below. For the avoidance of doubt, no death benefits will be payable under the Plan with respect to a Participant who dies while in active employment with the City, including a Participant who was on a leave of absence but had not terminated employment with the City as of the date of death; provided, however, if the amount of insurance coverage provided with respect to any Participant under the City of Plano, Texas, Employee's Group Term Life Insurance Plan (disregarding for this purpose any insurance coverage paid for by the Participant) is limited by the application of Title 7 of the Texas Insurance Code, the

amount of death benefit not payable thereunder as a result of such limitation shall be payable upon the Participant's death under the Plan.

ARTICLE 8. OTHER OPTIONAL FORMS OF PAYMENT

8.1 Other Options. In lieu of any life annuity form of payment that would otherwise become payable under Section 5.1, 5.2, or 5.4 of the Plan, as applicable, a Participant may elect that any benefit provided by the Plan shall be paid in an optional payment form set forth below, provided that payments in such other form shall be the Actuarial Equivalent of the benefit otherwise payable. The optional forms of payment are as follows:

- (a) Lump Sum Payment. A lump sum payment, in cash or kind (at fair market value), but only if the present value of the Participant's non-forfeitable Accrued Benefit is greater than Five Thousand Dollars (\$5,000), but less than Twelve Thousand Dollars (\$12,000), effective August 28, 1995, for payments made prior to January 1, 2016, to all current vested terminated Participants and all active Participants. For payments made on and after January 1, 2016, the lump sum payment form described above will be available to a Participant if the present value of his non-forfeitable Accrued Benefit is greater than Five Thousand Dollars (\$5,000), but less than Twenty-Five Thousand Dollars (\$25,000), or such other dollar limitations as may be adopted by the City Council from time to time, which are incorporated by reference herein.
- (b) Life Only Option. A monthly retirement income payable to the Participant during his lifetime. Upon the death of the Participant, payments shall cease.
- (c) Five (5) Year Certain and Life Option. A monthly retirement income payable to the Participant during his lifetime, with the provision that, if the Participant's death occurs before he has received sixty (60) monthly payments (5 years), the remaining number of such payments shall be paid to his designated beneficiary.
- (d) Ten (10) Year Certain and Life Option. A monthly retirement income payable to the Participant during his lifetime, with the provision that, if the Participant's death occurs before he has received one hundred twenty (120) monthly payments (10 years), the remaining number of such payments shall be paid to his designated beneficiary.
- (e) 50% Joint and Survivor Option. A monthly income payable to the Participant during his lifetime, with the provision that, upon his death, his designated beneficiary shall receive a monthly income equal to 50% of the income that the Participant was receiving at the time of his death.
- (f) 100% Joint and Survivor Option. A monthly income payable to the Participant during his lifetime, with the provision that, upon his death, his designated beneficiary shall receive a continuation of 100% of the income the Participant was receiving at the time of his death.

In the event of a mandatory distribution greater than one thousand dollars (\$1,000) but not exceeding five thousand dollars (\$5,000) in accordance with this paragraph, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator. For accrued benefits of one thousand dollars (\$1,000) or

less and the Participant does not elect to have such distribution to be paid directly to an eligible retirement plan specified by the Participant, the amount shall be distributed to the Participant in a lump sum.

Any optional form of payment elected under this paragraph must provide that the entire interest of a Participant is expected to be distributed to the Participant and his beneficiary over a period certain not exceeding beyond the life expectancy of the Participant or beyond the joint life and last survivor expectancy of the Participant and beneficiary.

8.2 Other Benefits Cancelled by Option. Any Pension, Death Benefit, or other benefit that would otherwise have become payable under the Plan, shall be cancelled and superseded by an option or any other form of payment elected under this Article 8 as of the date such option or other form of payment becomes operative.

8.3 Designation of Beneficiary. Each active or retired Participant may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive any benefit that may become payable under the Plan by reason of his death (other than a benefit payable only to his spouse or other qualified contingent pensioner). Such designation shall be made upon the forms furnished by the Committee, and may at any time and from time to time be changed or revoked without notice to the beneficiary or beneficiaries, and shall not be effective unless and until filed with the Committee.

If any Participant shall fail to designate a beneficiary or beneficiaries, or if all those designated by him predecease him, then the beneficiary shall be the Participant's Estate.

8.4 Election of Optional Form of Payment. A Participant whose Accrued Benefit is payable may, in writing to the City, elect to receive his benefit under one of the optional forms set forth in Section 8.1 above. The Committee shall not permit the retired Participant to change any prior election after commencement of payment of benefits under the Plan. The City shall provide to each active Participant, and each terminated Participant with a vested Accrued Benefit whose benefits have not yet commenced, an election form for electing an optional form, as well as a written explanation of the terms, conditions, and effects of such election as soon as administratively practicable, prior to his date of commencement of payment of benefits or, if earlier, prior to his Normal Retirement Date. Such written election must be filed with the City prior to commencement of any payments under the Plan.

8.5 Withholding Tax. Distributions from the Plan shall be subject to applicable tax withholding, including mandatory withholding to the extent applicable.

8.6 Direct Rollover Options for Eligible Rollover Distributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 8.6, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The following definitions apply to this Section 8.6:

- (a) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

- (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;
 - (2) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;
 - (3) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); provided, however, that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions (if applicable under the Plan) which are not includable in gross income. However, such portion may be transferred only to an individual retirement account, annuity, or plan described in Section 408(a) or (b) or 408A of the Code, a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code, or any other qualified plan under Code Section 401(a) or annuity contract described in Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable; and
 - (4) any other exception permitted by law or rules or regulations of the Internal Revenue Service.
- (b) Eligible retirement plan. An eligible retirement plan is any of the following plans or accounts, provided such plan or account accepts the distributee's eligible rollover distribution and, if applicable, agrees to separately account for amounts transferred into such plan or account from the Plan, an individual retirement account or annuity described in Section 408 or 408A of the Code; an annuity plan described in Section 403(a) of the Code; an annuity contract described in Section 403(b) of the Code; an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or a qualified trust described in Section 401(a) of the Code. However, if the distributee is a beneficiary who is not the surviving spouse of the Participant, an eligible retirement plan is an individual retirement account or annuity described in Section 408 or 408A of the Code.
- (c) Distributee. The following individuals may be distributees under this Section 8.6. a Participant (including a former Employee), a Participant's surviving spouse, a Participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order (as defined in Section 414(p) of the Code), and a designated non-spouse beneficiary.
- (d) Direct rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Any options set forth in this Section 8.6 shall automatically become inoperative and of no effect upon a ruling by the Treasury Department that the options set forth herein are no longer required.

