PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M., NOVEMBER 14, 2005 AND PRELIMINARY OPEN MEETING IMMEDIATELY THEREAFTER, IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

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

EXECUTIVE SESSION

I.	Legal Advice A. Respond to questions and receive legal advice on agenda items	Wetherbee	5 min
II.	Litigation – Bennett v. City of Plano, et al	Wetherbee	10 min.
III.	Personnel – Evaluation of Council Appointees	Council	15 min.

PRELIMINARY OPEN MEETING

I.	Consideration and action resulting from executive session discussion	Council	5 min.
II.	Final presentation of the Schematic Design Arts of Collin County/Design Development Services Necessary for ACC to Recommend an Approved Project	Robinson	20 min.
III.	Discussion and Direction on Rice Field Development	Turner	10 min.
IV.	Discussion and Direction re SH121 as A Tollway Facility	Johnson	10 mn.
V.	Council items for discussion/action on future agendas	Council	5 min.
VI.	Consent and Regular Agenda	Council	5 min.
VII.	Council Reports A. Council May Receive Information, discuss and provide direction on the following reports:	Council	5 min.

B. Council may receive reports from its other members who serve as liaisons to boards, commissions, and committees

In accordance with the provisions of the Open Meetings Act, during Preliminary Open Meetings, agenda items will be discussed and votes may be taken where appropriate.

Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Avenue L, with specially marked parking spaces nearby. Access and special parking are also available on the north side of building. The Council Chamber 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.

C I T Y C O U N C I L

1520 AVENUE K

DATE: **November 14, 2005**

CALL TO ORDER: **7:00 p.m.**

INVOCATION: **Abdul Hadi Khan**
Islamic Association of Collin County

PLEDGE OF ALLEGIANCE: **Color Guard w/American Legion Post**

ITEM NO.	EXPLANATION	ACTION TAKEN
	THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY. **The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.** **PROCLAMATIONS AND SPECIAL RECOGNITION** Proclamation: Veterans' Day Proclamation: American Cancer Society – Great American Smokeout Day Proclamation: Animal Shelter Appreciation Week Special Recognition: Frank Turner – President, Greater Dallas Planning Council Special Recognition: Jason Van Sickel, Winner of the Lone Star Emmy for Plano Television Network **GENERAL DISCUSSION** **In accordance with the Open Meeting Act, the City Council will hear comments of public interest, but any discussion shall be limited to placing the item on a future agenda for further consideration.** **Remarks are limited to five (5) minutes per speaker, with a maximum of 30 total minutes of testimony. Other time restraints may be directed by the Mayor.** **Specific factual information or an explanation of current policy may be made in response to an inquiry; but any discussion or decision must be limited to a proposal to place the item on a future agenda. Speakers will be notified when speaking time has expired.**	

ITEM NO.	EXPLANATION	ACTION TAKEN
	BOARD/COMMISSION REPORTS	
	Retirement Security Plan Committee – Karen Rhodes	
	CONSENT AGENDA	
	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. The Council will then take action on the remainder of the Consent Agenda items. Citizens are limited to two (2) items and discussion time of three (3) minutes each.	
(a)	**Approval of Minutes**	
	October 24, 2005	
	Approval of Expenditures	
	Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)	
(b)	**Bid No. 2005-270-B** for the Preston Ridge Trail Extension at Carpenter Park to Jim Bowman Construction Company, L.P. in the amount of $222,440.	
(c)	**CSP No. 2005-228-C** for Wireless Voice and Data Services to Cingular Wireless in the estimated annual amount of $450,000.	
	Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).	
(d)	To authorize the purchase of maintenance and support of HP printers and servers in the amount of $56,440 from Hewlett-Packard Company through a Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-BUSOP-178)	
(e)	To authorize the purchase of sports field lighting equipment for Phase II Lighting Improvements at Schell Park, fields 1 and 2, including installation, poles, wiring, switch gear, and controls in the amount of $141,100 from Techline Sports Lighting, L.P., through the Texas Association of School Board Purchasing Cooperative Program, Contract #204-04, and authorizing the City Manager to execute any and all documents necessary to effectuate this purchase.	
(f)	To authorize the purchase of fiber and copper connectivity for City of Plano offices in the Cox Building in the estimated amount of $25,873 from Henkels & McCoy, Inc., through a City of Plano contract, and authorizing the City Manager to execute all necessary documents. (Contract #C114-04).	

ITEM NO.	EXPLANATION	ACTION TAKEN
(g)	To authorize the purchase of two (2) Dodge Charger Police Vehicles in the amount of $52,360 from Columbus Country Dodge, through Texas Association of School Board Purchasing Buyboard Contract and authorizing the City Manager to execute all necessary documents (208-04).	
(h)	To authorize the purchase of eleven (11) Chevy Impala (9C3) Unmarked Police Sedans in the amount of $190,058 from Caldwell Country Chevrolet, through Tarrant County Joint Venture Cooperative Purchase Program and authorizing the City Manager to execute all necessary documents. (2005-001)	
	Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)	
(i)	To approve the terms and conditions of an engineering services contract by and between the City of Plano and Dannenbaum Engineering Company – Dallas, L.L.C. in the amount of $189,816 for design of Communications Parkway – Spring Creek Parkway to Tennyson Parkway and authorizing the City Manager to execute all necessary documents.	
	Miscellaneous Purchase Authorization:	
(j)	To approve a contract modification to contract C100-02 Telecommunications Equipment authorizing expenditure for two years maintenance and support in the amount of $104,728 for the VESTA, MAGIC and ORION systems utilized by PSC.	
(k)	To approve an agreement between the City of Plano and The Shops at Legacy, L.P. whereby the City will provide funding in part for the 4th Annual Holiday Festival of Tree Lights at The Shops of Legacy in the amount of $39,000.	
	Adoption of Resolutions	
(l)	To authorize the purchase of a service agreement from 3M Library Systems, suppliers of maintenance for 3M equipment in the amount of $41,449 for the Plano Public Library System; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.	
(m)	To approve the terms and conditions of a Communications Facilities License Agreement by and between the City of Plano, Texas and Dallas MTA L.P., d/b/a/ Verizon Wireless, a Texas Limited Partnership, to locate, place, attach, install, operate, and maintain a communications system on certain specific portions of the Tennyson Water Tower in the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	
(n)	To order Atmos Energy, Mid-Tex Division to show cause regarding the reasonableness of its existing natural gas distribution rates within the City; requiring Atmos Energy, Mid-Tex Division to submit a rate package based on a rate year ending June 30, 2005; directing that such filing shall be made by December 31, 2005; requiring reimbursement of reasonable legal and consultant expenses; requiring delivery of this resolution to the company and legal counsel; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(o)	To approve the terms and conditions of a Public Right-of-Way Use Agreement by and between the City of Plano, Texas and Tollway-121 Partners, Ltd, a Texas Limited Partnership, to locate, place, attach, install, operate, and maintain a communications system in certain specific portions of the public rights-of-way in the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	
(p)	To approve the terms and conditions of a lease agreement by and between the City of Plano and Plano Sports Authority, Inc., a duly authorized Texas nonprofit corporation and the City of Plano, Texas for the use of a portion of Enfield Park for the construction of a multi-use indoor sports facility; authorizing its execution by the City Manager; and providing an effective date.	
(q)	To approve the assignment of the cable franchise agreement from Comcast Cable of Plano, Inc. to C-Native Exchange III, L.P.; providing for the transfer of control over C-Native Exchange III, L.P. from Comcast Cable of Plano, Inc. to Time Warner Cable Inc.; providing for amendment to the cable franchise agreement; providing a severability clause; and providing an effective date.	
(r)	To approve a funding agreement among the cities of Allen, Frisco and Plano for additional funding in the amount of $705,698 each for design services for a proposed project pertaining to the Arts of Collin County Commission, Inc., authorizing the City Manager to execute the agreement; and providing an effective date.	
(s)	To support the corridors and continued evaluation of financing alternatives to fund a regional rail authority; authorizing its support by the Mayor, and providing an effective date.	
(t)	To approve the dedication of a 0.360 acre tract of land and a 1.126 acre tract of land, each owned by the City of Plano, Texas, for dedication as public right of way for Chaparral Road, said parcels situated in the Jeremiah Muncy Survey, Abstract No. 621, in the City of Plano, Collin County, Texas and providing an effective date. (This item will provide additional right of way for Chaparral Road from State Highway 5 (K Avenue) to Emerald Coast Drive.)	
(u)	To approve the terms and conditions of an interlocal cooperation agreement between the City of Plano, Texas, the City of McKinney, Texas, and the County of Collin, Texas for the disbursement of the 2005 Byrne Justice Assistance Grant Funds; authorizing its execution by the City Manager; and providing an effective date.	
	Adoption of Ordinances	
(v)	To deny the request of Atmos Energy Corp., Mid-Tex Division, for an annual gas reliability infrastructure program (GRIP) rate increase in this municipality, as a part of the company's statewide gas utility distribution system; approving cooperation with other cities within the Atmos Energy Corp., Mid-Tex Division distribution system as part of the Atmos Cities Steering Committee (ACSC); authorizing ACSC to hire legal and consulting services and to negotiate with the company and direct any necessary litigation; authorizing intervention as part of ACSC in any appeal of the City's action to the Railroad Commission; providing a requirement for a prompt reimbursement of costs incurred by the City; finding that the meeting at which this ordinance is passed is open to the public as required by law; providing for notice of this ordinance to Atmos Energy Corp., Mid-Tex Division; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(w)	To vacate Ordinance No. 2005-10-43 and adopting this ordinance to correct a clerical error; amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 7.0± acres located at the southwest corner of 18th Street and G Avenue in the City of Plano, Collin County, Texas, from Corridor Commercial with Heritage Resource Designation No. 20 to Planned Development-179-Downtown Business/Government with Heritage Resource Designation No. 20; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Zoning Case 2005-31	
(x)	To amend Chapter 12, Motor Vehicles and Traffic, Article IV, Speed, Section 12-74(b), Maximum Limits on Specific Streets, of the City of Plano Code of Ordinances to establish the prima facie speed limit for motor vehicles operating along the portion of Parkwood Boulevard between Spring Creek Parkway and State Highway 121 within the corporate limits of the City of Plano; authorizing and directing the Traffic Engineer to cause placement of traffic control devices indicating the speed limit; providing a fine for criminal penalties not to exceed $200 for each offense; and providing a repealer clause, a severability clause, a savings clause, a penalty clause and an effective date.	
	Approval of Agreement	
(y)	To approve an Administrative Services Agreement with ICMA Retirement Corporation ("ICMA-RC") in the amount of $36,000 for the initial year and $24,000 for the remaining term of the agreement. This agreement covers ICMA-RC's management services of the City's OBRA Plan for retirement accounts of Part-Time, Seasonal and Temporary Employees. The term of this Agreement shall be for a period of five (5) years with the option to renew by five (5) additional one-year terms by the City.	
	ITEMS FOR INDIVIDUAL CONSIDERATION:	
	The purpose of a Public Hearing is to receive input and information with the clarification that the focus of the City Council is on the singularly presented position, and not on repetition. To more effectively consider all presentations, applicants will limit their presentations to 15 minutes with a five (5) minute rebuttal time, if needed. All other speakers will be limited to a maximum of 30 total minutes of testimony, and three minutes per individual on any single issue. Other time restraints may be imposed at the discretion of the Mayor.	
(1)	**Council discussion and direction** on the regulation of temporary signs, including garage sale signs, and whether temporary sign regulations should remain in the Zoning Ordinance or the General Code of Ordinances; Council action to call a Public Hearing for the Planning and Zoning Commission to repeal the temporary sign regulations from the Zoning Ordinance and to correct the fine discrepancy in Section 3.1604(8)(b)(i).	
(2)	**An ordinance** to amend Chapter 6, Buildings and Building Regulations of the City of Plano Code of Ordinances, by adding Article XII, Temporary Signs, providing temporary signs regulations and definitions; providing a penalty clause; a severability clause; a repealing clause; a publication clause; and an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(3)	**Public Hearing and an ordinance as requested in Zoning Case 2005-36** – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 56.5± acres (Tract I - 17.3± acres and Tract II – 39.2± acres) located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway in the City of Plano, Collin County, Texas, from Regional Commercial and Neighborhood Office to Planned Development-177-Single-Family Residence Attached (Tract I - 17.3± acres) and Planned Development-178-Single-Family Residence-6 (Tract II – 39.20± acres); directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Cay Trust No. 2 and Preston/121 J.V. Tabled 10-24-05	
(4)	**A resolution** to cast its ballot for the election of members to the Collin County Central Appraisal District Board of Directors under the provision of the Property Tax Code; authorizing the Mayor to execute the ballot for and on behalf of the City of Plano; and providing an effective date.	
	Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.	

city of plano

Pat Evans
Mayor

Ken Lambert
Mayor Pro Tem

Scott Johnson
Deputy Mayor Pro Tem

Shep Stahel
Place 1

Loretta Ellerbe
Place 3

Sally Magnuson
Place 4

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Thomas H. Muehlenbeck
City Manager

November 9, 2005

Mayor Pat Evans
City Council Members
City of Plano
Plano, TX 75074

Honorable Mayor and City Council:

We will begin our meeting Monday evening in Executive Session with legal advice, litigation and personnel.

The Preliminary Open Meeting agenda consists of the final presentation of the schematic design by the Arts of Collin County and design development services necessary for ACC to recommend an approved project. Mr. Turner will present the Rice Field Development for discussion and direction and Councilman Johnson will present State Highway 121 as a tollway facility.

I look forward to seeing you Monday evening.

Sincerely yours,

Thomas H. Muehlenbeck
City Manager

THM/bn

P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
www.plano.gov

Preliminary Open Meeting Item II.

Final Presentation of Schematic Design – ACC/Design Development Services - Robinson

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P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099
http://www.ci.plano.tx.us

MEMORANDUM

DATE: November 9, 2005

TO: Thomas H. Muehlenbeck, City Manager

FROM: Frank F. Turner, Executive Director

SUBJECT: Rice Field Development Agreement

Below is a summary of the major points of the development agreement between the City of Plano and Lexington Luxury Builders concerning the development of Rice Field. We will review the terms of the agreement with City Council during the November 14th Council Worksession. Subject to their direction, the item will be scheduled for final Council consideration on November 28th.

- Plano agrees to sell to Lexington 6.325 acres at a price of $3.41 per square foot, estimated to be a total of $939,519.79.
- Prior to closing, Lexington is to provide the city independently verifiable documentation of its financial ability and obligation to complete the project.
- Lexington agrees to build not less than 90 owner-occupied dwelling units constructed on individually platted lots. The total completed assessed value (prior to exemptions) is to be not less than $20,000,000.
- Lexington is to secure all necessary approvals related to the subdivision of the land no later than May 1, 2006. All subdivision improvements are to be completed no later than January 1, 2007.
- Lexington is to obtain all necessary approvals to commence construction of twelve (12) dwelling units no later than October 1, 2006 and to complete the units ready for occupancy no later than March 1, 2007.
- The city's right to repurchase the land at the original purchase price is terminated once Lexington has (1) received all approvals required to commence construction of the subdivision improvements and (2) made an initial drawdown of funds from the construction lender, of which both events must occur between May 1, 2006 and January 1, 2007. After the city's right to repurchase expires, it may recover liquidated damages in the event the 90 units are not completed prior to June 1, 2010. The liquidated damages amount is the percentage of the project remaining uncompleted multiplied by the actual city's construction allowance paid to Lexington.
- The project is subject to all normal regulatory standards, permits and approvals required by the city.
- The project will be constructed as specified in the plans adopted as a part of the agreement.
- Development fees shall be waived in accordance with the terms of the neighborhood empowerment zone for all improvements and construction permits issue on or before June 1, 2010.