ARTICLE 9. ADMINISTRATION

9.1 Appointment of Committee. The Plan shall be administered by a Committee consisting of at least five (5) but no more than seven (7) persons who shall be appointed by the City Council, based on recommendations from the City Manager. At least two (2) members of the Committee must meet the same eligibility requirements as appointees to City boards and commissions as described in section 4.07 of the City Charter. Each member of the Committee shall be appointed for a period of two (2) years, with the intent that the terms of the Committee members will generally be staggered in a manner such that the Committee will not consist entirely of newly appointed members at any given time.

Committee members will not receive compensation with respect to their services for the Committee.

9.2 Committee Powers and Duties. The Committee shall have such powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following powers and duties:

- (a) to develop bylaws and procedures necessary to discharge the Committee's responsibilities outlined herein;
- (b) to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder;
- (c) to prescribe procedures to be followed by distributees in obtaining benefits;
- (d) to make a determination as to the right of any person to a benefit and to afford any person dissatisfied with such determination the right to a hearing thereon;
- (e) to receive from the City and from Participants such information as shall be necessary for the proper administration of the Plan;
- (f) to receive and review the valuation of the Plan made by the Actuary;
- (g) to appoint an Investment Manager(s) to manage the investment of the assets of the Plan; and
- (h) to receive and review reports of the financial condition and of the receipts and disbursements of the Trust Fund from the Trustee; and
- (i) to recommend to the City Council employment of any agents it deems advisable, including, but not limited to, legal counsel.

The Committee shall have no power to add to, subtract from or modify any of the terms of the Plan, nor to change or add to any benefits provided by the Plan, nor to waive or fail to apply any requirements of eligibility for a Pension under the Plan.

A majority of the members of the Committee shall constitute a quorum for the transaction of business. No action shall be taken except upon a majority vote of the quorum. An individual shall not vote or decide upon any matter relating solely to himself. If, in any case

in which a Committee member is so disqualified to act, and the remaining members cannot agree, the City will appoint a temporary substitute member to exercise all the powers of the disqualified member concerning the matter in which he is disqualified.

9.3 Duties and Powers of the Plan Administrator. The Plan Administrator shall have such powers as may be necessary to discharge his duties hereunder, including, but not by way of limitation, the following powers and duties:

- (a) to file with the appropriate government agency (or agencies) any reports or other information that may be required;
- (b) to provide to each Participant and each beneficiary receiving benefits hereunder communications summarizing the Plan's terms and such benefits, as deemed necessary;
- (c) to cause benefit payments to be made hereunder if approved by the Committee;
- (d) to maintain all records necessary for verification of information required to be filed with the appropriate government agency (or agencies); and
- (e) to administer the Trust Fund on behalf of the City.

9.4 Rules and Decisions. The Committee may adopt such rules and actuarial tables as it deems necessary or desirable, subject to Section 2.1(b). All rules and decisions of the Committee shall be uniformly and consistently applied to all Participants in similar circumstances.

Any rule or decision, except as to benefits, which is not inconsistent with the provisions of the Plan, shall be conclusive and binding upon all persons affected by it, and there shall be no appeal from any ruling by the Committee which is within its authority.

When making a determination or calculation, the Committee shall be entitled to rely upon information furnished by the City, the legal counsel of the City, or the actuary for the Plan.

The Committee may, from time to time, appoint groups of Participants to advise the Committee on matters being considered. Such appointments should be made on a basis to ensure broad representation of Participant interests.

9.5 Unclaimed Benefits. During the time when a benefit hereunder is payable to any beneficiary or distributee, the Committee, upon request by the Trustee, or at its own instance, shall mail by registered or certified mail to such beneficiary or distributee, at his last known address, a written demand for his then address, or for satisfactory evidence of his continued life, or both. If such information is not furnished to the Committee within twelve (12) months from the mailing of such demand, then the Committee may, in its sole discretion, determine that such beneficiary or distributee is deceased and may declare such benefit, or any unpaid portion thereof, suspended as if the death of the distributee (with no surviving beneficiary) had occurred on the date of the last payment made thereon or the date such beneficiary or distributee first became entitled to receive benefit payments, whichever is later.

9.6 Application for Pension Benefits. Notwithstanding anything to the contrary in the Plan, except as provided in Section 5.3 with respect to application for a Disability Pension, a

Participant must apply to the Plan Administrator for a Pension that is otherwise payable under the Plan no later than one (1) year after the last date on which such Pension becomes payable from the Plan (e.g., within one (1) year of the first day of the month coinciding with or next following his Normal Retirement Date with respect to a Deferred Vested Pension payable under the Plan). In addition, a Participant or beneficiary seeking to contest a determination regarding his benefit rights under the Plan (a "contested determination") must follow any reasonable claims procedures that may be adopted by the Committee from time to time, as necessary, before seeking judicial review of, or bringing any action in court regarding, such contested determination. A Participant or beneficiary will be required to bring any action in court regarding a contested determination within two (2) years of the date that the Plan (or its representative) provides written notice to such individual of its final decision regarding the contested determination.

ARTICLE 10. TRUSTEE AND/OR INVESTMENT MANAGER(S)

10.1 Appointment of Trustee. A Trustee (or Trustees) shall be appointed by the City Council to administer the Trust Fund.

10.2 Appointment of Investment Manager(s). The Committee may appoint one or more Investment Manager(s) to manage (including the power to acquire or dispose of) such assets of the Trust Fund as may be delegated to it in writing by the Committee.

10.3 Responsibility of Trustee. All contributions under the Plan shall be paid to and held by the Trustee. The Trustee shall invest and reinvest only those assets of the Trust Fund not delegated in writing by the Committee to an Investment Manager(s) and shall not have exclusive management and control of any assets of the Trust Fund other than those not otherwise delegated to an Investment Manager(s) by the Committee. All property and funds of the Trust Fund, including income from investments and from all other sources, shall be retained by the Trustee for the exclusive benefit of Participants, as provided in the Plan, and shall be used to pay benefits to Participants or their beneficiaries, or to pay expenses of administration of the Plan and Trust Fund to the extent not paid by the City, except as provided in Section 12.5.

10.4 Responsibility of Investment Manager(s). The Investment Manager(s) shall invest and reinvest only those assets of the Trust Fund delegated to it in writing by the Committee and shall not have exclusive management and control of any assets of the Trust Fund other than those specifically delegated to it by the Committee.

ARTICLE 11. GUARANTEES AND LIABILITIES

11.1 Non-guarantee of Employment. Nothing contained in the Plan shall be construed as a contract of employment between the City and any Participant, or as a right of any Participant to be continued in the employment of the City, or as a limitation on the right of the City to discharge any of its employees, with or without cause.

11.2 Rights to Trust Assets. No Participant shall have any right to, or interest in, any assets of the Trust Fund upon termination of his employment or otherwise, except as provided from time to time under the Plan, and then only to the extent of the benefits payable to such Participant out of the assets of the Trust Fund. Neither the City, the Trustee, any Committee member, nor any employee, officer, or other official of the City, shall be liable to any Participant or beneficiary for payment of Plan benefits. Rather, any benefits due to be paid from the Plan will be paid exclusively from the Trust Fund, in accordance with the terms of the Plan and the Trust.

11.3 Non-alienation of Benefits. Benefits payable under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to being received by the person entitled to the benefit under the terms of the Plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder shall be void. The Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits hereunder. None of the unpaid Plan benefits or Trust assets shall be considered an asset of the Participant in the event of his insolvency or bankruptcy.

The provisions of Subchapters A and C of Chapter 804 of the Texas Government Code shall apply to the Plan. In accordance with Section 804.003(b) of the Texas Government Code, the Plan Administrator has the exclusive authority to determine whether a domestic relations order is a qualified domestic relations order; provided, however, that such a determination by the Plan Administrator may be appealed to the Committee in accordance with rules established by the Committee. Any such determination by the Plan Administrator (or by the Committee if appealed to the Committee) shall be final, binding, and conclusive on all parties. In accordance with Section 804.004 of the Government Code, the Committee may establish rules pursuant to which the Plan, in the sole discretion of the Plan Administrator, may pay to an alternate payee a single lump sum or a monthly annuity for the life of the alternate payee in lieu of any interest awarded to the alternate payee by a qualified domestic relations order. In accordance with Section 804.101 of the Government Code, any remaining interest of an alternate payee or spouse in the Plan shall be terminated by the death of the alternate payee or spouse.

ARTICLE 12. AMENDMENT AND TERMINATION

12.1 Right to Amend. The City reserves the right to make, from time to time, any amendment or amendments to the Plan which do not permit reversion of any part of the Trust Fund to the City, except as provided in Section 12.5 and which do not cause any part of the Trust Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants included in the Plan. In all cases, amendments to the Plan must be approved by the City Council.

12.2 Right to Terminate and Withdraw. The City may at any time terminate the Plan and require the Trustee to liquidate the Trust Fund. If, for any reason, the City shall cease to exist, the Plan shall terminate. The termination of the Plan must be approved by the City Council.

12.3 Allocation and Liquidation of Trust Fund. Upon termination of the Plan, the proportionate interests of the Participants, and their beneficiaries, respectively, shall be determined by the actuary. The assets of the Trust Fund shall be liquidated and, after the provision is made for the expenses of administration, termination and liquidation, the assets shall be allocated to provide the accrued benefits of Participants and their beneficiaries in the following priority categories:

- (a) Pensions or other benefits in course of payment to retired Participants, and beneficiaries of deceased retired Participants and immediate Pensions for Participants who have reached their Normal Retirement Dates but have not retired.
- (b) Pensions deferred to Normal Retirement Date for Participants who have qualified for an Early Pension.
- (c) Pensions deferred to Normal Retirement Date for Participants who have qualified for a Deferred Vested Pension.

If the funds available in either of categories (a), (b) or (c) are determined to be insufficient to provide all such benefits, the funds and benefits shall be apportioned among the various persons, first in category (a), next in category (b), and next in category (c), in the same proportion as each person's accrued credits bear to the accrued credits of all persons in each such category on an Actuarially Equivalent basis as determined by the actuary.

If the cost of providing for the benefits, first in category (a), next in category (b), and next in category (c) is determined to be less than the total funds available, the balance will be similarly used to the extent available to provide Pensions deferred to Normal Retirement Date for all other Participants under the Plan at the time of termination of the Plan in proportion to the actuarial value of each such Participant's accrued credits, on an Actuarially Equivalent basis as determined by the actuary, as of the date of termination.

The benefit any such participant is entitled to receive under this Section 12.3 shall be based on the Participant's Compensation and Service accrued with the City prior to the date of termination of the Plan, and his right to such benefit shall be considered as vested, regardless of his age and years of Service on the date of termination of the Plan.

12.4 Manner of Distribution. Any distribution after termination of the Plan may be made through the purchase of annuities from a duly licensed insurance company, as determined by the Committee.

In making such distribution, any and all determinations, appraisals, apportionments and allotments shall be made by the Committee acting under the information supplied by the actuary and shall be final and conclusive and not subject to question by any person.

12.5 Amounts Returnable to the Employer. In no event shall the City receive any amounts from the Trust, except such amounts, if any, as set forth below:

- (a) Upon termination of the Plan and notwithstanding any other provisions of the Plan, the City shall receive such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan to its Participants and beneficiaries, and arising out of any variations between actual requirements and expected actuarial requirements.
- (b) In the event of a contribution made by the City by a mistake of fact, such contribution shall be returned to the City within one (1) year after payment thereof.

12.6 Vesting Upon Termination. Upon termination of the Plan, each Participant shall have a 100% vested and non-forfeitable right to his Accrued Benefit hereunder.

ARTICLE 13. MISCELLANEOUS

13.1 Payment in Case of Incapacity. In the event that the Plan Administrator shall find that a Participant or other person entitled to receive payment of benefits under the Plan is unable to manage his own affairs because of illness or accident or is a minor, the Plan Administrator may direct that any benefit payment due him, unless a claim shall have been made therefor by a duly appointed legal representative, be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides. Any such payment shall be a complete discharge of the liabilities of the Plan therefor.