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recycled paper

- The common central open space designated on the plan shall be open to the public and such right shall be secured by an easement to the city noted on the final plat.
- The city shall provide a maximum allowance of $1,000,000 for the construction of perimeter streets, walks, landscaping, utilities and other appurtenances to be dedicated to the city. The allowance may also be used for expenses related to the construction of drainage improvements as required to carry off-site storm water across the property. The city will retain any unexpended funds. The city shall also pay the cost of off-site drainage improvements carrying water from the property to the point of discharge.
- Lexington is responsible for paying all on-site improvements. All streets, alleys, rights-of- way and improvements within the rights-of-way shall be dedicated to the city.

MH

Draft Dated
11/08/05

Resolution _____
Date: _____

STATE OF TEXAS §
§
COUNTY OF COLLIN §

DEVELOPMENT AGREEMENT WITH LEXINGTON LUXURY BUILDERS, LLC FOR PLANO-RICE FIELD REDEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Plano, a Texas municipal corporation of Collin County, Texas (the "City"), acting by and through its duly authorized officers, and Lexington Luxury Builders LLC, a Texas limited liability company ("Lexington");

RECITALS:

WHEREAS, the City is authorized pursuant to the law of Texas and its Home Rule Charter to enter into agreements with persons or entities intending to undertake any development on real property for the purposes of providing supporting public facilities and services; and

WHEREAS, Lexington desires to develop approximately 6.325 acres located at the southwest corner of 18th Street and G Avenue owned by the City of Plano (the "Property") and as shown in **Exhibit "A"** attached hereto; and

WHEREAS, Lexington has proposed a development on the Property based on a preliminary project design and concept plan prepared by Lexington attached hereto as **Exhibit "B"** (which design and concept plan, together with all additions, changes and amendments thereto approved by Lexington and the City, is referred to in this Agreement as the "Plan") ; and

WHEREAS, Lexington's proposed development is located in Tax Increment Financing District No. 2 and is in keeping with the intent of that reinvestment zone to promote sound growth; and

WHEREAS, Lexington's proposed development is consistent with the goals and objectives as set forth in *Downtown Plano, A Vision and Strategy for Creating a Transit Village* which was adopted by the City Council by Resolution No. 99-5-14, dated May 10, 1999, and

WHEREAS, the development of the Property in accordance with the Plan by Lexington will contribute important direct and indirect economic and social benefits to the City including,

but not limited to, the creation of a pedestrian-oriented, owner occupied residential development in close proximity to the DART railway station, and

WHEREAS, it is essential to the City's public health, safety and general welfare to assure that the Development is supported by adequate levels of public facilities and services; and

WHEREAS, the City Council has adopted Resolution No. _____ on _____, 2005, approving this Agreement with Lexington and authorizing the City Manager to execute same by affixing their hand and the City Seal;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

SECTION 1. **LEXINGTON'S OBLIGATIONS**

A. Lexington agrees to purchase the Property "As Is" from the City for $3.41 per square foot, for a total amount of $939,519.79. City shall provide a Warranty Deed in a form acceptable to Lexington. Additional terms of the sale shall be included in a Real Estate Contract (the "Contract") to be executed concurrently with execution of this Agreement. The date that Lexington becomes owner of record of the Property is the "Acquisition Date" for purposes of this Agreement.

B. Lexington agrees to cause, supervise, manage and complete the construction and design of not less than 90 owner occupied residences on individually platted lots (the "Development") on the Property, which will substantially conform to the Plan, and which when completed (and when the Public Improvements have also been completed) shall have an assessed value of not less than Twenty Million ($20,000,000) Dollars. The Project Completion Budget (the "Budget") attached hereto as **Exhibit "C"** and incorporated herein by this reference, sets forth the proposed nature and projected total costs of the Development and the related Public Improvements (as that term is defined in Subsection D of this Section). The Development will be the property of Lexington, except insofar as Lexington will convey easements over the Property to the City as may be necessary in connection with any Public Improvements constructed on or over the Property.

C. Lexington agrees to secure financing for the entire Development, submit any required applications for a preliminary plat and obtain issuance of all necessary permits for the division of land no later than May 1, 2006, and complete construction of all Public Improvements by January 1, 2007. Lexington further agrees to obtain all necessary permits and begin construction of the first twelve units no later than October 1, 2006 and have the first twelve units ready for occupancy by March 1, 2007.. Construction shall be deemed to have begun when Lexington actually commences site work (i.e., demolition, grading or clearing) on the Property. Lexington shall provide to City independently verifiable documentary evidence of its financial ability and obligation to complete the entire project prior to transfer of any real property or commencement of any work.

D. Lexington shall complete the Development on or before June 1, 2010. The City shall not waive any fees for permits issued after June 1, 2010.

E. Lexington shall be responsible for the design and construction of all Public Improvements in substantial conformity to the Plan, subject to allnecessary City regulatory approvals, and for supervision and management of construction of the Public Improvements. The Public Improvements (as that term is used in this Agreement) shall include all of the proposed storm sewer, drainage, utility, paving, lighting and other improvements, both on-site and off-site, that are described or referred to in **Exhibit "E"** attached to this Agreement, all of which Public Improvements are also included in and depicted on or described in the Plan.

F. All common areas, open spaces and landscaping improvements on the Property or abutting the Property from "back-of-curb" of perimeter streets or the paved portion of interior streets, shall be the responsibility of Lexington or a subsequent Homeowners' Association assuming Lexington's maintenance responsibilities. Landscaping and streetscaping in the public rights-of-way shall be in accordance with the specifications and standards set forth in the Plan, and as provided in the Rice Field Public Landscape Maintenance Schedule attached to this Agreement as **Exhibit "D".**

G. All streets and alleys on the Property contemplated by the Plan as public rights-of-way will be dedicated to the City upon completion. All storm sewer and drainage facilities and utility lines within, on or under dedicated public rights-of-way and not otherwise the subject of easements granted to third-party utility providers, will also be rights-of-way in favor of the City. Although such areas will not be dedicated to the public, public access to the common open spaces serving residential development shall be allowed and shall not be restricted by gates, barriers, or signage.

SECTION 2. **CITY'S OBLIGATIONS**

A. In consideration of and as incentive to Lexington for the completion of the Development and the Public Improvements, the City agrees, subject to the conditions contained herein, to advance funds for the Public Improvements in an amount up to but not to exceed in the aggregate the maximum amount indicated in the Budget as the Construction Allowance (herein so called). Lexington will pay actual costs of completion of Public Improvements to the extent such aggregated total costs exceed the Construction Allowance, except as to any increase in costs resulting from supplements or amendments to or changes in the Plan or any part of the Plan requested or required by the City, and any increase in costs resulting from site conditions unknown and unanticipated at the time the Budget was prepared. **The Construction Allowance will be available to Lexington on an "aggregate cost" basis, as opposed to a "line-item cost" basis, such that cost savings realized with respect to discreet line-item allocations in the Budget will be freely available for use in connection with any cost overruns experienced as to other line-item allocations, provided that in no event will the aggregate funds advanced by the City exceed the Construction Allowance.** To the extent actual costs of Public Improvements are less than the Construction Allowance, any remainder shall be retained by the City. The source of funding (including grants) for all

Public Improvements paid for by the City is at the discretion of the City. The City and Lexington further agree to coordinate and jointly approve the design of the Development and the Public Improvements.

B. Advances of funds to Lexington out of the Construction Allowance will be made by the City on a percentage completion basis upon written request by Lexington. In connection with each such written request for payment, Lexington shall provide evidence of expenses paid and costs incurred and confirmation from the project engineer as to the percentage of work completed. Advances of Construction Allowance funds will be made in accordance with the line-item allocations indicated in the Budget for the Construction Allowance. In the event a "cost savings" is achieved for any line-item, determined as of the completion of work for such line-item, the amount of any such line-item cost savings will become available as "contingency funds" to supplement any other line-item of Construction Allowance funds as to which the actual cost of completion exceeds the amount of the line-item allocation.

C. On the Acquisition Date, the City will reimburse Lexington for the actual design costs for utility extensions and the street and sidewalk paving plan that are part of the Plan, and for costs incurred in obtaining a boundary survey and an environmental site assessment (ESA) of the Property prior to the Acquisition Date, but in no event shall such total reimbursement exceed $25,000.00 in the aggregate. All project designs, drawings, site plans and other documents produced by Lexington in connection with the Development and the Public Improvements, including those attached to this Agreement, shall remain the property of Lexington. However, in exchange for Lexington's acceptance of the above-described reimbursement from the City, the City will retain all necessary rights to use such portion of the Plans created for public facilities and infrastructure, and all assignable rights in the boundary survey and environmental site assessment of the Property obtained by Lexington.

SECTION 3. **DESIGN AND CONSTRUCTION PROCUREMENT**

A. Design management for the Public Improvements and the Development will be provided by Kadleck and Associates or such other party as shall be mutually agreed to by the parties to this Agreement.

B. Procurement of construction for the Public Improvements must be in accordance with the following provisions:

1. All plans and specifications for the Public Improvements shall be submitted to the City Engineer for review and approval. All plans and specifications shall comply with the standards and requirements for similar developments located in the city, unless otherwise approved by the City for this project.

2. Lexington shall use its best efforts to insure that the Public Improvements are completed in a timely manner in accordance with the construction contract documents, plans and specifications.

3. Any construction contract for the construction of the Public Improvements shall specify that the contractor shall look solely to Lexington concerning any claim under the contract. For each such construction contract Lexington shall acquire and maintain or require its general contractor to acquire and maintain, during any period for which the Development of the Property is under construction, comprehensive general liability insurance in the amount of the construction contract or $1,000,000, whichever is greater. Such insurance shall cover any and all claims which might arise out of the construction contract, whether by the contractor, a subcontractor, materialman or otherwise. All such insurance shall: (a) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (b) name Lexington and City as an additional insured. Certified copies of all of such policies shall be delivered to the City upon the execution of a construction contract; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, Lexington and City shall receive written notice of such cancellation, non-renewal or modification.

4. The construction contract shall require, among other things, that the contractor provide performance and payment bonds in a form acceptable to the City.

5. In accordance with the City's Subdivision Ordinance, Article 5.10c as amended, all electric utility lines and wires, terminals and other facilities and equipment shall be constructed, placed or located underground.

SECTION 4. **FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the substantial completion of the construction of any the Development and Public Improvements contemplated hereunder is delayed by reason by war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, or acts of the other party, its affiliates/related entities and/or their contractors, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

SECTION 5. **TERM**

The term of this Agreement shall begin on the date of execution, and end upon the complete performance of all obligations and conditions precedent by parties to this Agreement; provided, however, that the obligations of the City to pay Lexington for unpaid Public Improvement costs pursuant to Section 2.A of this Agreement which accrued during the term of this Agreement, but which is not paid prior to the expiration of the term of this Agreement, shall survive.

SECTION 6. **INDEMNITY**

Lexington agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned by Lexington's breach of any of the terms or provisions of this Agreement, or by any grossly negligent act or omission of Lexington, its officers, agents, associates, employees or subconsultants, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both Lexington and the City, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 7. **AUTHORITY OF LEXINGTON**

Lexington represents and warrants to the City that Lexington is duly formed, validly existing and in good standing under the laws of the State of Texas. Lexington has full power, authority and legal right to execute and deliver this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Lexington and the City, enforceable in accordance with its terms.

SECTION 8. **EVENTS OF DEFAULT**

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, or if the representation provided for in Section 7 is not true or correct. A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party, or, with the giving of notice or passage of time, or both, would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.

SECTION 9. **REMEDIES AVAILABLE TO THE CITY**

If a default shall occur and continue, after thirty (30) days' written notice to cure default, City may, at its option, terminate this Agreement or pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon Lexington; provided, however, that if Lexington shall within

such thirty (30) day period commence action to cure such default but is unable, by reason of the nature of the performance required, to cure the default within such period, and if Lexington continues such action thereafter diligently and without unnecessary delays, Lexington shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure, provided further, however, that in any event Lexington shall be in default hereunder if such failure is not cured on or before ninety (90) days after receipt by Lexington of the above-described written notice of default and demand for performance. In the event of any termination of this Agreement due to any such default, Lexington will remain entitled to recover from the City any Construction Allowance funds for Public Improvements earned through the date of termination.

Notwithstanding the above, in the event Lexington does not commence construction of the Public Improvements identified in the Budget by May 1, 2006, the City shall have the right to repurchase (the "Right of Repurchase") the Property at Lexington's original purchase price, which remedy the City shall be entitled to exercise by written notice to Lexington that the City is exercising the Right of Repurchase. The Right of Repurchase, which will be referenced in and retained by the City in the Deed to Lexington, will automatically terminate and expire, if not sooner exercised by the City, on the date that both of the following conditions (the "Conditions to Release") have been met: (i) Lexington has secured all approvals required to proceed with the subdivision of the Property and the Public Improvements related thereto; and (ii) Lexington has met the conditions for the first drawdown of funds from its construction lender to commence the construction of Public Improvments on the Property (with the exception of any requirement of such lender that the Right of Repurchase shall already have been terminated).. Simultaneously with the conveyance of the Property to Lexington and the delivery of the Deed by the City, the City will also execute and deliver into escrow with the title company handling the closing of such conveyance and acting as escrow agent under the Contract (the "Escrow Agent") the following items relating to the Right of Repurchase: (a) a fully-executed release instrument (the "Release") in recordable form by which the Right of Repurchase is waived, released and terminated by the City, and (b) a letter of escrow instructions by which the City instructs the Escrow Agent to hold the Release in escrow pending completion of the Conditions to Release, and authorizes the Escrow Agent to file the Release in the Real Property Records of Collin County, Texas upon the Escrow Agent's receipt of an affidavit from Lexington asserting that the Conditions to Release have been met, together with copies of all such authorizations, consents or permits issued by the City or any department, agency or body of the City for commencement of construction of the Public Improvements, all of which items collectively Lexington shall certify to the Escrow Agent as satisfying the Conditions to Release. The Escrow Agent shall be entitled to accept and act upon any such affidavit and supporting documentation received from Lexington, which the Escrow Agent, in good faith, believes to be genuine and what it purports to be, and shall not be required to further investigate the validity, completeness or accuracy of the items submitted or Lexington's authority to submit the same. Lexington and the City agree to enter into any standard escrow agreement reasonably required by the Escrow Agent in connection with establishing the escrow.

From and after the date that the Conditions to Release have been satisfied, and the Right of Repurchase has terminated, the City shall still be entitled to the remedy of

payment from Lexington, not as a penalty but as liquidated damages, for the pro-rata portion of the Development not completed by June 1, 2010. The formula to be used to determine the liquidated damages shall be as follows: A x (B/C) = D, where A is the amount of the Construction Allowance actually advanced to Lexington by the City, B is the number of lots, if any, upon which Lexington has not commenced and is not then continuing with and in the process of construction, C is the total number of lots designated in the final plat for the Development, and D is the amount of liquidated damages to which the City is entitled.

SECTION 10. **VENUE AND GOVERNING LAW**

This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

SECTION 11. **NOTICES**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mails by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Plano, Texas
Attention: City Manager
1520 Avenue K
Plano, Texas 75086

If intended for Lexington, to:

Lexington Luxury Builders, LLC
Attention: Tracey Schaefer
6371 Mercedes Avenue
Dallas, Texas 75214

SECTION 12. **GIFT TO PUBLIC SERVANT**

A. City may terminate this Agreement immediately if Lexington has offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

B. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

C . Notwithstanding any other legal remedies, City may require Lexington to remove any employee of Lexington from the development of the Public Improvements who has violated the restrictions of this section or any similar state or federal law, and obtain

reimbursement for any expenditures made to Lexington as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION 13. **APPLICABLE LAWS**

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

SECTION 14. **LEGAL CONSTRUCTION**

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

SECTION 15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

SECTION 16. **CAPTIONS**

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

SECTION 17. **SUCCESSORS AND ASSIGNS**

A. The terms and conditions of this Agreement and the Contract are binding upon the successors and assigns of all parties hereto. Provided, however, this Agreement and the Contract shall not be assigned without the prior consent of the Plano City Council, which approval shall not be unreasonably withheld.