13.2 Recovery of Overpayments. The Plan has a right of reimbursement and recovery against any person who receives or holds a payment from the Plan in excess of the amount to which such person is entitled under the terms of the Plan. The Plan Administrator or the Trustee may recover the amount overpaid in any manner determined by the Plan Administrator or Trustee to be in the best interests of the Plan, including by legal action against the recipient and/or holder of the overpayment or by offset against other or future benefits payable to or with respect to the participant or beneficiary under the Plan. The provisions of this Section 13.2 are intended to clarify existing rights of the Plan and apply to all past or future overpayments.

13.3 Savings Clause. In the event any provision of the Plan is held to be in conflict with or in violation of any applicable state or federal statute, rule, or decision, all other provisions of the Plan shall continue in full force and effect. In the event that the making of any payment or the provision of any other benefit required under the Plan is held to be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable, such conflict, violation, invalidity, or unenforceability shall not prevent any other payment or benefit from being made or provided under the Plan, and in the event that the making of any payment in full or the provision of any other benefit required under the Plan in full would be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable, then such conflict, violation, invalidity, or unenforceability shall not prevent such payment or benefit from being made or provided in part, to the extent that it would not be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable, and the maximum payment or benefit that would not be in conflict with or in violation of any state or federal statute, rule, or decision or otherwise invalid or unenforceable shall be made or provided under the Plan.

13.4 Governing Law. The Plan shall be construed according to the laws of the State of Texas (without giving effect to the conflicts of laws provisions of any state).

13.5 Notices. The Committee and Plan Administrator may give any notice required to be given to a Participant, beneficiary, or any other person entitled to benefits hereunder, by mailing such notice to such person at the address last furnished to the Plan Administrator or Committee or by providing such notice electronically, to the extent permitted by applicable law.

IN WITNESS WHEREOF, the City has caused this instrument to be executed in its name and on its behalf on this ____ day of _____, 20____ effective as stated herein.

CITY OF PLANO, TEXAS

By: _____

Title: _____

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

APPENDIX A- MINIMUM PENSION FOR CERTAIN ELIGIBLE PARTICIPANTS

2.1A Definition of Primary Social Security Benefit: The amount of monthly benefits which a Participant would be entitled to receive as his "primary insurance amount" assuming: (1) that he has made or will make appropriate application for such benefit; (2) that no event occurs to delay or forfeit any part of such benefit; (3) that if he retires (except for Disability) before his Normal Retirement Date, he will continue to receive until his Normal Retirement Date, remuneration (which would be treated as taxable wages for purposes of the Social Security Act) at the same rate as at the time of Retirement; or (4) that if he retires under the Plan on account of Disability, his Primary Social Security benefit, as herein defined, shall be the benefit payable if his Social Security disability insurance benefit were to be approved at the same time as his Disability Retirement, if he were eligible for such benefit. As used in this subparagraph, the term "primary insurance amount" shall have the meaning ascribed to it in the federal Social Security Act as amended and in effect on the affected Participant's date of death, date of severance, or Normal Retirement Date, whichever is earlier, assuming (except for Disability) commencement at the Participant's Normal Retirement Date. The Committee may adopt and apply appropriate and nondiscriminatory rules and procedures to determine such amounts.

The Committee may, to determine such amounts, use wage estimates for the Participant's pre-separation period where actual wage history is not furnished by Participant. Any such wage estimates shall be made by applying a salary scale, projected backwards, to the Participant's Compensation at his date of separation. Such salary scale shall be six percent (6%). Notice shall be duly given to each Participant explaining the use of such estimates and informing the Participant that he can obtain his actual wage history from the Social Security Administration. If any Participant shall furnish actual wage history in writing to the Committee no later than a reasonable time after his separation or, if later, after he is informed of his plan benefits, the Committee shall determine his Primary Social Security Benefit on the basis of such actual wage history.

6.1A Minimum Normal and Late Pension: If a Participant had attained age sixty (60) on January 1, 1992, was an active participant hereunder on December 31, 1991, and has not at any time been a Highly Compensated Employee, then in no event will his Normal Pension be less than the monthly amount provided under the prior benefit formula (as set forth under the terms of the Plan as in force and effect as of December 31, 1991), which is set out below and which equals (a) minus (b), subject to (c):

- (a) (1) Three Percent (3%) of his Average Monthly Compensation, multiplied by his Credited Service, not to exceed twenty-five (25) years, minus
- (2) Two Percent (2%) of his Primary Social Security Benefit multiplied by his Credited Service, not to exceed twenty-five (25) years.
- (b) The amount of benefit to which he is entitled under TMRS. The amount of such benefit shall be stated in terms of an Actuarially Equivalent five (5) year certain and life Pension, and shall be computed based upon his employee and employer account balances as of his date of Retirement, regardless of vesting, including any updated service credits.
- (c) In no event, however, shall the Actuarially Equivalent lump sum value of the above Normal Pension produced by (a) minus (b) above be less than the

accumulated value of a benefit equal to Six and Seven-Tenths Percent (6.7%) of the Participant's Compensation during each Plan Year commencing on and after January 1, 1983.

The minimum Late Pension of a Participant who meets the requirements above for a minimum Normal Pension and who retires after his Normal Retirement Date shall be computed the same as the minimum Normal Pension in accordance with the foregoing, considering his Average Monthly Compensation and Credited Service to his actual date of Retirement, but using his Primary Social Security Benefit as of his Normal Retirement Date.

6.2A Minimum Early Pension: If a Participant had attained age sixty (60) on January 1, 1992, was an active participant hereunder on December 31, 1991, and has not at any time been a Highly Compensated Employee, then in no event will his Early Pension be less than the monthly amount provided under the prior benefit formula (as set forth under the terms of the Plan as in force and effect as of December 31, 1991), which is set out below and which equals (a) minus (b), subject to (c):

- (a)
 - (1) Three Percent (3%) of his Average Monthly Compensation, multiplied by his Credited Service, not to exceed twenty-five (25) years, minus
 - (2) Two Percent (2%) of his Primary Social Security Benefit, multiplied by the number, not to exceed twenty-five (25), of the years of Credited Service he would have accumulated if his employment with the City had continued uninterrupted to his Normal Retirement Date, with the result being multiplied by the ratio that the number of his years of Credited Service at Retirement bears to the number of years of Credited Service he would have accumulated if his employment with the City had continued uninterrupted to his Normal Retirement Date.
- (b) The amount of benefit to which he is entitled under TMRS. The amount of such benefit shall be stated in terms of an Actuarially Equivalent five (5) year certain and life Pension, and shall be computed based upon his employee and employer account balances as of his date of Retirement, regardless of vesting, including any updated service credits, increased with interest at a rate determined by the Committee, to Normal Retirement Date.
- (c) In no event, however, shall the Actuarially Equivalent lump sum value of the above Early Pension produced by (a) minus (b) above be less than the accumulated value of a benefit equal to Six and Seven-Tenths Percent (6.7%) of the Participant's Compensation during each Plan Year commencing on and after January 1, 1983.