B. An assignment or delegation of this Agreement and the Contract to an Affiliate of Lexington shall not require City Council approval and shall not result in a breach of the Agreement or the Contract if the Affiliate of Lexington expressly assumes all of the obligations of Lexington under this Agreement and the Contract for the balance of the term of this Agreement and provides evidence establishing the relationship between Lexington and an Affiliate. Lexington shall notify the City in writing, however, within 30 days of such assignment. "Affiliates", as used herein, includes any parent, sister, partner, joint venturer, equity investor or subsidiary entity of Lexington; any entity in which either of Lexington, Scot

Schaefer or Tracey Schaefer is initially a major shareholder, owns an equity interest or is a joint venturer or partner (whether general or limited).

SECTION 18. **ENTIRE AGREEMENT**

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

SECTION 19. **INCORPORATION OF RECITALS**

The recitals set forth herein are intended, and are hereby deemed to be a part of this Agreement.

EXECUTED on the _____ day of _____, 2005, by City, signing by and through its City Manager, duly authorized to execute same by Resolution Nos._____ and _____ approved by the City Council on _____, and by ____, acting through its duly authorized officials.

CITY OF PLANO:

_____
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, City Attorney

LEXINGTON LUXURY BUILDERS LLC,
a Texas limited liability company

BY: _____

N:Economic Development\Lexington.Dev Agmnt.doc

LIST OF EXHIBITS

EXHIBIT A	Property legal Description
EXHIBIT B	Design and Concept Plan
EXHIBIT C	Project Completion Budget
EXHIBIT D	Public Landscape Maintenance Schedule

N:Economic Development\Lexington.Dev Agmnt.doc

CM

EXHIBIT "A"

LEGAL DESCRIPTION

n

EXHIBIT "A"

LEGAL DESCRIPTION

Being a 275,519 square foot or 6.3250 acre tract of land situated in the Joseph Keppler Survey, Abstract No. 213, City of Plano, Collin County, Texas, said tract being part of two tracts of land conveyed to the Plano Independent School District by deeds recorded in Volume 250, Page 593 and in Volume 399, Page 111, Deed Records of Collin County, Texas and a called 1.895 acre tract of land conveyed to the City of Plano by deed recorded in Volume 4509, Page 918, Deed Records of Collin County, Texas, and being more particularly described as follows (the bearing basis for this description is a bearing of N 00°13'20" W for the east line of North Central Addition as recorded in Volume 6, Page 74, Map Records of Collin County, Texas):

BEGINNING at a found "x" cut on concrete pavement for a corner at the intersection of the west line of Avenue G (a variable width right of way) with the south line of 18th Street (a 60 foot right of way);

THENCE, the following courses and distances with the west line of Avenue G:

- S 00°08'20" W, a distance of 20.00 feet to a found ½ inch iron rod at the beginning of a tangent curve to the right with a central angle of 05°29'46", a radius of 1679.08 feet, a chord bearing of S 02°53'13" W and a chord distance of 160.72 feet;

- Southwesterly, along said curve, an arc distance of 160.78 feet to a found ½ inch iron rod with a plastic cap at the beginning of a reverse curve to the left with a central angle of 05°29'46", a radius of 1726.08 feet, a chord bearing of S 02°53'13" W and a chord distance of 165.51 feet;

- Southwesterly, along said curve, an arc distance of 165.57 feet to a set 5/8 inch iron rod at the end of said curve;

- S 00°08'20" W, a distance of 336.90 feet to a found 5/8 inch iron rod for a corner, said point being the northeast corner of Lot 1, Block 1 of Bridgeman's Office Addition as recorded in Volume F, Page 516, Map Records of Collin County, Texas;

THENCE, S 89°03'45" W, departing the west line of Avenue G and with the north line of the said Bridgeman's Office Addition, a distance of 144.24 feet to a set 5/8 inch iron rod for a corner, said point being the northwest corner of the said Bridgeman's Office Addition and in the east line of the said City of Plano tract;

THENCE, S 01°11'35" E, with the west line of the said Bridgeman's Office Addition, a distance of 196.06 feet to a set 5/8 inch iron rod for a corner in the north line of 16th Street (a 60 foot right of way), said point being the southwest corner of the said Bridgeman's Office Addition;

THENCE, S 89°04'39" W, with the north line of 16th Street, a distance of 197.10 feet to a set 5/9 inch iron rod for a corner, said point being the southwest corner of the said City of Plano tract;

THENCE, N 01°20'23" W, departing the north line of 16th Street, a distance of 198.40 feet to a set 5/8 inch iron rod for a corner, said point being in the south line of Lot 1, of North Central Addition, as recorded in Volume 6, Page 74, Map Records of Collin County, Texas;

THENCE, N 89°18'37" E, with the south line of the said Lot 1, North Central Addition, a distance of 11.97 feet to a set 5/8 inch iron rod for a corner, said point being the southeast corner of said Lot 1, North Central Addition;

THENCE, N 00°28'38" W, with the east line of said Lot 1, North Central Addition, a distance of 236.38 feet to a found ½ inch rod with a plastic cap for an angle point, said point being the common west corner of the said City of Plano tract and the Plano Independent School District tract;

THENCE, N 00°13'20" W, continuing with the east line of said Lot 1, North Central Addition, a distance of 467.84 feet to a found ½ inch iron rod with a plastic cap for a corner in the south line of 18th Street, said point being the northeast corner of said Lot 1, North Central Addition;

THENCE, the following courses and distances with the south line of 18th Street:

- S 89°51'40" E, a distance of 261.19 feet to a set 5/8 inch iron rod at the beginning of a curve to the right with a central angle of 19°21'00", a radius of 224.83 feet, a chord bearing of S 80°11'10" E and a chord distance of 75.57 feet;

- Southeasterly, along said curve, an arc distance of 75.93 feet to a found ½ inch iron rod with a plastic cap at the point of tangency;

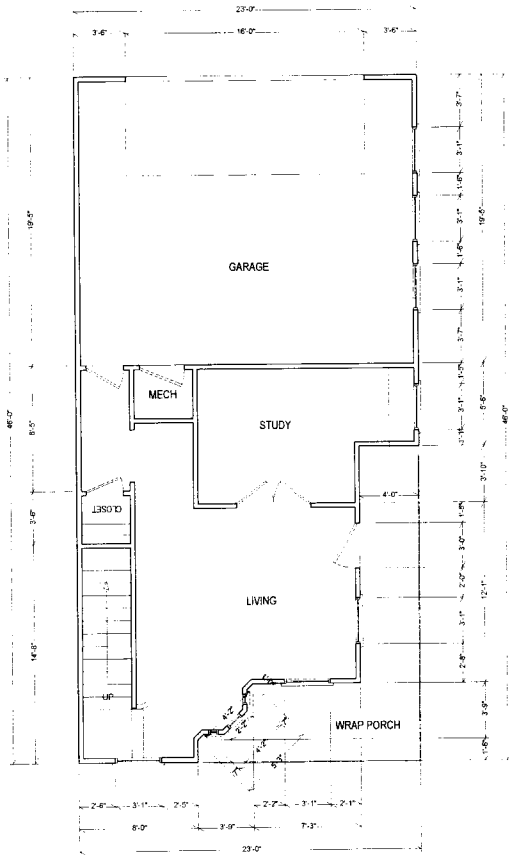
- S 72°09'51" E, a distance of 16.08 feet to the Point of Beginning and Containing 275,519 square feet or 6.3250 acres of land.

yp

EXHIBIT "B"

PRELIMINARY PROJECT DESIGN AND

CONCEPT PLAN



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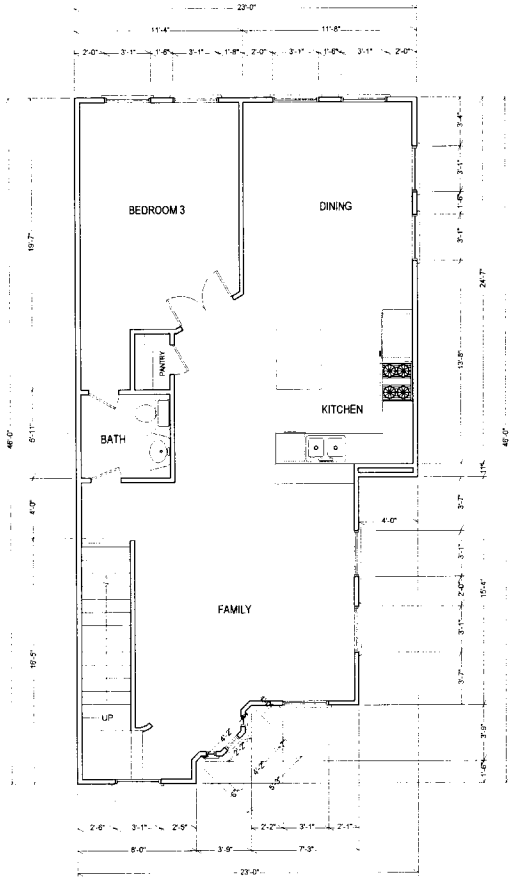

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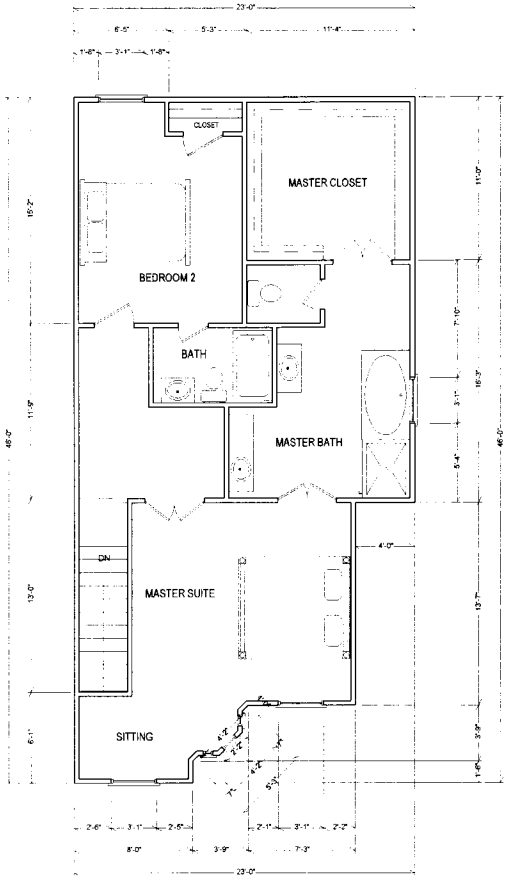

03

Rice Field Redevelopment Block Project

A Public Private Partnership Between Lexington Luxury Builders and the City of Plano

Preliminary Typical Floor Plan

A UNIT TYPE : 2172 SF

Prepared For:

Lexington Luxury Builders, LLC
P O Box 140946 Dallas, Texas 75214
(214) 369-4900

Date: 10/4/05

Sheet Title: LPP

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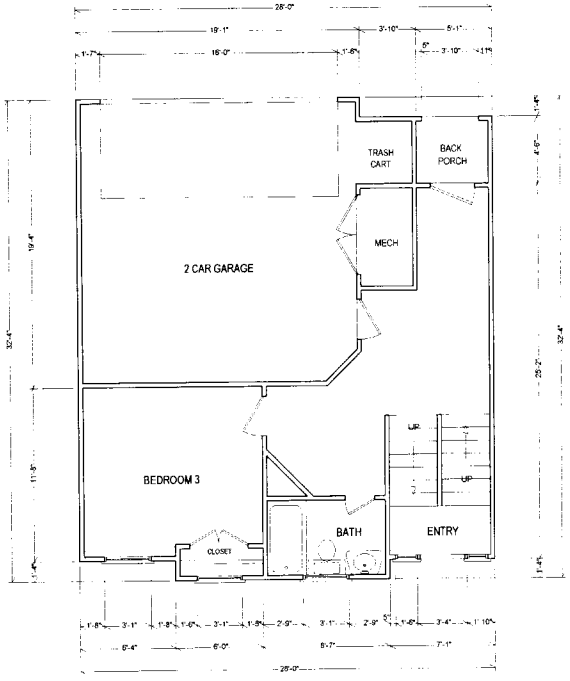

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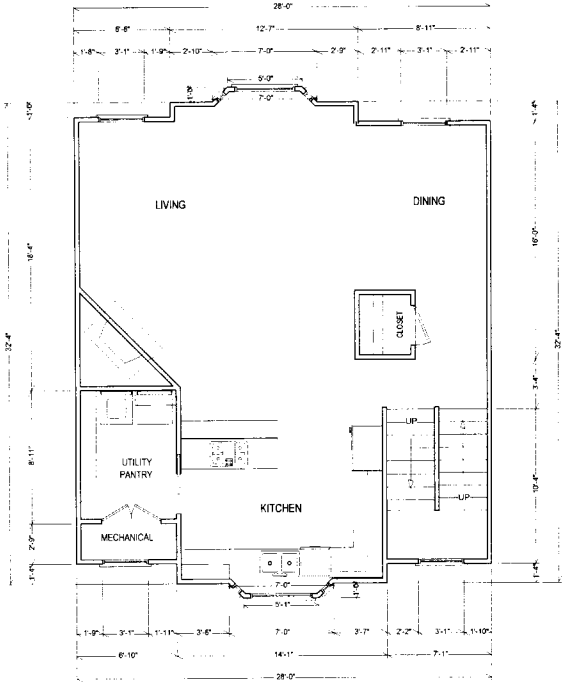

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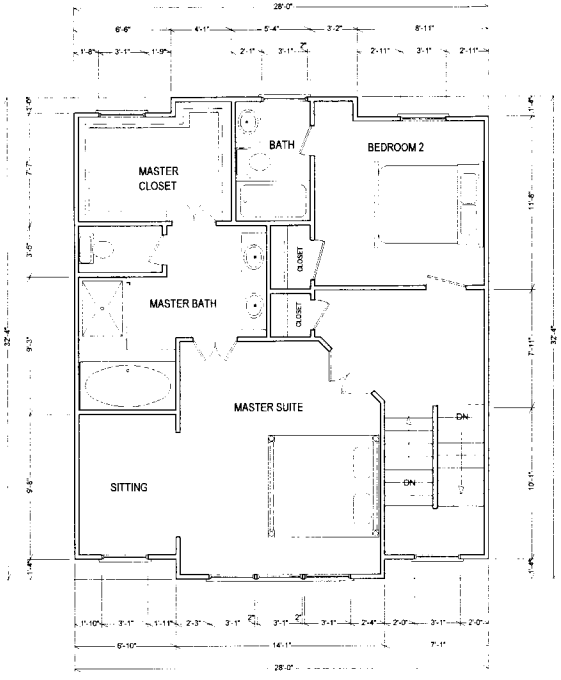

03

Rice Field Redevelopment Block Project

A Public Private Partnership Between Lexington Luxury Builders and the City of Plano

Preliminary Typical Floor Plan

B UNIT TYPE : 2056 SF

Prepared For:

Lexington Luxury Builders, LLC
P O Box 140946 Dallas, Texas 75214
(214) 369-4900

Date:
10/4/05

Sheet Title:
LPP

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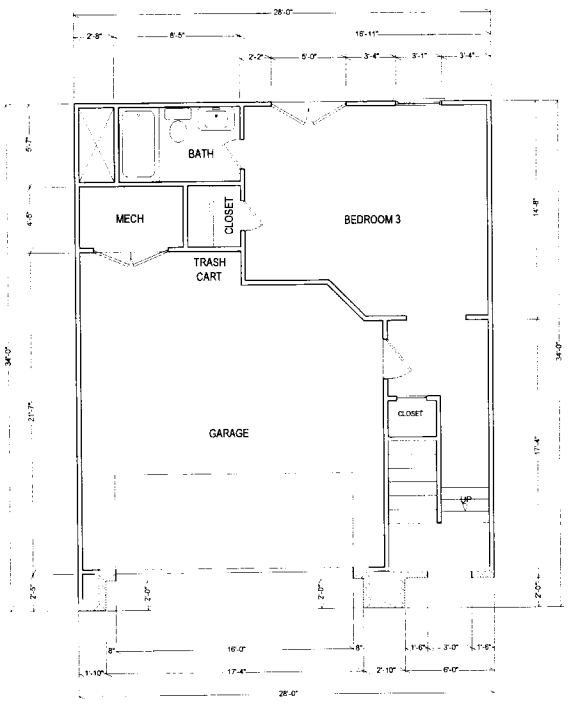

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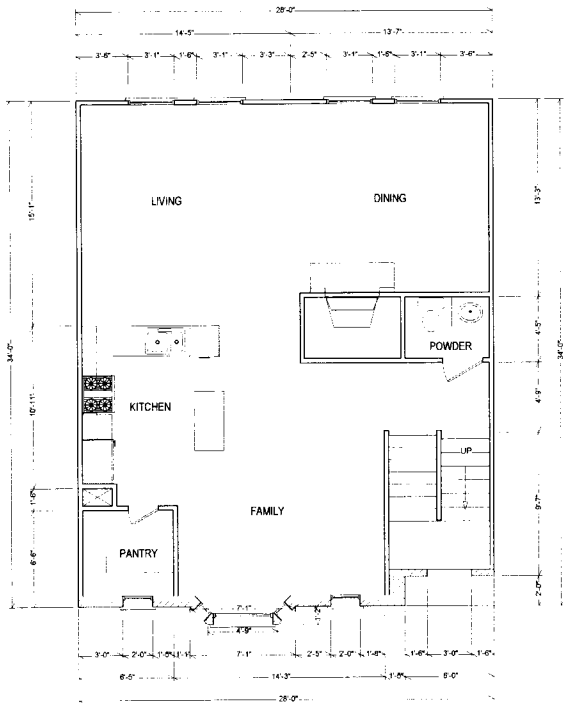

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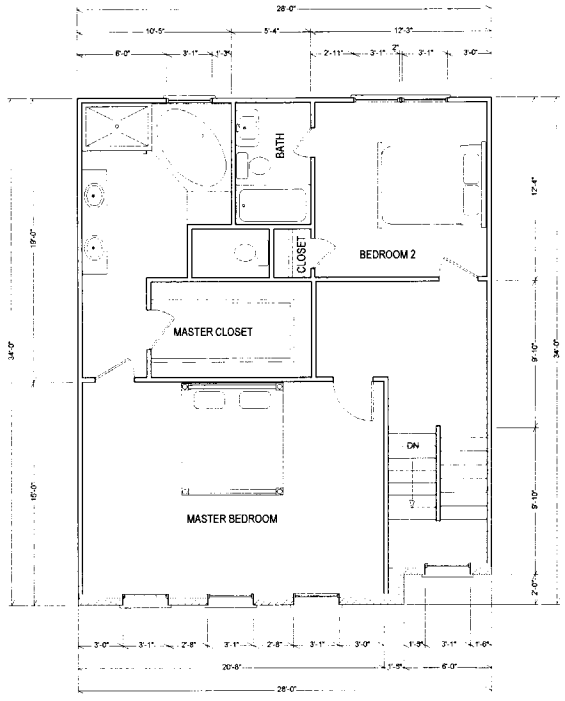

03

Rice Field Redevelopment Block Project

A Public Private Partnership Between Lexington Luxury Builders and the City of Plano

Preliminary Typical Floor Plan

C Unit Type : 2172 SF

Prepared For:

Lexington Luxury Builders, LLC
P O Box 140946 Dallas, Texas 75214
(214) 369-4900

Date: 10/4/05

Sheet Title: LPP

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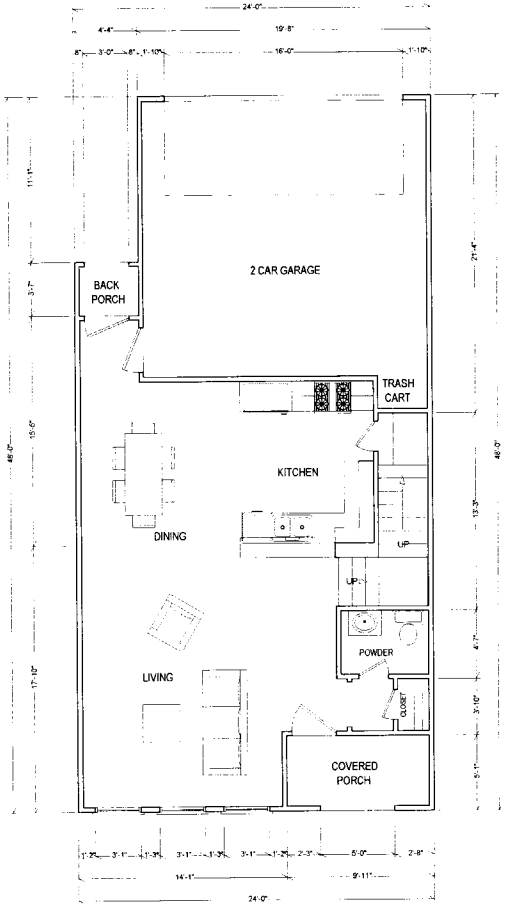

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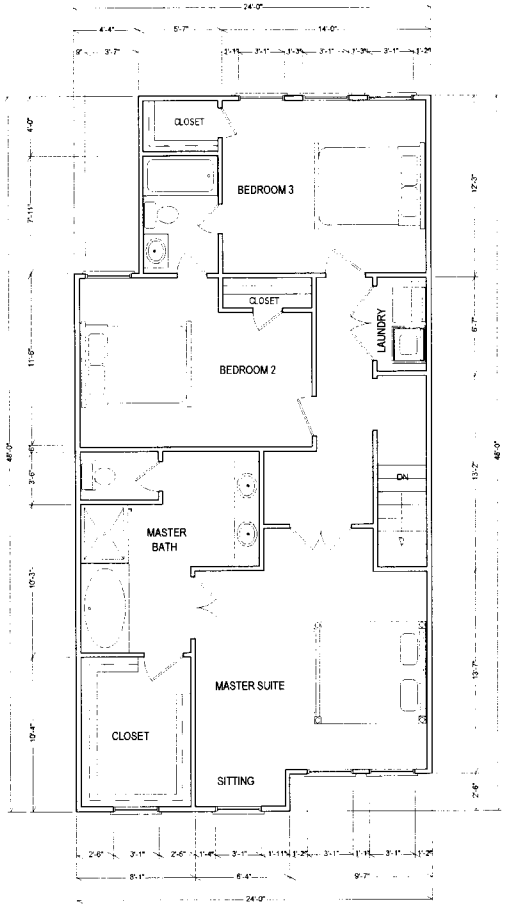

02

Rice Field Redevelopment Block Project

A Public Private Partnership Between Lexington Luxury Builders and the City of Plano

Preliminary Typical Floor Plan

D UNIT TYPE : 1681 SF

Prepared For:

Lexington Luxury Builders, LLC
P O Box 140946 Dallas, Texas 75214
(214) 369-4900

Date:
10/4/05

Sheet Title:
LPP

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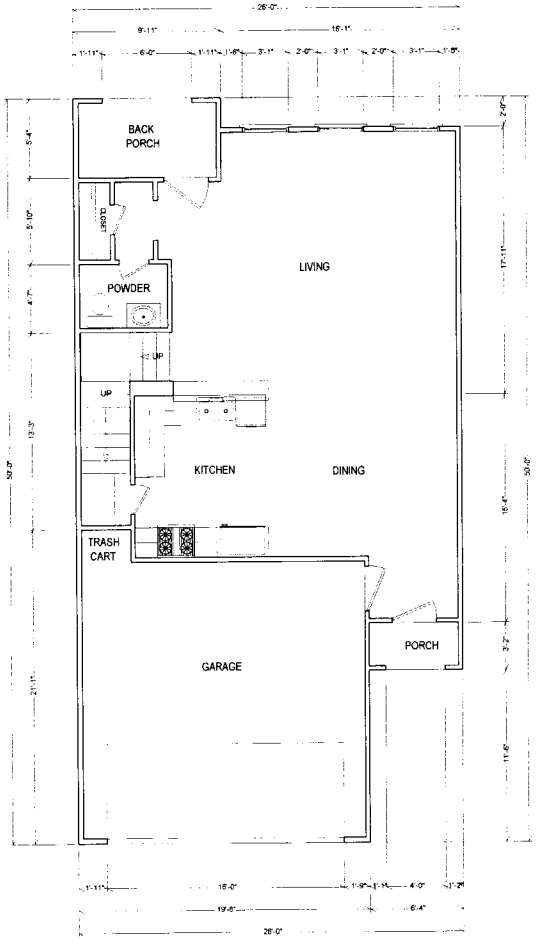

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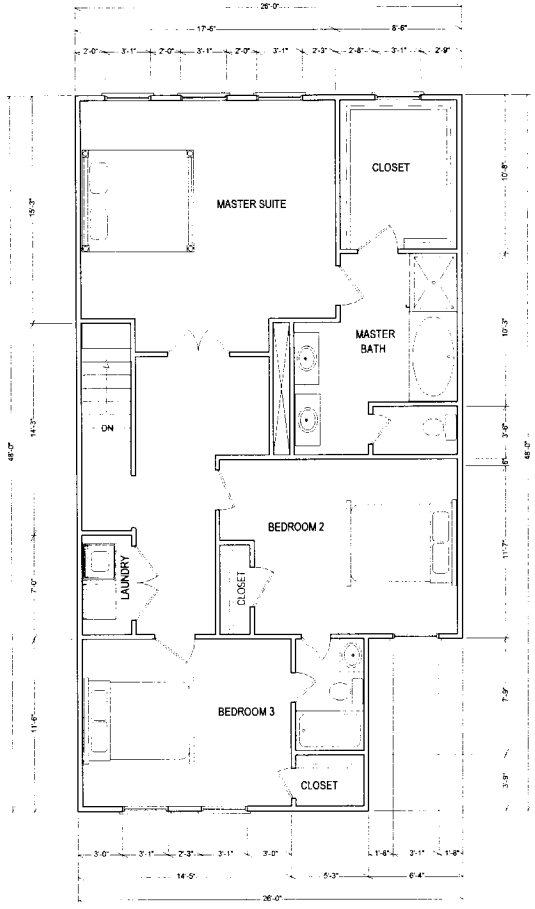

02

Rice Field Redevelopment Block Project

A Public Private Partnership Between Lexington Luxury Builders and the City of Plano

Preliminary Typical Floor Plan

E UNIT TYPE : 1863 SF

Prepared For:

Lexington Luxury Builders, LLC
P O Box 140946 Dallas, Texas 75214
(214) 369-4900

Date: 10/4/05

Sheet Title: LPP

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LEXINGTON

LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION

PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION

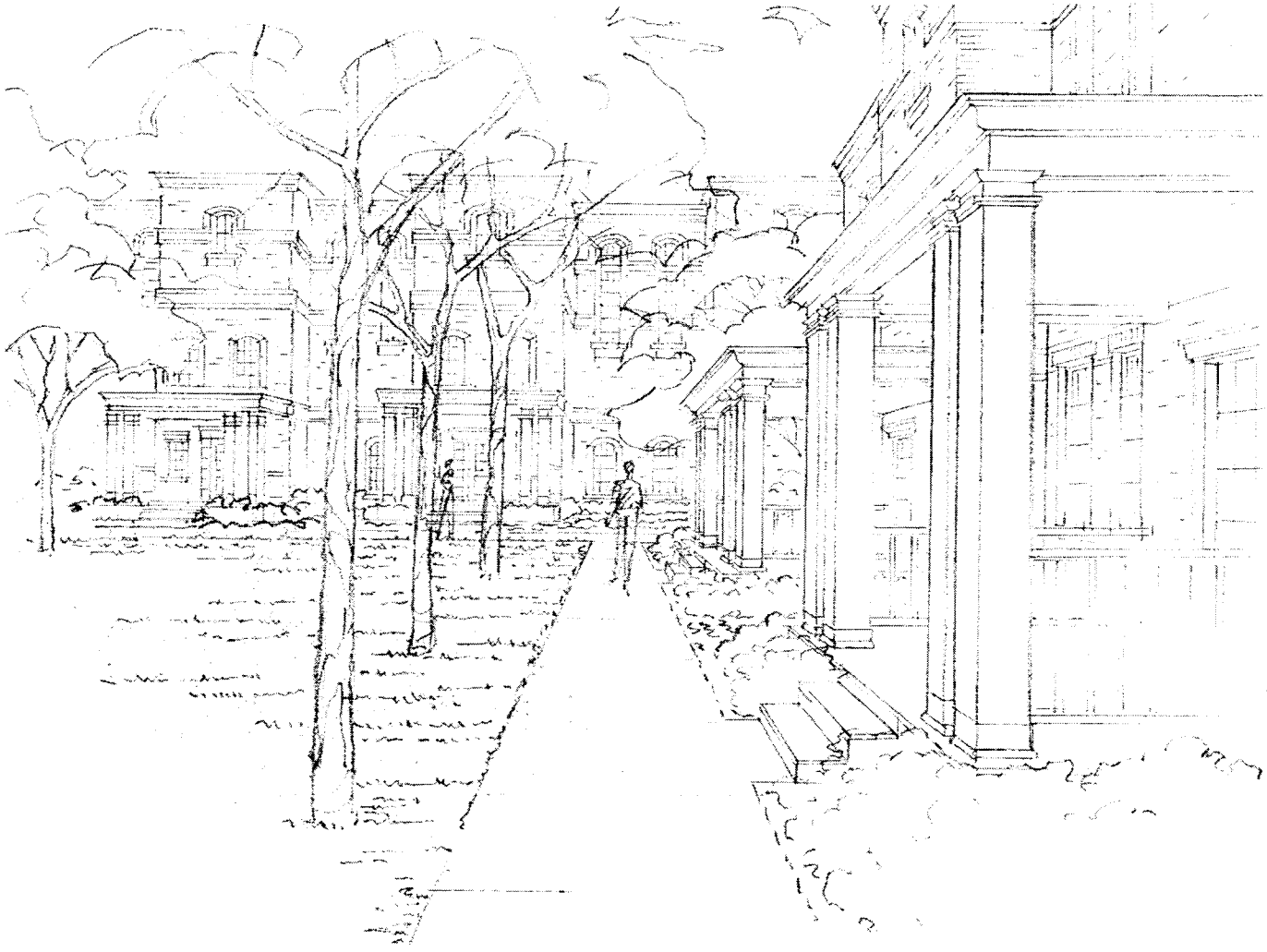
PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION



PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION

PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

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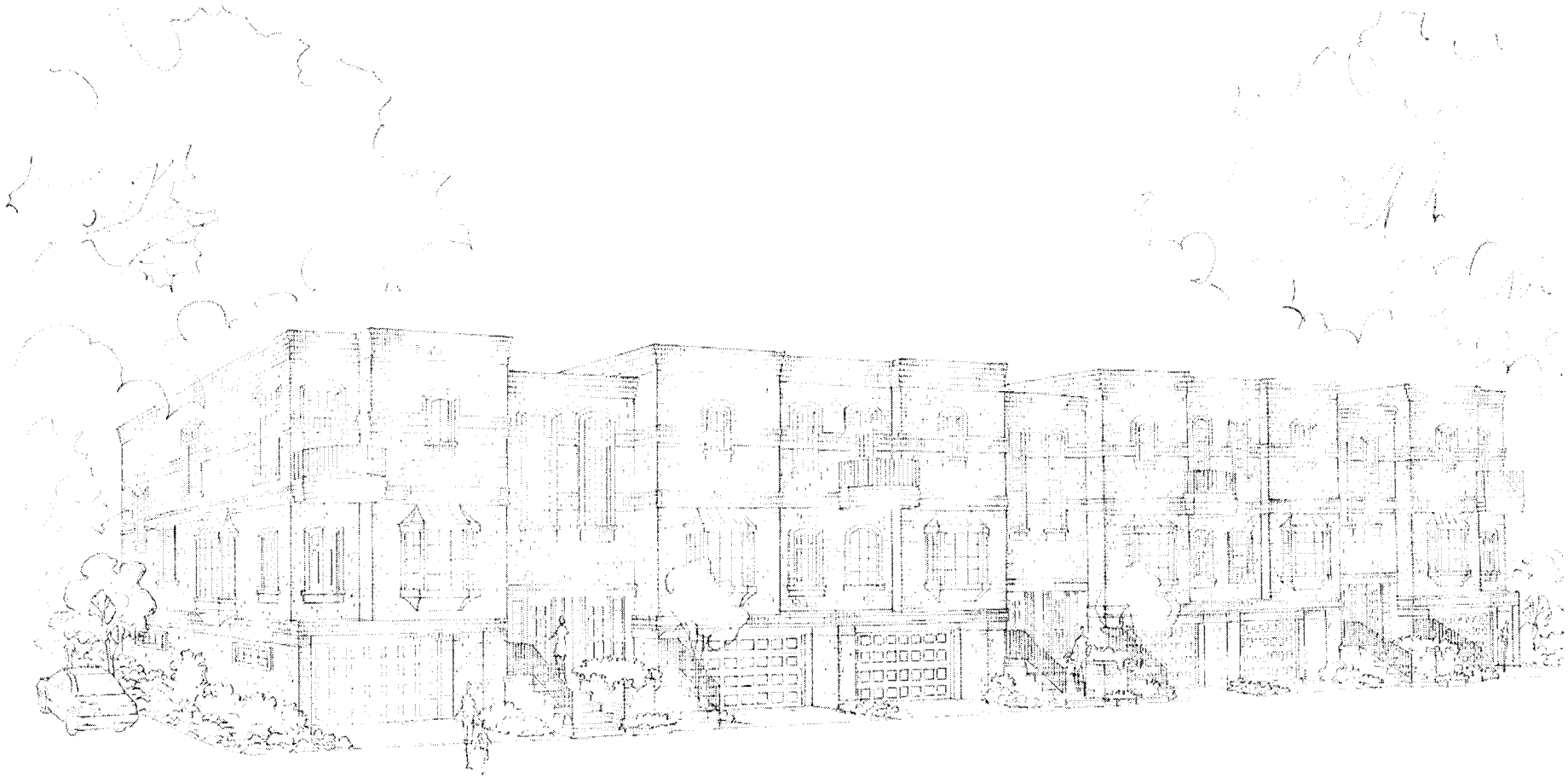
LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION



PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION

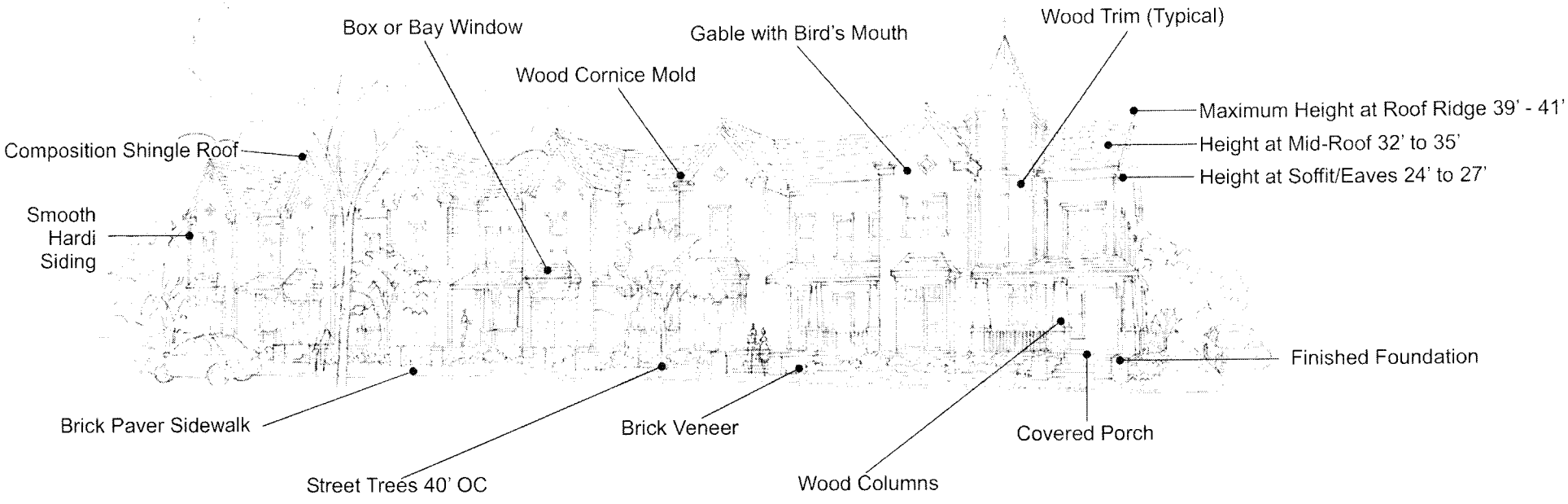
PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

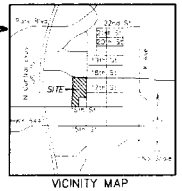
LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION



PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT



VICINITY MAP

SCALE: 1"=40'

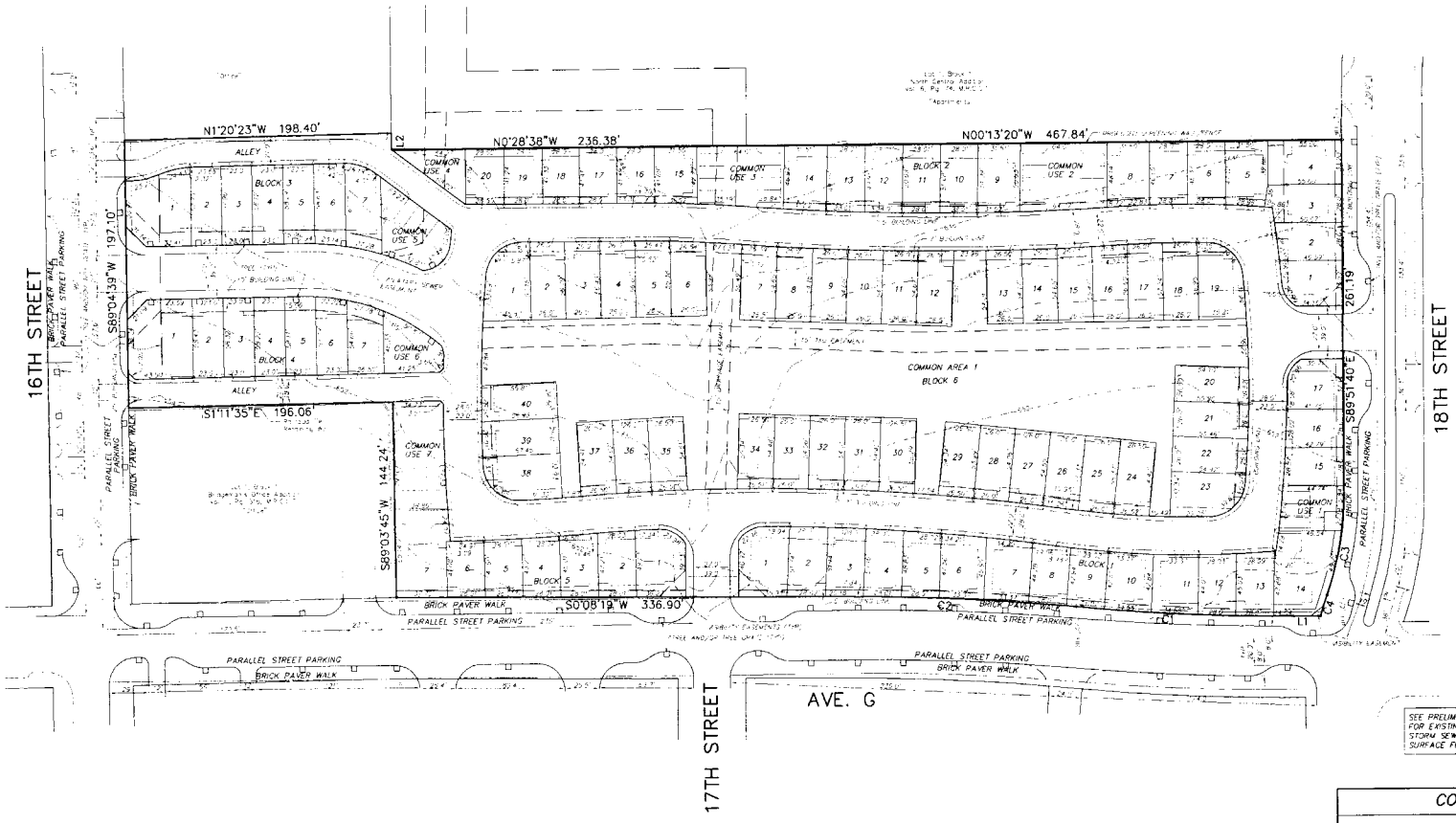
LINE	BEARING	DISTANCE
L1	S00°08'33"W	19.00'
L2	S89°51'27"E	19.00'

CURVE	DELTA	RADIUS	ARC	CHORD	CHORD BEARING	TANGENT
C1	90°00'00"	15.00'	23.56'	S45°08'19"W	21.21'	15.00'
C2	90°00'00"	15.00'	23.56'	S45°08'19"W	21.21'	15.00'
C3	90°00'00"	15.00'	23.56'	S45°08'19"W	21.21'	15.00'
C4	90°00'00"	15.00'	23.56'	S45°08'19"W	21.21'	15.00'

SITE DATA TABLE

ZONING:	PLANNED DEVELOPMENT
PROPOSED USE:	RESIDENTIAL
PROPERTY AREA:	6.3250 AC./275,519 SF
NUMBER OF LOTS/HOUSES:	98 LOTS
HOUSE SIZES:	1400 SF MIN. TO 3000 SF MAX.
HOUSE HEIGHT:	TWO & THREE STORY
PARKING REQUIRED:	0 REGULAR SPACES
PARKING PROVIDED:	28 REGULAR SPACES

LEGEND



SEE PRELIMINARY UTILITY AND DRAINAGE PLAN FOR EXISTING AND PROPOSED UTILITIES AND STORM SEWER, EXISTING TREES AND OTHER SURFACE FEATURES

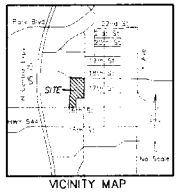
CONCEPT PLAN

RICE FIELD REDEVELOPMENT

JOSEPH KLEPPER SURVEY ABSTRACT NO. 213

PLANO, COLLIN COUNTY, TEXAS

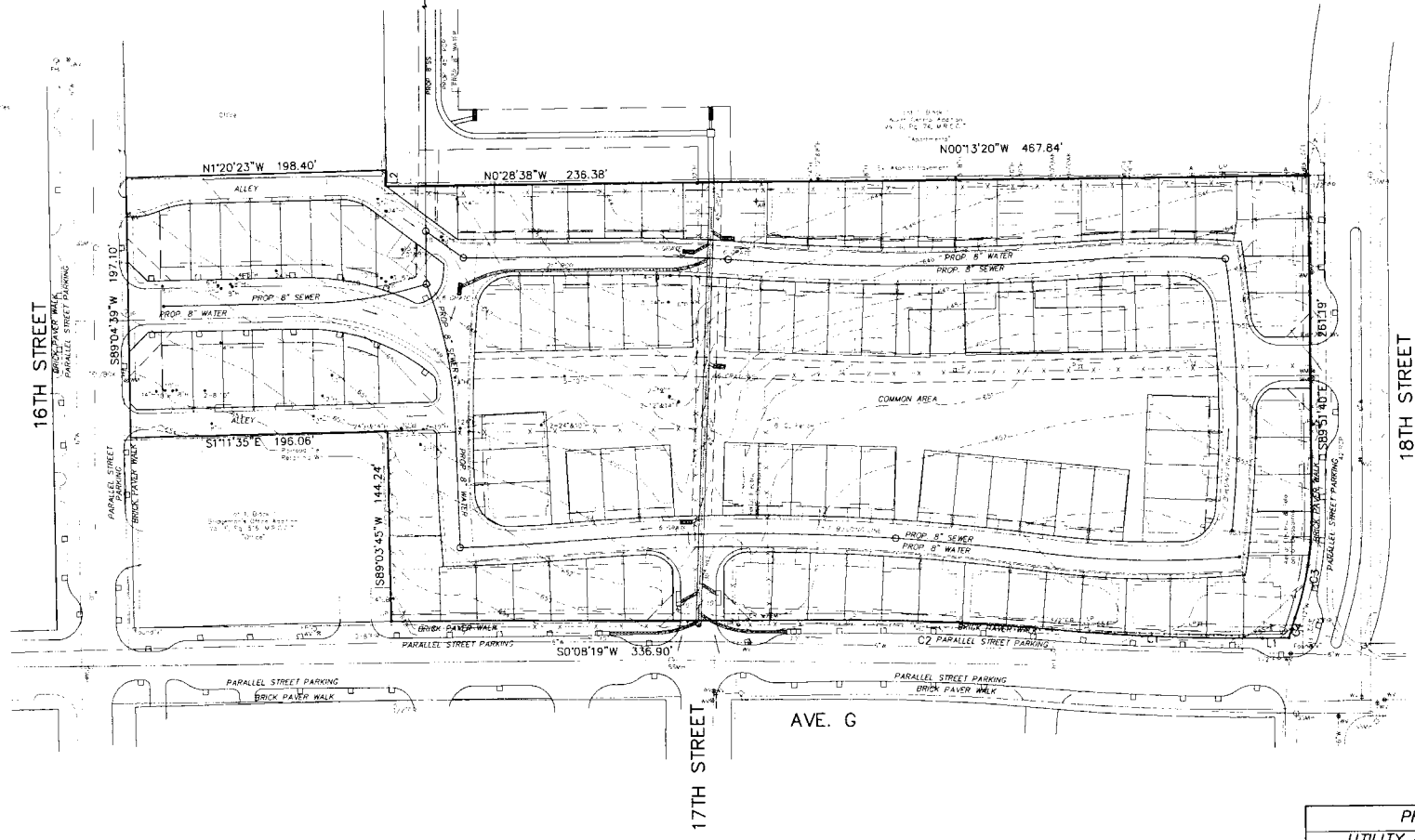
DESIGN	DRAWN	DATE	SCALE	NOTES	PROJECT	NO.
K&A	K&A	OCT 2005	1"=40'			



VICINITY MAP

SCALE: 1"=40'

LEGEND



PREPARED BY
KADLECK & ASSOCIATES

PRELIMINARY						
UTILITY & DRAINAGE PLAN						
RICE FIELD REDEVELOPMENT						
JOSEPH KLEPPER SURVEY ABSTRACT NO. 213						
PLANO, COLLIN COUNTY, TEXAS						
DESIGN	DRAWN	DATE	SCALE	NOTES	PROJECT	NO.
K&A	K&A	OCT 2005	1"=40'			

EXHIBIT "C"

PROJECT COMPLETION BUDGET

Rice Field Redevelopment Block Project

Development Agreement Exhibit "C"

Project Completion Budget
Summary of Project Costs

A Public/Private Partnership Between
Lexington Luxury Builders and the City of Plano

LAND AND SOFT COSTS		TOTAL
A	Land Cost	$939,520
B	Development Loan Interest and Fees	$372,391
C	Development Period Taxes, Insurance and Advertising	$360,025
	LAND AND SOFT COSTS	**$1,671,936**