If payment of an Early Pension commences prior to the Participant's Normal Retirement Date, the amount determined above shall be reduced by one-fifteenth (1/15th) for each of the first five (5) years and one-thirtieth (1/30th) for each of the next five (5) years (and on an Actuarially Equivalent basis thereafter) by which the starting date of Pension payments precedes the Participant's Normal Retirement Date.



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/9/2015		
Department:		Human Resources		
Department Head		Shanté Akafia		
Agenda Coordinator (include phone #): Billy Bailey (x) 5411				
CAPTION				
An Ordinance of the City of Plano, Texas repealing Ordinance No. 2015-9-7; establishing the number of certain classifications within the Fire Department for fiscal year 2015-16; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective November 9, 2015; and providing a repealer clause, a severability clause and 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: 2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	160,147	0	160,147
Encumbered/Expended Amount	0	-11,874	0	-11,874
This Item	0	-159,225	0	-159,225
BALANCE	0	-10,952	0	-10,952
FUND(S): GENERAL				
<p>COMMENTS: This item eliminates one (1) Battalion Chief position and adds one (1) Deputy Fire Chief position to the City of Plano Fire Department with an effective date of November 9, 2015. The overage of \$10,952 will be absorbed within the Fire Department's existing budget.</p> <p>STRATEGIC PLAN GOAL: Updates to the Civil Service Compensation and Classification Plan Ordinances relate to the City's Goal of Financially Strong City with Service Excellence and Safe Large City.</p>				
SUMMARY OF ITEM				
New FY 2015-16 Compensation and Pay plan for Plano Fire-Rescue				
List of Supporting Documents: Ordinance, Exhibit A			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas repealing Ordinance No. 2015-9-7; establishing the number of certain classifications within the Fire Department for fiscal year 2015-16; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective November 9, 2015; and providing a repealer clause, a severability clause and an effective date.

Whereas, on September 14, 2015 by Ordinance No. 2015-9-7, the City Council of the City of Plano, Texas, adopted the Civil Service compensation plan for the Fire Department of the City of Plano; and

Whereas, in compliance with Chapter 143 of the Texas Local Government Code, V.T.C.A., as amended, the City Council desires to adopt the specified number of positions effective November 9, 2015, and the classification and salary plan for the sworn personnel of the Fire Department of the City of Plano, Texas as set forth in attached Exhibit "A"; and

Whereas, the Department recommends, based on operational needs, to add one (1) Deputy Chief position and eliminate one (1) Battalion Chief position; and

Whereas, the salary plan adopted by this ordinance does not, in any way, limit the ability or authority of the City to implement a reduction in salary due to business or other fiscal needs, nor does it prevent the City Manager or Department Head from reducing, on an individual or a group basis, the number of hours worked per week or per work cycle due to fiscal needs, disciplinary actions, or other allowable reasons.

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

Section I. Ordinance No. 2015-9-7 duly passed and approved by the City Council of the City of Plano, Texas on September 14, 2015 is repealed in its entirety effective November 9, 2015.

Section II. The number of positions in the City of Plano Fire Department effective November 9, 2015 and the classification and salary plan of the City of Plano Fire Department for City of Plano fiscal year 2015-16, as set forth in Exhibit "A" is hereby approved.

Section III. The addition of one (1) Deputy Chief position and eliminating one (1) Battalion Chief position are hereby approved.

Section IV. Any and all advancements from one service plateau to the next, within the salary structure set out in Exhibit "A" is hereby approved and adopted, and shall thereafter be permitted to start on the first payroll period following completion of the required number of continuous service months.

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

Section VI. It is the intention of the City Council that this Ordinance, and every provision thereof, 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 VII. Upon passage, this Ordinance shall become effective November 9, 2015.

DULY PASSED AND APPROVED, this, the 9th day of November 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY



**CITY OF PLANO
2015 - 2016 CIVIL SERVICE
COMPENSATION PLAN
Effective 11/9/2015**

FIRE

RANGE	POSITION	# Positions Effective	STEP:	BASE 1	6 MOS. 2	12 MOS. 3	24 MOS. 4
001	Firefighter	9/21/2015 - 204	Hourly: Monthly: Annual:	\$21,7124 \$5,269 \$63,227		\$23,2435 \$5,640 \$67,685	\$25,6050 \$6,213 \$74,562
002	Fire Engineer	9/21/2015 - 58	Hourly: Monthly: Annual:	\$28,7983 \$6,988 \$83,861			
003	Lieutenant	9/21/2015 - 24	Hourly: Monthly: Annual:	\$32,2998 \$7,838 \$94,057			
004	Captain	9/21/2015 - 49	Hourly: Monthly: Annual:	\$35,9213 \$8,717 \$104,603			
005	Battalion Chief	9/21/2015 - 7 11/9/2015 - 6	Hourly: Monthly: Annual:	\$40,8998 \$9,925 \$119,100			
006	Deputy Fire Chief	9/21/2015 - 6 11/9/2015 - 7	Hourly: Monthly: Annual:	\$62,5251 \$10,838 \$130,052			
007	Appointed Assistant Fire Chief	9/21/2015 - 2	Hourly: Monthly: Annual:	\$67,3942 \$11,682 \$140,180			

The base pay is the same for all personnel within a classification; however the hourly and monthly pay rates may vary based on whether the individual is assigned to a 40 hour per week staff position or a 56 hour per week field position. The City Council can change pay, pay periods, and total hours scheduled at any time.