LAND DEVELOPMENT COSTS		TOTAL
D	Civil, Geotechnical and Environmental Engineering	$157,636
E	Construction Management / General Contractor Fees	$416,500
F	Development Agreement, Due Diligence and Acquisition Costs	$176,085
G	Drainage and Storm Sewer Construction	$249,723
H	Electric, Gas and Communication (TV/Phone) Utilities	$147,900
I	Erosion Control Provisions and Maintenance	$15,128
J	Fees: City Permit, Impact, Park, Utility and Inspection (Waived Due To NEZ)	$0
K	General Conditions and Mobilization	$73,443
L	Grading, Excavation and Earthwork	$247,458
M	Greenbelt Hardscape and Landscape Areas	$221,634
N	Off-Site / Perimeter Public Infrastructure Improvements	$889,467
O	Paving, Concrete and Sidewalks	$162,740
P	Perimeter Hardscape and Landscape Areas	$78,660
Q	Sanitary Sewer Service	$127,139
R	Water Service	$163,453
S	Contingency and Miscellaneous Other Costs	$379,397
	LAND DEVELOPMENT COSTS	**$3,506,362**

TOWNHOME CONSTRUCTION COSTS		TOTAL
T	Townhome Hard Construction Costs	$16,254,342
U	Interim Construction Loan Interest and Soft Costs	$1,422,076
V	Townhome Construction Personel and General Costs	$2,454,900
W	Townhome Sales Commissions and Selling Expenses	$2,082,600
	TOWNHOME CONSTRUCTION COSTS	**$22,213,918**

TOTAL PROJECT COSTS	**$27,392,216**

LESS CITY CONSTRUCTION COST ALLOWANCE FOR PUBLIC IMPROVEMENTS	**-$1,000,000**

NET TOTAL PROJECT COST	**$26,392,216**

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EXHIBIT "D"

RICE FIELD PUBLIC LANDSCAPE MAINTENANCE SCHEDULE

Rice Field Redevelopment Block Project

Development Agreement Exhibit "D"

Rice Field Public Landscape
Maintenance Schedule

A Public/Private Partnership Between
Lexington Luxury Builders and the City of Plano

SERVICE DESCRIPTION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
MOW ALL RYE AREAS: CUT GROUNDCOVER LOWER, RYE SCALPING, RYE SEEDING	5	4	4	2	5	4	4	5	2	4	5	4	48
EDGE ALL CURBS, SIDEWALKS, ETC.	5	4	4	2	5	4	4	5	2	4	5	4	48
TRIM GRASS AROUND FENCES, SPRINKLERS HEADS, ETC.	5	4	4	2	5	4	4	5	2	4	5	4	48
TRIM ALL HEDGES SHRUBS, AND GROUNDCOVER			1	2	2	2	2	2	2	2			15
FERTILIZE ALL RYE TURF AND BED AREAS				1		1		1	1		1		5
APPLY PRE EMERGENT TO ALL TURF AREAS	1			1							1		3
PRUNE TREES UP 7 FT.		1					1						2
CHECK SPRINKLER SYSTEM	1	1	1	1	1	1	1	1	1	1	1	1	12
CLEAN-UP OF ALL SIZEABLE TRASH AND LITTER FROM TURF AND BED AREAS.	5	4	4	4	5	4	4	5	4	4	5	4	52

SPECIAL INSTRUCTIONS:

3X POST EMERGENT HERBICIDE

RYE GRASS INCLUDED - PUT DOWN AT 14# PER 1000 SQ, FT.

WINTER LEAF PICKUP INCLUDED

OTHER AVAILABLE SERVICES:

TREE PRUNING
MULCHING BEDS
PLANT INSTALLATION
SEASONAL COLOR INSTALLATION
PRICES TO BE PROVIDED UPON REQUEST.

EXHIBIT "E"

PUBLIC IMPROVEMENTS AND

PUBLIC IMPROVEMENT CONSTRUCTION ALLOWANCE

Public Improvements and Public Improvement Construction Allowance

A Public/Private Partnership Between Lexington Luxury Builders and the City of Plano

SUMMARY DESCRIPTION AND CONSTRUCTION COST ALLOWNCE OF PUBLIC IMPROVEMENTS		TOTAL
A	Civil Engineering, Surveying, Infrastructure Design and Professional Fees	$120,140
B	Construction Management and General Overhead Costs	$76,769
C	Demolition, Site Clearing, Site Preparation and Clean-Up	$65,520
D	Electric Utilities, Overhead Power Line Relocation and Antique Style Street Lights	$54,270
E	General Conditions, Mobilization, Traffic Control and Street Cleaning	$19,550
F	Fire Hydrants, Erosion Control, Street Signs and Miscellaneous Costs	$15,890
G	Paving, Concrete, Sidewalks, Curb and Gutter Improvements	$327,162
H	Street Trees, Tree Grates, Irrigation Systems, Landscape and Hardscape Improvements	$126,935
I	Construction Contingency and Other Miscellaneous Costs	$83,231
J	Drainage and Storm Sewer Construction (Facility for Haggard Park Storm Water Run-Off)	$110,534

TOTAL AGGREGATE CITY PROVIDED CONSTRUCTION COST ALLOWNCE FOR PUBLIC IMPROVEMENTS	**$1,000,000**

Rice Field Redevelopment Block Project

Public Improvements and Public
Improvement Construction Allowance

Development Agreement Exhibit "E"

A Public/Private Partnership Between
Lexington Luxury Builders and the City of Plano

A	Civil Engineering, Surveying, Infrastructure Design and Professional Fees	UNITS	COST/UNIT	QUANTITY	TOTAL
	Design Survey (Including Existing Public Improvements)	Each	$10,290.00	1	$10,290
	Public Streetscape, Landscape and Hardscape Designs	Each	$51,680.00	1	$51,680
	Irrigation System Design	Each	$3,600.00	1	$3,600
	Printing, Duplication, Renderings and Electronic Media	Each	$4,260.00	1	$4,260
	Civil Engineering - Demolition Plans	Each	$4,500.00	1	$4,500
	Civil Engineering - Traffic Control Plans	Each	$3,400.00	1	$3,400
	Civil Engineering - Streetscape, Sidewalk, ROW Construction Drawings	Each	$14,750.00	1	$14,750
	Civil Engineering - Bid Phase Services	Each	$6,100.00	1	$6,100
	Construction Administration	Each	$1,450.00	7	$10,150
	Civil Engineering - Construction Control Surveys	Each	$5,700.00	1	$5,700
	Civil Engineering - ROW and Easement Surveying	Each	$2,660.00	1	$2,660
	Reimbursable Expenses	Each	$4,200.00	1	$3,050
	Civil Engineering, Surveying, Infrastructure Design and Professional Fees				$120,140

B	Construction Management and General Overhead Costs	UNITS	COST/UNIT	QUANTITY	TOTAL
	Construction Management, Overhead, General Contractor Fees				$76,769
	Construction Management and General Overhead Costs				$76,769

C	Demolition, Site Clearing, Site Preparation and Clean-Up	UNITS	COST/UNIT	QUANTITY	TOTAL
	Sawcut, Demolish and Remove Existing Curbs and Gutters	LF	$14.00	2,500	$35,000
	Demolish and Remove Existing Sidewalks	SY	$22.50	778	$17,500
	Sawcut, Demolish and Remove Street Sections - 18th Median 12' Width	SY	$22.50	440	$9,900
	Misc Clean-Up and Trash Hauling	%	5%		$3,120
	Demolition, Site Clearing, Site Preparation and Clean-Up				$65,520

D	Electric Utilities, Overhead Power Line Relocation and Antique Style Street Lights	UNITS	COST/UNIT	QUANTITY	TOTAL
	TXU Electric - Relocate Overhead Lines 18th Street	Each	$22,770.00	1	$22,770
	TXU Electric - 11' Historical Acorn Street Lights	Each	$2,500.00	10	$25,000
	TXU Electric - Services for Street Lights and Irrigation	Each	$1,625.00	4	$6,500
	Electric Utilities, Overhead Power Line Relocation and Antique Style Street Lights				$54,270

E	General Conditions, Mobilization, Traffic Control and Street Cleaning	UNITS	COST/UNIT	QUANTITY	TOTAL
	General Conditions and Mobilization	Each	$4,100.00	1	$4,100
	Barricades and Traffic Control	Each	$650.00	3	$1,950
	Construction Signage	Each	$1,680.00	1	$1,680
	General Liability Insurance	Each	$4,270.00	1	$4,270
	Miscellaneous Costs	Each	$1,000.00	3	$3,000
	Construction and Street Cleaning	Each	$2,275.00	2	$4,550
	General Conditions, Mobilization, Traffic Control and Street Cleaning				$19,550

F	Fire Hydrants, Erosion Control, Street Signs and Miscellaneous Costs	UNITS	COST/UNIT	QUANTITY	TOTAL
	Relocate Existing Fire Hydrants	Each	$2,235.00	4	$8,940
	Silt Fence (prior to excavation)	LF	$1.70	2,500	$4,250
	Erosion Control Maintenance	%	40%		$1,700
	Four Way Stop Signs - Intersection Ave G and 16th Street	Each	$500.00	2	$1,000
	Fire Hydrants, Erosion Control, Street Signs and Miscellaneous Costs				$15,890

G	Paving, Concrete, Sidewalks, Curb and Gutter Improvements	UNITS	COST/UNIT	QUANTITY	TOTAL
	New 24" Curb and Gutter	LF	$22.00	3,220	$70,840
	New 10' Wide Concrete Sidewalk Base	SF	$3.40	25,000	$85,000
	Brick Pavers - Installed Turnkey	SF	$5.45	25,000	$136,250
	Connect Concrete Pavement at 18TH Street	SY	$26.50	180	$4,770
	Street Signs and Poles (Street, Parking, Stop, Pedestrian)	Each	$425.00	25	$10,625
	Stripe Travel and Parking Lanes	LF	$1.00	3,200	$3,200
	Barrier Free Ramps	Each	$750.00	16	$12,000
	Maintenance and Performance Bonds	%	1%		$3,227
	Materials Testing	SY	$0.45	2,778	$1,250
	Paving, Concrete, Sidewalks, Curb and Gutter Improvements				$327,162

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H	Street Trees, Tree Grates, Irrigation Systems, Landscape and Hardscape Improvements	UNITS	COST/UNIT	QUANTITY	TOTAL
	3" Shade Trees (Street Trees Planted Turnkey)	Each	$500.00	63	$31,500
	Sidewalk Tree Gates Materials and Labor Installed	Each	$650.00	63	$40,950
	Landscape / Hardscape Design - 18th Street Median	Each	$10,250.00	1	$10,250
	Landscaping Materials and Labor 18th Street Median	SF	$6.50	2,640	$17,160
	Hardscape Improvements 18th Street Median	Each	$3,800.00	1	$3,800
	Re-Sod Effected Areas After Construction	Each	$35.00	315	$11,025
	Irrigation System Materials and Labor Installed	Each	$175.00	70	$12,250
	Street Trees, Tree Grates, Irrigation Systems, Landscape and Hardscape Improvements				$126,935

I	Construction Contingency and Other Miscellaneous Costs	UNITS	COST/UNIT	QUANTITY	TOTAL
	Contingency				$83,231
	Construction Contingency and Other Miscellaneous Costs				$83,231

J	Drainage and Storm Sewer Construction (Facility for Haggard Park Storm Water Run-Off)	UNITS	COST/UNIT	QUANTITY	TOTAL
	Drainage & Storm Sewer Engineering Plans	Contract	$9,250.00	1	$9,250
	Turnkey Contract - Estimate	Contract	$238,000.00	1	$238,000
	Maintenance Bond (1.0% of Total)	%	1%		$2,473
	Amount Paid By Developer for On-Site Only Storm Sewer and Drainage Facilities	Contract	$139,189.00	1	-$139,189
	Drainage and Storm Sewer Construction (Facility for Haggard Park Storm Water Run-Off)				$110,534

Preliminary Open Meeting Item IV.

SH121 as Tollway Facility
Councilmember Johnson

IV.a

Discussion/Action Items for Future Council Agendas
(as of November 8, 2005)

Additional rescheduling of Council meetings may be necessary due to elections and the PISD calendar. These changes will be made as soon as the dates are confirmed.

November 10 – District 2 Roundtable – Plano Sports Authority – 2nd floor

November 24 – 25 – Thanksgiving Holidays

November 28

DART Status Report
Mobility Report
Comprehensive Monthly Financial Report
TIF I and 2 Committee Reports
Personnel – Evaluation of Council Appointees
Restricted Parking of Oversized Vehicles in Other Districts

Public Hearing: Zoning Case 2005-26 - A request to amend Planned Development-65-Central Business-1, located at the northeast and southeast corners of Dallas North Tollway and Legacy Drive, regarding signage and townhouse regulations and ground floor retail uses. **Applicant: City of Plano**

Public Hearing: Zoning Case 2005-39 - A request to rezone 4.2± acres located at the southeast corner of Legacy Drive and Preston Meadow Drive **from** Single-Family Residence-7 **to** Neighborhood Office. **Applicant: DMC Mazal, Ltd.**

Public Hearing: Zoning Case 2005-40 - A request for a Specific Use Permit for Automobile Leasing/Renting on 0.1± acre located within the Shops of Willow Bend mall, 547± feet east of Plano Parkway and 733± feet south of Chapel Hill Boulevard. Zoned Regional Commercial. **Applicant: Brian Haigwood**

Public Hearing: Zoning Case 2005-41 - A request for a Specific Use Permit for Day Care Center on 35.0± acres located at the northeast corner of Plano Parkway and Coit Road. Zoned Planned Development-128-Light Industrial-1. Applicant: **Montessori New Beginnings Academy**

Public Hearing: Zoning Case 2005-42 - A request to rezone 18.4± acres located at the northeast corner of Headquarters Drive and Dallas North Tollway

V.a

from Central Business-1 **to** Planned Development-65-Central Business-1. Zoned Central Business-1. Applicant: **EDS Information Services, LLC.**

December 6 – 10 – NLC – Charlotte, NC

December 12

Achievement of Excellence Award, Purchasing, Ryan
Library Advisory Board Report

December 20 – Employee Holiday Luncheon – Plano Centre

December 23 – 26 – Christmas/ Winter Holidays

December 28 (rescheduled from 12/26) (Winter Holiday)

DART Status Report
Mobility Report
Comprehensive Monthly Financial Report
Heritage Commission Report

January 2, 2006 – New Year Holiday

January 9

Senior Citizens Advisory Board Report

January 23

Transportation Advisory Committee Report

V.L

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager	[illegible]	11/1/05
Agenda Coordinator (include phone #):	Sharon Wright ext. 7107			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER

CAPTION

Proclamation: Veterans' Day

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11/1/05
Agenda Coordinator (include phone #):	Sharon Wright ext. 7107			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER

CAPTION

Proclamation: American Cancer Society - Great American Smokeout Day

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11/10/05
Agenda Coordinator (include phone #):	Sharon Wright ext. 7107			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER

CAPTION

Proclamation: Animal Shelter Appreciation Week

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

REV 08/98

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11/3/05
Agenda Coordinator (include phone #):	Sharon Wright ext. 7107			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER

CAPTION

Special Recognition: Frank Turner - President, Greater Dallas Planning Council

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11/1/05
Agenda Coordinator (include phone #):	Sharon Wright ext. 7107			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER

CAPTION

Special Recognition: Jason Van Sickel, Winner of the Lone Star Emmy for Plano Television Network

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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 AND REGULAR SESSION
October 24, 2005

COUNCIL MEMBERS
Pat Evans, Mayor
Ken Lambert, Mayor Pro Tem
Scott Johnson, Deputy Mayor Pro Tem
Shep Stahel
Sally Magnuson
Jean Callison
Loretta L. Ellerbe
Harry LaRosiliere

STAFF
Thomas H. Muehlenbeck, City Manager
Frank Turner, Executive Director
Bruce Glasscock, Executive Director
Rod Hogan, Executive Director
Diane C. Wetherbee, City Attorney
Elaine Bealke, City Secretary

Mayor Pro Tem Lambert called the meeting to order at 5:08 p.m. Monday, October 24, 2005, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Mayor Evans arrived at 5:11 p.m. Mayor Pro Tem Lambert stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice, Section 551.071 and to discuss matters of Personnel, Section 551.074 for which a certified agenda is required.

Mayor Evans reconvened the meeting back into the Preliminary Open Meeting and Regular Meeting at 7:01 p.m. in the Council Chambers at which time the following matters were discussed:

The invocation was led by Associate Pastor Kenny Dickson with Custer Road United Methodist Church.

The Pledge of Allegiance was led by Girl Scout Troop 2284 of Sigler Elementary.

PROCLAMATIONS AND SPECIAL RECOGNITION

Mayor Evans presented a proclamation recognizing Arbor Day – 2005.

Mayor Evans administered oaths of office to Cameron Aron McCall for the Board of Adjustment and Earnest Richard Burke for the Plano Housing Authority.

Mayor Evans presented Certificates of Appreciation to outgoing members of the boards and commissions.

GENERAL DISCUSSION

Jack Lagos, citizen of the City, spoke to public money being routed through the Arts of Collin County Foundation which is not appointed by the City and requested oversight by the Council and an agenda item to discuss the situation. City Attorney Wetherbee advised that she would meet with Mr. Lagos to discuss issues raised at the October 10 Council meeting and spoke to contracting work occurring prior to the formation of the Arts of Collin County in February 2004 and approved expenditures by the three cities that entered into agreement. Mr. Lagos requested information be shared with the public.

Guy Wormald, citizen of the City, requested an agenda item to consider renaming the portion of Shiloh Road from Parker Road to Park Boulevard as Spring Creek Parkway.

BOARD/COMMISSION REPORTS

Youth Advisory Commission

Chair Sedlet advised the Council regarding the Commission's membership, projects including annual Christmas parade participation, holiday dinner, efforts to expand awareness of the dangers of drunk driving, visits to elementary schools to meet with fifth graders and participation at the National League of Cities Conference. She reviewed future programs including participation in "Kids Night Out," attendance at a program designed to increase recognition and response to those showing signs of crisis and the YAC Fest Spring Concert. Ms. Sedlet advised that the Commission is available for any projects recommended by the Council.

Technology Commission

Chair Johnson advised the Council that the Commission's initiatives include monitoring the status of broadband in the City, considering the effects of Radio Frequency ID (RFID)/Nanotechnology, addressing technology as it relates to the Plano Economic Development Board, and redeployment of the Commission's web site. He spoke to the success of the 2nd Annual Internet Security Conference, keeping communications open with the City regarding technology, and affirmed the board's role as an incubator for examining emerging and existing technologies as well as providing guidance and recommendations.

Consideration and Action Resulting From Executive Session Discussion

No action was brought forward.

DART Status Report

No report was given.

Comprehensive Monthly Financial Report

Finance Director McGrane presented the Comprehensive Monthly Finance Report for the month of September and year-end and advised that the numbers are un-audited. He spoke to revenues doing well and exceeding the budget, stated that expenditures have come in well with sales tax trends continuing upward, and that unemployment declined slightly. Mr. McGrane spoke to sales tax comparisons with other cities, new refuse collection accounts, a slight increase in single family housing starts, and stated that building permit values are up on the commercial side along with hotel/motel occupancy. He reviewed treasury pool equity and portfolio diversification.

Mobility Report

Transportation Engineering Manager Neal advised that transmission problems were detected with traffic signals on Preston Road and have been resolved through Public Safety Communications. He spoke to consideration of revisions to the Safe Streets Program (Consent Item "W") to clarify terms and make for a simpler process. Mr. Neal spoke to the success with the Haggard Park Neighborhood for a Resident Only Parking Program, and further spoke to neighborhoods considering use of other devices besides speed humps.

Personnel Appointments – Self Sufficiency Committee

Upon a motion made by Council Member Callison and seconded by Council Member Stahel, the Council voted 8-0 to appoint Melissa Manfre.

Consent Agenda

Council Member Stahel advised that he will be stepping down on Consent Item "D," approval of an expenditure to establish a public safety wireless mesh network from Mesh Broadband Network to Motorola, Inc., and "E," approval of an expenditure for Interactive Voice Response System to Selectron Technologies, Inc. both due to possible conflicts of interest.

Deputy Mayor Pro Tem Johnson advised that he will be stepping down on Consent Item "M," change order to Mario Sinacola & Sons Excavating, Inc. for Legacy Business District Water Line and further will be stepping down on Regular Item "1," Public Hearing and ordinance to establish and designate Reinvestment Zone No. 93 for a tax abatement, and Item "2," resolution to approve an agreement with Collin County, Collin County Community College District and Rent-A-Center Texas L.P. all due to possible conflicts of interest.

Council Items for Discussion/Action on Future Agendas

No items were brought forward.

Council Reports

Council Member Magnuson advised that she, Mayor Evans, and Deputy Mayor Pro Tem Johnson attended the Plano International Festival at Haggard Park and stated that it was well done with excellent attendance.

CONSENT AGENDA

Upon a motion made by Council Member Stahel and seconded by Council Member Ellerbe, the Council voted 8-0 to approve and adopt the remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes [Consent Agenda Item (A)]

October 10, 2005

Approval of Expenditures

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

To approve Bid No. 2005-190-C for Standard Lot Abatement Contract to Whitlock Commercial Services in the amount of $35,000. This item will establish an annual fixed price contract with two City optional renewals. [Consent Agenda Item (B)] (See Exhibit "A")

To approve Bid No. 2005-253-C for Printing Services for Leisure Catalog to DFW Printing in the amount of $67,005. This item will establish an annual fixed price contract with one City optional renewal. [Consent Agenda Item (C)] (See Exhibit "B")

To approve Bid No. 2005-264-P for the 2005-2006 Residential and Arterial Pavement Under-sealing and Raising Contract to Nortex Concrete Lifting and Stabilization, Inc. in the amount of $1,398,250. [Consent Agenda Item (F)] (See Exhibit "C")

Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).

To authorize the purchase of Pager Rentals in the estimated annual amount of $36,760 from Metrocall Inc. through a State of Texas Department of Information Resources contract, and authorizing the City Manager to execute all necessary documents (DIR Contract No. DIR-SDD-202). [Consent Agenda Item (G)]

To authorize the purchase of four (4) full size Chevrolet Tahoes with Police Package in the amount of $110,168 from Caldwell Country Chevrolet, through Tarrant County Joint/Venture Cooperative Program, and authorizing the City Manager to execute all necessary documents. (Contract #2005-180) [Consent Agenda Item (H)]

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

To approve and authorize a contract with Kendall Landscape Architecture to provide Landscape Architectural Services in conjunction with the Memorial Park Improvements in an amount not to exceed $154,000 and authorizing the City Manager to execute any and all documents necessary to effectuate the contract. [Consent Agenda Item (I)]

To approve and authorize a contract with Halff Associates, Inc. to provide Landscape Architectural Services in conjunction with trail construction to extend Bluebonnet Trail from Alma Road to the underpass at U.S. 75 for a total of 2.3 miles in an amount not to exceed $123,500 and authorizing the City Manager to execute any and all documents necessary to effectuate the contract. [Consent Agenda Item (J)]

To approve the terms and conditions of an engineering services contract by and between the City of Plano and Pacheco Koch Consulting Engineers, Inc. in the amount of $234,820 for the Parkwood Boulevard Widening (Park Boulevard to Spring Creek Parkway) and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (K)]

Change Order: (Change to current City of Plano contract allowable under State law)

To Jim Bowman Construction Company LP, increasing the contract by $122,271 for the 2004-2005 Residential Slab Replacement Project, Zones 16 & 17, Project No. 5587, Change Order No. 1, Bid No. B097-05. [Consent Agenda Item (L)]

Miscellaneous Purchase Authorization:

To authorize the potential future expenditure of up to $75,000 to Earth One, Inc. for the completion of the cleanup operation associated with a fuel spill at the Spring Creek Lift Station and authorizing the City Manager to execute any and all documents necessary to effectuate this expenditure. [Consent Agenda Item (N)]

Adoption of Resolutions

Resolution No. 2005-10-16(R): To amend and terminate the Section 401(a) Plan "Savings and Retirement Plan for Employees of the City of Plano" for its employees; and providing an effective date. [Consent Agenda Item (O)]

Resolution No. 2005-10-17(R): To approve the tax roll for fiscal year 2005-2006, and providing an effective date. [Consent Agenda Item (P)]

Resolution No. 2005-10-18(R): To approve and authorize refunds of property tax overpayments; and providing an effective date. [Consent Agenda Item (Q)]

Resolution No. 2005-10-19(R): To authorize the purchase of various library materials, including books, books-on-tape, audio cassettes, compact disks, and videocassettes for Plano Public Library System (PPLS), from Baker & Taylor under Texas State Contract 715-N1 Section IV (715-10-50), Section V (715-10-60), Section VIII (715-90-10), Section IX (715-05-10) and Section X (715-05-11); and for non-print materials only under the annual Northeast Texas Library System (NETLS) contract in the amount of $400,000; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date. [Consent Agenda Item (R)]

Resolution No. 2005-10-20(R): To authorize the purchase of library materials such as books, books-on-tape, and compact disks for the Plano Public Library System (PPLS) in the amount of $340,000 from Brodart through the Northeast Texas Library System (NETLS); authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein and providing an effective date. [Consent Agenda Item (S)]

Resolution No. 2005-10-21(R): To authorize the purchase of various library materials for the Plano Public Library System in the total amount of $59,761 from Standard & Poor's and Proquest Information and Learning, the sole source suppliers of such materials; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date. [Consent Agenda Item (T)]

Resolution No. 2005-10-22(R): To approve the terms and conditions of agreements between the City of Plano, Texas, and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of $574,375; authorizing the City Manager to execute such agreements with these organizations for the provision of support of heritage preservation; and providing an effective date. [Consent Agenda Item (U)]

Resolution No. 2005-10-23(R): To authorize the City Manager to enter into an agreement with LINK2GOV CORP. for the purpose of providing a City-wide payment processing service; and providing an effective date. [Consent Agenda Item (V)]

Resolution No. 2005-10-24(R): To repeal Resolution No. 2005-3-28(R); adopting new criteria and procedures for the Safe Streets Program (SSP) including evaluation of requests for traffic management devices for collector and residential streets; establishing new criteria for the substitution of traffic management devices; and updating the definitions to clarify the process. [Consent Agenda Item (W)]

Resolution No. 2005-10-25(R): To ratify and approve the expenditure of funds in the amount of $79,938 to the Assistance Center of Collin County and $15,174 to Jerry Jones, Property Management, to provide continued assistance to hurricanes Katrina/Rita evacuees for the next ninety (90) days; and providing an effective date. [Consent Agenda Item (X)]

Resolution No. 2005-10-26(R): To approve the terms and conditions of the funding agreements between the City of Plano, Texas, and various arts organizations, which all render services that are beneficial to the public and serve a valid public purpose; authorizing the City Manager to execute such agreements with these organizations for provision of support of the arts; and providing an effective date. [Consent Agenda Item (Y)]

Resolution No. 2005-10-27(R): To designate Plano Centre Manager, Food Sales and Service Supervisor and Plano Centre Financial Specialist as administrators of the Mixed Beverage Restaurant Permits with Food and Beverage (FB) for Plano Centre and Pecan Hollow Golf Course and providing an effective date. [Consent Agenda Item (Z)]

Resolution No. 2005-10-28(R): To ratify and approve the expenditure of funds in the amount of $165,079 for the repair of Plano Aquatic Center leaks by D.C.C., Inc. a local HUB vendor. [Consent Agenda Item (AA)]

Resolution No. 2005-10-29(R): To endorse and authorize the Director of the Parks and Recreation Department to act on behalf of the City of Plano in executing shared cost grant agreement documents with the Texas Forest Service's Partnership Grant Program for the funding of a temporary, part-time Urban Forestry Data Collection Technician; and providing an effective date. [Consent Agenda Item (BB)]

Resolution No. 2005-10-30(R): To approve the terms and conditions of an agreement between the City of Plano, Texas, and Ray King, a qualified professional artist, for the design, fabrication, delivery and installation of artwork for the Tom Muehlenbeck Center; and authorizing the City Manager to execute such agreement with Mr. King; and providing an effective date. [Consent Agenda Item (CC)]

Resolution No. 2005-10-31(R): To set forth issues for consideration that should be undertaken regarding the design, construction, operational and financial decisions for tolling Highway 121; and providing an effective date. [Consent Agenda Item (DD]

Resolution No. 2005-10-32(R): To repeal Resolution No. 2005-10-1(R) in its entirety; and providing an effective date. [Consent Agenda Item (EE)]

Resolution No. 2005-10-33(R): To approve the expenditure of bond funds, for equipment for technical services including a public safety wireless mesh network and library server, prior to the actual sale of the obligations. [Consent Agenda Item (FF)]

Adoption of Ordinances

Ordinance No. 2005-10-34: To amend Ordinance No. 98-5-28, codified as Section 2-324 of Article XVIII of Chapter 2 of the Code of Ordinances (Youth Advisory Commission) limiting the Youth Advisory Commission membership to Plano public and private high school and senior high school students only; and providing a repealer clause, a severability clause, and an effective date. [Consent Agenda Item (GG)]

Ordinance No. 2005-10-35: To amend the Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-102(e) to include the prohibition of stopping, standing, or parking of motor vehicles along the east and west side of Floyd Drive from its intersection with Oakland Hills Drive south to its intersection with Gull Lake Drive within the City limits of the City of Plano on school days between the hours of 7:15 a.m. and 8:15 a.m. and 2:45 p.m. and 3:45 p.m.; declaring the stopping, standing, or parking of motor vehicles in said section of Floyd Drive within the defined time limits as unlawful and a misdemeanor; and providing a repealer clause, a severability clause, a savings clause, a penalty clause, and an effective date. [Consent Agenda Item (HH)]

Ordinance No. 2005-10-36: To amend the Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-101, Prohibited on certain streets at all times, to prohibit stopping, standing, or parking of motor vehicles on the west side of Franc Drive between Plano Parkway and Guilder Drive within the City limits of the City of Plano; declaring it unlawful and a misdemeanor to stop, stand, or park motor vehicles upon such sections of such roadway within the limits herein defined; providing a fine for criminal penalties not to exceed $200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, and an effective date. [Consent Agenda Item (II)]

Ordinance No. 2005-10-37: To abandon all right, title and interest of the City, in and to those certain easements assigned to the City of Plano by Lebanon Water Supply Corporation as recorded in Volume 2919 at Page 214 of the Collin County Land Records and being situated generally west of Preston Road and north of Spring Creek Parkway in the City limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easements to the abutting property owners, to the extent of their interests; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. [Consent Agenda Item (JJ)]

Ordinance No. 2005-10-38: To abandon all right, title and interest of the City, in and to a portion of that certain sanitary sewer easement recorded in Volume 2579 at Page 869 of the Land Records of Collin County and being situated in the Collin County School Land Survey, Abstract No. 153, located at the southeast corner of Preston Road and Hedgcoxe Road which is located within the City limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Adolph Scherer Preston I, Ltd., to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. [Consent Agenda Item (KK)]

Ordinance No. 2005-10-39: To abandon all right, title and interest of the City in and to a portion of Lots 1 and 2, Block 9 of the P.R. Garrett Addition, as acquired in Volume 888 at Page 391 of the Land Records of Collin County, Texas, being situated in the Joseph Klepper Survey, Abstract No. 213 and located adjacent to the east line of F Avenue between 12th Street and 13th Street, which is located in the City limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in a portion of such right-of-way to the abutting property owner, Grady L. Dunbar, to the extent of his interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. [Consent Agenda Item (LL]

Ordinance No. 2005-10-40: To approve the carrying forward of Fiscal Year 2004-2005 funds to Fiscal Year 2005-2006; and providing an effective date. [Consent Agenda Item (MM)]

END OF CONSENT

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

To approve CSP No. B199-05 for CISV Only – Mesh Broadband Network to Motorola, Inc. in the amount of $915,000. This purchase will establish a public safety wireless mesh network within the City of Plano that will be utilized by the Police Department for automation of field reporting. [Consent Agenda Item (D)] (See Exhibit "D")

To approve RFP No. 2005-133-B for Interactive Voice Response System to Selectron Technologies, Inc. in the amount of $93,060. [Consent Agenda Item (E)] (See Exhibit "E")

Upon a motion made by Mayor Pro Tem Lambert and seconded by Council Member Magnuson, the Council voted 7-0 to approve CSP No. B199-05 for CISV Only – Mesh Broadband Network to Motorola, Inc. in the amount of $915,000 and to approve RFP No. 2005-133-B for Interactive Voice Response System to Selectron Technologies, Inc. in the amount of $93,060.