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:		11/09/15		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): Paula Date X 8306				
CAPTION				
<p>Public Hearing and an Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas as Reinvestment Zone 140 for tax abatement, consisting of a 9.515 acre tract of land located in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and described in Exhibit "A", attached hereto, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2015-16	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): N/A				
<p>COMMENTS: This item has no fiscal impact. Notice of public hearing published on October 22, 2015 to create Reinvestment Zone 140. The real property improvements amount is \$29,000,000 and the business personal property amount is \$6,000,000.</p> <p>Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.</p>				
SUMMARY OF ITEM				
<p>This relates to Capital One, National Association, a national banking association, request for tax abatement on Reinvestment Zone 140 and the creation of the zone at the southeast corner of Dominion Parkway and Headquarters Drive.</p> <p>https://goo.gl/3phKvC</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Ordinance Metes and Bounds				

An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas as Reinvestment Zone No. 140 for tax abatement, consisting of a 9.515 acre tract of land located in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and described in Exhibit "A", attached hereto, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.

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

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 9th day of November, 2015, 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. 140, City of Plano, Texas.

Section V. The zone shall be effective as of November 9, 2015.

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

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

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

- a) Ten (10) consecutive tax years beginning with and including the January 1, 2018 assessment date for the Real Property Improvements.
- b) Ten (10) consecutive tax years beginning with and including the January 1, 2018 assessment date for the Tangible Personal Property Improvements.
- c) Share of taxes abated – fifty percent (50%) of taxes on the total value of appraised Real Property Improvements for the years 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 and 2027.
- d) Share of taxes abated – fifty percent (50%) of taxes on the total appraised value of Tangible Personal Property for the years 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 and 2027.

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

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

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

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

DULY PASSED AND APPROVED this the 9th day of November, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and being part of that tract of land described in Special Warranty Deed to Capital One National Association as recorded in Document Number 20081008001203900, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being part of Lot 4, Block 1 of the Revised Conveyance Plat of CAPITAL ONE ADDITION LOT 4, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 42-43, O.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Half" (hereafter referred to as "with cap") found at an interior corner on the north line of said Lot 4, same being the southwest corner of Lot 2, Block A of the Conveyance Plat of NETWORK ASSOCIATES, LOT 2, BLOCK A, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2006, Page 535, O.P.R.C.C.T.;

THENCE North 49 degrees 30 minutes 24 seconds West, along the common line between the northeast line of said Lot 4 and the southwest line of said Lot 2, a distance of 147.09 feet to the POINT OF BEGINNING of the herein described tract of land;

THENCE departing said common line, and over and across said Lot 4, the following bearings and distances:

South 40 degrees 29 minutes 33 seconds West, a distance of 74.93 feet to the beginning of a non-tangent curve to the left with a radius of 234.23 feet and a chord that bears South 88 degrees 19 minutes 13 seconds West, a distance of 106.21 feet;

Southwesterly, along said curve, through a central angle of 26 degrees 12 minutes 34 seconds, an arc distance of 107.15 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 251.15 feet and a chord that bears North 89 degrees 52 minutes 27 seconds West, a distance of 154.53 feet;

Northwesterly, along said curve, through a central angle of 35 degrees 50 minutes 09 seconds, an arc distance of 157.08 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears South 63 degrees 01 minutes 14 minutes West, a distance of 45.25 feet;

Southwesterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

South 16 degrees 48 minutes 16 seconds West, a distance of 183.77 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears South 28 degrees 11 minutes 44 seconds East, a distance of 45.25 feet;

Southeasterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

South 73 degrees 12 minutes 33 seconds East, a distance of 15.64 feet to the beginning of circular curve to the left with a radius of 62.00 feet and a chord that bears South 79 degrees 53 minutes 41 seconds East, a distance of 14.44 feet;

Southeasterly, along said curve, through a central angle of 13 degrees 22 minutes 16 seconds, an arc distance of 14.47 feet to the point of reverse curvature of a circular curve to the right with a radius of 567.37 feet and a chord that bears South 84 degrees 59 minutes 11 seconds East, a distance of 31.57 feet;

Southeasterly, along said curve, through a central angle of 03 degrees 11 minutes 17 seconds, an arc distance of 31.57 feet to a point for corner;

South 16 degrees 47 minutes 24 seconds West, a distance of 420.55 feet to a point for corner on the southwesterly line of said Lot 4, same being located on the northeasterly right-of-way line of Dominion Parkway (a 92 foot wide right-of-way at this point), said point being the beginning of a non-tangent curve to the right with a radius of 1,004.00 feet and a chord that bears North 49 degrees 43 minutes 51 seconds West, a distance of 634.30 feet;

THENCE Northwesterly, along the common line between the southwesterly line of said Lot 4, and the northeasterly right-of-way line of said Dominion Parkway, and along said curve, through a central angle of 36 degrees 49 minutes 43 seconds, an arc distance of 645.35 feet to a 1/2-inch iron rod with cap found for corner;

THENCE North 31 degrees 18 minutes 59 seconds West, continuing along said common line, a distance of 46.07 feet to a 1/2-inch iron rod with cap found for the southwest corner of a corner clip on the northeasterly right-of-way line of said Dominion Parkway;

THENCE North 12 degrees 43 minutes 53 seconds East, departing said common line, and along said corner clip, a distance of 35.94 feet to a 1/2-inch iron rod with cap found for corner on the southeast right-of-way line of Headquarters Drive (a 121-foot wide right-of-way) as recorded in Cabinet M, Page 327, M.R.C.C.T. and the northwest line of said Lot 4, said corner being the beginning of a non-tangent curve to the left with a radius of 1,760.50 feet and a chord that bears North 45 degrees 53 minutes 48 seconds East, a distance of 640.20 feet;

THENCE Northeasterly, along the common line between the northwest line of said Lot 4 and the southeast right-of-way line of said Headquarters Drive, and along said curve, through a central angle of 20 degrees 57 minutes 07 seconds, an arc distance of 643.78 feet to a 1/2-inch iron rod with cap set for the beginning of non-tangent curve to the right with a radius of 1,639.50 feet and a chord that bears North 37 degrees 57 minutes 25 seconds East, a distance of 145.10 feet;

THENCE Northeasterly, continuing along said common line, and along said curve, through a central angle of 05 degrees 04 minutes 21 seconds, an arc distance of 145.15 feet to a 1/2-inch iron rod with cap found for the northwest corner of said Lot 4, same being the most westerly corner of said Lot 2;

THENCE South 49 degrees 30 minutes 24 seconds East, departing said common line, and along the common line between the northeast line of said Lot 4, and the southwest line of said Lot 2, a distance of 517.20 feet to the POINT OF BEGINNING AND CONTAINING 414,471 square feet or 9.515 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:		11/09/15			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Paula Date X 8306					
CAPTION					
A Resolution of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2017-18 through 2027- 28	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(S): N/A					
COMMENTS: This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.					
SUMMARY OF ITEM					
This relates to Capital One, National Association, a national banking association, request for tax abatement on Reinvestment Zone 140 and the creation of the zone at the southeast corner of Dominion Parkway and Headquarters Drive. https://goo.gl/3phKvC					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution Tax Abatement Agreement					

A Resolution of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 9th day of November, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

3. Owner shall maintain the taxing situs of the Personalty on the Real Property and may not relocate the taxing situs of the Personalty to other Reinvestment Zones in the City.

IMPROVEMENTS

4. (a) Owner agrees to add the Personalty required under Section 2 by December 31, 2017, unless an extension as a result of an Event of Force Majeure is approved by the City in writing. The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner at the Real Property. The term shall not include a downturn in the economy.

(b) By December 31, 2017, Owner shall make or cause to be made improvements to the Real Property consisting of a new building(s) and/or building improvements that are at least 200,000 gross square feet of office space with an assessed taxable value of not less than Twenty-Nine Million Dollars (\$29,000,000) for new improvements added to the Real Property between the dates of October 1, 2015 through December 31, 2017, as determined by the Collin Central Appraisal District. The real property abatement for the new improvements shall begin in the 2018 tax year pursuant to Section 11 (a) herein unless an extension as a result of an Event of Force Majeure has been approved by the City in writing.

(c) Upon the occurrence of an Event of Force Majeure, Owner shall notify the City in writing not less than sixty (60) days of the commencement of the Event of Force Majeure with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event of Force Majeure. The City Manager shall consider such request and may grant an extension of time to complete the obligations; such extension shall not be unreasonably withheld. If the Event of Force Majeure results in a delay of meeting the required improvement value, Owner agrees that in the following year the minimum required taxable value of the improvements and/or Personalty shall be met.

DEFAULT

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

(a) Owner allows its personal property taxes or real property improvement taxes owed the City to become delinquent, and fails to either:

(i) Timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes; or

(ii) Cure such delinquency within thirty (30) days of receipt of notice of such delinquency; or

(b) Owner fails to construct the Real Property improvements required in Section 4 (b); or

(c) (i) In the first year of the abatement period for the Personalty, the assessed taxable value is less than the minimum amount set forth in Section 2; or

(ii) At any time during the Agreement, the Personalty is removed from the Real Property and the result is the taxable appraised value of the Personalty is below the minimum amount set forth in Section 2; or

(d) At any time during the Agreement, the assessed taxable value of the Real Property improvements is less than the minimum amount set forth in Section 4 (b) as a result of the Owner's protest; or

(e) Owner or Owner's duly authorized representative fails to provide the annual certification as required in Section 9; or

(f) Owner fails to comply with the Assignment provision in Section 10; 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 Real Property.

6. In the event of a default under Section(s) 5 (a), (b), (c), (d), (e), (f) and/or (g) above, the City shall give the Owner written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated except any damages as specified below shall survive the termination of this Agreement. Notice shall be in writing as provided below. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

7. (a) Upon the occurrence of an event of default under Section(s) 5 (a), (b) and/or (g) above and that remains uncured, all taxes, including previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement, shall become due and owing to the City from the Owner, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07 and Texas Government Code Chapter 2264.

(b) Upon the occurrence of an event of default under Section(s) 5 (c), (d) , (e) and/or (f) above and that remains uncured, at the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement to become due and owing to the City from the Owner, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety (90) days of notice of default.

EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS

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

ANNUAL CERTIFICATION

9. Beginning November 1, 2018, and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, Owner, or its successors or assigns, must each provide annual certification (substantially in the form attached as **EXHIBIT "B"** hereto) to the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

10. If Owner wishes to assign its rights and duties under this Agreement, it must comply with the following provisions. A failure to comply is an event of default and all remedies may apply including but not limited to a suspension of the abatement for the year(s) for which non-compliance occurred.

(a) **City Consent Required.** Except as permitted by Section 10 (b) below, this Agreement may not be assigned without the express written consent of the City. The assignment agreement must be furnished in a form acceptable to the City and be provided at least sixty (60) days prior to the effective assignment date for the City Council review and approval.

(b) **Exceptions to City Consent.** Owner may assign this Agreement without obtaining the City's consent:

(i) To a wholly owned affiliate of Owner; or

(ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety percent (90%) of the assets of the Owner, or

(iii) Upon the sale of the Real Property by Owner.

(c) Prior to the effective date of the assignment or sale under Section 10 (a) or (b) above, the assigning party agrees to have the assignee or successor execute an agreement with the City to be bound to all the terms and conditions of this Agreement, without exception, and the assignee or successor shall be responsible for any default(s) of the assignee or seller that occurred prior to or after the effective date of the assignment.

ABATEMENT PROVISIONS

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

(a) (i) The tax abatement as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2018 through December 31, 2027.

(ii) The tax abatement as to Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2018 through December 31, 2027.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the taxable value of the Personalty and Real Property improvements for the tax years set forth above.

(c) The Owner shall have the right to protest and/or contest any assessment of the Personalty or Real Property improvements where such assessment is above the minimum amount required to be maintained under Sections 2 and 4 of this Agreement. The abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those required in Sections 2 and 4 as a result of a protest and/or contest filed by Owner, or the removal of Personalty from the Real Property.

NOTICE

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

For City by notice to:

City of Plano
Attention: Mr. Bruce D. Glasscock
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

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

For Owner by notice to:

Capital One, National Association
c/o Capital One Services, LLC
Attention: Chief Counsel, Transactions
1680 Capital One Drive
McLean, VA 22101

With copy to:

Capital One, National Association
c/o Capital One Services, LLC
Attention: Real Estate Administration - Office
8050 Dominion Parkway
Plano, TX 75024

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

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

14. It is understood and agreed between the parties that the Owner, in performing its respective 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 their respective defaults of their obligations hereunder.

15. Based upon the certification provided by Owner, the City represents that the Real Property is not owned by any member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.

16. Owner agrees to comply with Section 2-11(F) of the City Code of Ordinances, which reads as follows:

“It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or employment in, any program established to provide apprenticeship or other training;
- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
- (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or

(m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

Owner also understands that they are entitled to apply to the City Manager for a waiver from the Equal Rights Ordinance’s application to their business if applying it would conflict with state or federal law. During the review of the waiver request, the Agreement will be placed on hold.

17. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 9th day of November, 2015, authorizing the City Manager to execute the Agreement on behalf of the City.

18. This Agreement was entered into by Owner pursuant to its duly authorized representatives.

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

20. 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.

21. This Agreement is performable in Collin County, Texas and venue for any dispute arising out of this Agreement shall be in Collin County, Texas.

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

ATTEST:

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

Lisa C. Henderson, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

ATTEST:

OWNER
CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking association

Name: _____
Title: _____

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

EXHIBIT "A"

LEGAL DESCRIPTION

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and being part of that tract of land described in Special Warranty Deed to Capital One National Association as recorded in Document Number 20081008001203900, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being part of Lot 4, Block 1 of the Revised Conveyance Plat of CAPITAL ONE ADDITION LOT 4, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 42-43, O.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Half" (hereafter referred to as "with cap") found at an interior corner on the north line of said Lot 4, same being the southwest corner of Lot 2, Block A of the Conveyance Plat of NETWORK ASSOCIATES, LOT 2, BLOCK A, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2006, Page 535, O.P.R.C.C.T.;

THENCE North 49 degrees 30 minutes 24 seconds West, along the common line between the northeast line of said Lot 4 and the southwest line of said Lot 2, a distance of 147.09 feet to the POINT OF BEGINNING of the herein described tract of land;

THENCE departing said common line, and over and across said Lot 4, the following bearings and distances:

South 40 degrees 29 minutes 33 seconds West, a distance of 74.93 feet to the beginning of a non-tangent curve to the left with a radius of 234.23 feet and a chord that bears South 88 degrees 19 minutes 13 seconds West, a distance of 106.21 feet;

Southwesterly, along said curve, through a central angle of 26 degrees 12 minutes 34 seconds, an arc distance of 107.15 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 251.15 feet and a chord that bears North 89 degrees 52 minutes 27 seconds West, a distance of 154.53 feet;

Northwesterly, along said curve, through a central angle of 35 degrees 50 minutes 09 seconds, an arc distance of 157.08 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears South 63 degrees 01 minutes 14 minutes West, a distance of 45.25 feet;

Southwesterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

South 16 degrees 48 minutes 16 seconds West, a distance of 183.77 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears South 28 degrees 11 minutes 44 seconds East, a distance of 45.25 feet;

Southeasterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

South 73 degrees 12 minutes 33 seconds East, a distance of 15.64 feet to the beginning of circular curve to the left with a radius of 62.00 feet and a chord that bears South 79 degrees 53 minutes 41 seconds East, a distance of 14.44 feet;

Southeasterly, along said curve, through a central angle of 13 degrees 22 minutes 16 seconds, an arc distance of 14.47 feet to the point of reverse curvature of a circular curve to the right with a radius of 567.37 feet and a chord that bears South 84 degrees 59 minutes 11 seconds East, a distance of 31.57 feet;

Southeasterly, along said curve, through a central angle of 03 degrees 11 minutes 17 seconds, an arc distance of 31.57 feet to a point for corner;

South 16 degrees 47 minutes 24 seconds West, a distance of 420.55 feet to a point for corner on the southwesterly line of said Lot 4, same being located on the northeasterly right-of-way line of Dominion Parkway (a 92 foot wide right-of-way at this point), said point being the beginning of a non-tangent curve to the right with a radius of 1,004.00 feet and a chord that bears North 49 degrees 43 minutes 51 seconds West, a distance of 634.30 feet;

THENCE Northwesterly, along the common line between the southwesterly line of said Lot 4, and the northeasterly right-of-way line of said Dominion Parkway, and along said curve, through a central angle of 36 degrees 49 minutes 43 seconds, an arc distance of 645.35 feet to a 1/2-inch iron rod with cap found for corner;

THENCE North 31 degrees 18 minutes 59 seconds West, continuing along said common line, a distance of 46.07 feet to a 1/2-inch iron rod with cap found for the southwest corner of a corner clip on the northeasterly right-of-way line of said Dominion Parkway;

THENCE North 12 degrees 43 minutes 53 seconds East, departing said common line, and along said corner clip, a distance of 35.94 feet to a 1/2-inch iron rod with cap found for corner on the southeast right-of-way line of Headquarters Drive (a 121-foot wide right-of-way) as recorded in Cabinet M, Page 327, M.R.C.C.T. and the northwest line of said Lot 4, said corner being the beginning of a non-tangent curve to the left with a radius of 1,760.50 feet and a chord that bears North 45 degrees 53 minutes 48 seconds East, a distance of 640.20 feet;

THENCE Northeasterly, along the common line between the northwest line of said Lot 4 and the southeast right-of-way line of said Headquarters Drive, and along said curve, through a central angle of 20 degrees 57 minutes 07 seconds, an arc distance of 643.78 feet to a 1/2-inch iron rod with cap set for the beginning of non-tangent curve to the right with a radius of 1,639.50 feet and a chord that bears North 37 degrees 57 minutes 25 seconds East, a distance of 145.10 feet;

THENCE Northeasterly, continuing along said common line, and along said curve, through a central angle of 05 degrees 04 minutes 21 seconds, an arc distance of 145.15 feet to a 1/2-inch iron rod with cap found for the northwest corner of said Lot 4, same being the most westerly corner of said Lot 2;

THENCE South 49 degrees 30 minutes 24 seconds East, departing said common line, and along the common line between the northeast line of said Lot 4, and the southwest line of said Lot 2, a distance of 517.20 feet to the POINT OF BEGINNING AND CONTAINING 414,471 square feet or 9.515 acres of land, more or less.

**EXHIBIT “B”
CERTIFICATION FORM**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 140
Tax Abatement Agreement (the “Agreement”) between Capital One, National Association.
 (“Owner”); and the City of Plano.

This letter certifies that Owner is in compliance with each applicable term as set forth in the Agreement. The term of the tax abatement pursuant to the Agreement is January 1, 2018 through December 31, 2027. This form is due on November 1, 2018 and on November 1 of each year thereafter that the Agreement is in force.

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

By: _____
Name: _____
Title: _____