Due to possible conflicts of interest, Deputy Mayor Pro Tem Johnson stepped down from the bench on the following three items.

To approve a Change Order to Mario Sinacola & Sons Excavating, Inc., increasing the contract by $104,350 for Legacy Business District Water Line, Change Order No. 1. (Original Bid No. B069-05) [Consent Agenda Item (M)]

Upon a motion made by Mayor Pro Tem Lambert and seconded by Council Member Ellerbe, the Council voted 6-0 to approve a Change Order to Mario Sinacola & Sons Excavating, Inc., increasing the contract by $104,350 for Legacy Business District Water Line, Change Order No. 1. (Council Member Stahel was away from the bench.)

Council Member Stahel resumed his place at the bench.

Public Hearing and adoption of Ordinance No. 2005-10-41 to establish and designate a certain area within the City of Plano as Reinvestment Zone No. 93 for a tax abatement consisting of a 15.00 acre tract of land located at the northeast corner of Headquarters Drive and Parkwood Boulevard, east of Intuit Corporate Headquarters, in the City of Plano; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date. [Regular Agenda Item (1)]

Director of Finance McGrane advised the Council that the proposed business personal property and real property tax abatement will begin January 1, 2007 and continue through the year 2015 and will be equal to fifty percent for ten years.

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

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Ellerbe the Council voted 6-0 to establish and designate a certain area within the City of Plano as Reinvestment Zone No. 93 for a tax abatement consisting of a 15.00 acre tract of land located at the northeast corner of Headquarters Drive and Parkwood Boulevard, east of Intuit Corporate Headquarters, in the City of Plano; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date; and further to adopt Ordinance No. 2005-10-41. (Council Member Magnuson was away from the bench.)

Resolution No. 2005-10-42(R) to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District and Rent-A-Center Texas, L.P., a Texas Limited Partnership, and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (2)]

Resolution No. 2005-10-42(R) (cont'd)

Upon a motion made by Mayor Pro Tem Lambert and seconded by Council Member Callison, the Council voted 6-0 to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District and Rent-A-Center Texas, L.P., a Texas Limited Partnership, and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date and further to adopt Resolution No. 2005-10-42(R). (Council Member Magnuson was away from the bench.)

Deputy Mayor Pro Tem Johnson resumed his place at the bench.

Public Hearing and an ordinance as requested in Zoning Case 2005-36 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 56.5± acres (Tract I - 17.3± acres and Tract II – 39.2± acres) located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway in the City of Plano, Collin County, Texas, from Regional Commercial and Neighborhood Office to Planned Development-177-Single-Family Residence Attached (Tract I - 17.3± acres) and Planned Development-178-Single-Family Residence-6 (Tract II – 39.20± acres); directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Cay Trust No. 2 and Preston/121 J.V. [Regular Agenda Item (3)]

Director of Planning Jarrell advised the Council that the applicant has requested the item be tabled until the November 14, 2005 Council meeting.

Upon a motion made by Council Member Magnuson and seconded by Council Member Callison, the Council voted 7-0 to table Zoning Case 2005-36 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 56.5± acres (Tract I - 17.3± acres and Tract II – 39.2± acres) located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway in the City of Plano, Collin County, Texas, from Regional Commercial and Neighborhood Office to Planned Development-177-Single-Family Residence Attached (Tract I - 17.3± acres) and Planned Development-178-Single-Family Residence-6 (Tract II – 39.20± acres) until the November 14, 2005 Council meeting. (Council Member LaRosiliere was away from the bench.)

Public Hearing and adoption of Ordinance No. 2005-10-43 as requested in Zoning Case 2005-31 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 7.0± acres located at the southwest corner of 18th Street and G Avenue in the City of Plano, Collin County, Texas, from Corridor Commercial with Heritage Resource Designation No. 20 to Planned Development-179-Downtown Business/Government with Heritage Resource Designation No. 20; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano [Regular Agenda Item (4)]

Director of Planning Jarrell advised the Council that the Planning and Zoning Commission recommended approval subject to the property being zoned Planned Development-Business Government (PD-BG) with the following stipulations:

1. Only single-family residence attached dwelling units as shown in the attached concept plan and home occupations operated in accordance with Subsection 3.110 of the Zoning Ordinance are permitted on the area defined by the concept plan, Rice Field Redevelopment; however, the existing office property at the northwest corner of G Avenue and 16th Street (Bridgeman's Office Addition, Block 1, Lot 1) may be used and developed in accordance with the BG zoning district.

2. The total number of residential units shall be not less than 90 or more than 110.

3. Public access to the common open space serving residential development shall be allowed and shall not be restricted by gates, barriers, or signage.

4. Maintenance of all open space, landscaping, and common amenities shall be the responsibility of a homeowners association. Homeowners' association documents must be approved by the City Attorney.

5. The concept plan shall be adopted as part of the ordinance. Minor amendments in accordance with Section 5.500 of the Zoning Ordinance shall be permitted.

6. Single-family residence attached development shall conform to the requirements of the BG district with the following exceptions:

    a. 60% of single-family residence attached lots may abut a mews street or alley as the only point of street frontage and access.

    b. The building setbacks shall be as follows:

        (1) From minor streets with on-street parking: 16th Street and other minor streets within the Haggard Park Heritage Resource District - The building setbacks shall conform to the guidelines for the Haggard Park Heritage Resource District.

Ordinance No. 2005-10-43 (cont'd)

(2) From mews streets: Garages - Maximum ten feet as measured from the right-of-way line of the mews street. The minimum setback from the property line shall be zero feet.

c. Stoops, balconies, bay windows, box windows, and awnings shall not extend into the right-of-way of mews streets.

d. The Heritage Commission shall approve the building configuration and street tree, and sidewalk design for the portion of the property within the Haggard Park Heritage Resource District.

Ms. Jarrell advised that the developer intends to construct 98 urban townhouses with a mix of two and three-story units each with a two-car garage. She stated that visitor parking will be provided in small parking areas and on-street parking spaces and that a common open space area will be created in the middle of the development. Ms. Jarrell spoke to the City's goal of adding at least 1,000 dwelling units within one-quarter mile of the downtown DART station and 3,500 within one-half mile and the request creating a pedestrian-oriented area. She spoke to the plan being oriented to the street even though 60% of the lots would only have access from a mews street and restrictions to prevent parking on the mews street. Ms. Jarrell responded to Mayor Pro Tem Lambert stating that the owners of an existing medical office building on 16th Street and G Avenue have been contacted and are in support of the request.

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

Mayor Pro Tem Lambert requested a briefing regarding the requirement that open space be made available to the public even though it is located on private property and owned by the homeowners association. City Attorney Wetherbee advised that it will be critical that the conveyance instruments reserve that requirement so that a future land owner will be on notice.

A motion was made by Council Member Stahel and seconded by Council Member LaRosiliere, to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 7.0± acres located at the southwest corner of 18th Street and G Avenue in the City of Plano, Collin County, Texas, from Corridor Commercial with Heritage Resource Designation No. 20 to Planned Development-179-Downtown Business/Government with Heritage Resource Designation No. 20; directing a change accordingly in the official zoning map of the City as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2005-31; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2005-10-43. The Council voted 7-1 with Mayor Pro Tem Lambert voting in opposition.

Public Hearing and Consideration of an appeal of the Planning & Zoning Commission's denial of Zoning Case 2005-05 - Request to rezone 22.5± acres located at the southeast corner of Parker Road and Preston Road from Agricultural (A) to Planned Development-Neighborhood Office (O-1) with Specific Use Permit to allow for Bank, Savings and Loan, or Credit Union, Single-Family Residence Attached (SF-A) and Patio Home (PH). Zoned Agricultural. Neighborhood #43. [Regular Agenda Item (5)]

Director of Planning Jarrell stated that because the Council had remanded this case back to the Planning and Zoning Commission and that due to their denial, the request would require a three-quarter vote of approval. She stated that the applicant is requesting a mix of zoning districts on the property and advised regarding surrounding land use. Ms. Jarrell stated that the Commission recommended patio home zoning for the entire parcel.

Ms. Jarrell responded to the Council stating that there is a street connection in place to the patio home development to the east and spoke to future connection to the townhome development. She stated that she was unaware of the reasons why the development does not "line up" with the adjacent one. Ms. Jarrell responded to Council Member LaRosiliere stating that there would be a minimum of two possible access points from Preston Road and that Staff would discourage a direct cut through to the neighborhood.

Mayor Evans opened the Public Hearing. Larry Good, representing the applicant, spoke to following the direction previously provided by the Council and stated that the City Attorney's opinion was sought regarding the need for a three-quarter vote and that he would not waive his right to challenge that requirement. He spoke regarding the offset between the plan and the adjacent development and regarding the points of access to be provided. John Donovan, citizen of the City, spoke to recognizing the intent for the property to be developed as single family, denial of the proposal by the Planning and Zoning Commission and the opposition expressed by residents in the area. He spoke to an alternate design showing how the property could be successfully developed as single-family detached patio homes and to the development to the east being tied to a large three-story retirement facility.

Larry Rehg, president of the Harrington Homeplace Homeowners Association, spoke in opposition to the request and in favor of the recommendation of the Planning and Zoning Commission. He referred to a 1992 letter from Mayor Muns in opposition to commercial at this location. Mr. Rehg spoke to the current level of commercial development, the Comprehensive Plan listing this location as residential and regarding traffic concerns. Glen Hinckley, representing the Preston-Parker Shopping Center Tenants' Association spoke to the property's designation on the Comprehensive Plan, Staff's recommendation for denial and Planning and Zoning Commission's recommendation of patio homes. He spoke to the overabundance of both office/retail zoned property in the City, making sure the property develops as promised, homeowners' opposition and traffic in the area. Mr. Hinckley responded to the Council regarding the level of property zoned office and stated that some buildings have been constructed, but are not occupied.

Appeal of Planning & Zoning Commission's Denial of Zoning Case 2005-05 (cont'd)

John Roach, Jr. representing the applicant, spoke to development of the proposal being in response to the Council's discussion. He spoke to being consistent with adjacent property owners, the difficulty of developing single-family attached and advised that patio homes will be two stories in height. Debbie Leecock, citizen of the City, spoke to development of single-family homes on the site rather than townhomes, the abundance of condominiums and to the advantages of patio homes. No one else spoke either for or against the request. The Public Hearing was closed.

Ms. Jarrell responded to the Council that the height limits on the southwest, northwest and northeast corners are two story or 35 feet. Council Member Stahel spoke to Harrington Homeplace not being within the 200 feet notification area. Ms. Jarrell responded to Council Member Stahel regarding restrictions on Neighborhood Commercial (NC) zoning and advised that the northeast corner exceeds the square footage typical for NC zoning. Mr. Donovan responded to Council Member LaRosiliere that the plans being presented were compiled in conformance with City regulations and Ms. Jarrell advised that she has not yet reviewed the plans. She spoke regarding open space requirements and stated that there is street connection between properties on either side of the creek. Ms. Jarrell responded to Council Member Magnuson that the maximum height for both townhomes and patio homes is two stories and stated that no plan has been submitted for review or approval by the Commission or the Council. She responded to Mayor Pro Tem Lambert regarding the plan, stating that it would be best if the Council provided direction for the zoning, after which time the applicant would submit a plan in conformance.

Mr. Donovan responded to Council Member LaRosiliere regarding the number of patio homes that could be developed as opposed to townhomes or single-family homes. Ms. Jarrell advised that the three-quarter vote is required due to the denial by the Planning and Zoning Commission. She advised Mayor Evans regarding open space requirements and stated that when a plan is submitted, it will be reviewed for compliance. Ms. Jarrell responded to Mayor Pro Tem Lambert that the request for office zoning would include an SUP for a bank, savings and loan or credit union.

Council Member Magnuson spoke to the efforts of the applicant and the revisions made from the original plan. She spoke regarding the height of the development and the distance across Preston Road from residential zoning. Ms. Magnuson made a motion to approve the item as requested in the letter of appeal with Council Member Stahel seconding. No vote was taken at this time.

Council Member LaRosiliere stated concern regarding the amount of townhomes in the area and spoke to the reduction in actual units that might be attained by patio home development. Ms. Jarrell advised that should the applicant desire to convert the townhomes to patio homes they could do so.

Appeal of Planning & Zoning Commission's Denial of Zoning Case 2005-05 (cont'd)

A motion was made by Council Member Stahel and seconded by Council Member Magnuson, to approve the appeal of the Planning & Zoning Commission's denial of Zoning Case 2005-05 - Request to rezone 22.5± acres located at the southeast corner of Parker Road and Preston Road from Agricultural (A) to Planned Development-Neighborhood Office (O-1) with Specific Use Permit to allow for Bank, Savings and Loan, or Credit Union, Single-Family Residence Attached (SF-A) and Patio Home (PH) as requested in the letter of appeal. The Council voted 7-1 with Council Member LaRosiliere voting in opposition.

There being no further discussion, Mayor Evans adjourned the meeting at 9:19 p.m.

Pat Evans, MAYOR

Ken Lambert, MAYOR PRO TEM

ATTEST:

Elaine Bealke, City Secretary

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Parks and Recreation Department		Initials	Date
Department Head	Don Wendell	Executive Director		11-04-05
Dept Signature:	Don Wendell	City Manager		11/7/05
Agenda Coordinator (include phone #):	**Linda Benoit (7255)**			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☒ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

Award/Rejection of Bid/Proposal for Bid No. 2005-270-B and Conditional Acceptance of the Lowest Responsible Bid/Proposal for the Preston Ridge Trail Extension at Carpenter Park to Jim Bowman Construction Company, L.P. in the amount of $222,440.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: **2005-06**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	170,883	2,524,117	1,000,000	**3,695,000**
Encumbered/Expended Amount	-170,883	-133,762	0	**-304,645**
This Item	0	-222,440	0	**-222,440**
BALANCE	0	2,167,915	1,000,000	**3,167,915**

FUND(S): PARK IMPROVEMENT CIP

COMMENTS: Funds are included in the 2005-06 Park Improvement CIP. This item, in the amount of $222,440, will leave a current year balance of $2,167,915 for the Trail Connections project.

STRATEGIC PLAN GOAL: Trail connections relate to the City's Goal of "Premier City for Families."

SUMMARY OF ITEM

Staff recommends that the bid received from Jim Bowman Construction Company, L.P., in the amount of $222,440 be accepted as the lowest responsible bid conditioned upon timely execution of any necessary contract documents.

The bid, in the amount of $222,440, is for construction of reinforced concrete recreational trail, pre-fab pedestrian bridge, abutments, ornamental iron fence, and erosion control. The new trail will connect existing trail near Denham Way, through Carpenter Park, and ending at Bluebonnet Trail on the south. The bid is below the consultants estimate of $231,000 and is below the project budget of $250,000.

In the event the low bidder cannot execute contract documents, staff recommends the project be awarded to the second low bidder, Jeske Construction Company in the amount of $269,053.

b-1

CITY OF PLANO
COUNCIL AGENDA ITEM

Jim Bowman Construction Company, L.P. has successfully completed construction of numerous projects for the City. Jeske Construction has also successfully completed construction projects for the City.

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

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CITY OF PLANO
BID TABULATION
2005-270-B
PRESTON RIDGE TRAIL-CARPENTER PARK
Project No. 5594
Monday, October 17, 2005 @ 3:00 PM

CONTRACTOR	BID BOND	TOTAL BID
Jim Bowman Construction Co., L.P.	Yes	$222,440.00
Jeske Construction Co.	Yes	$269,053.00
Vortex Construction	Yes	$284,222.00
J & J Hardscape Construction	Yes	$317,800.00

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

Sharron Mason — October 18, 2005

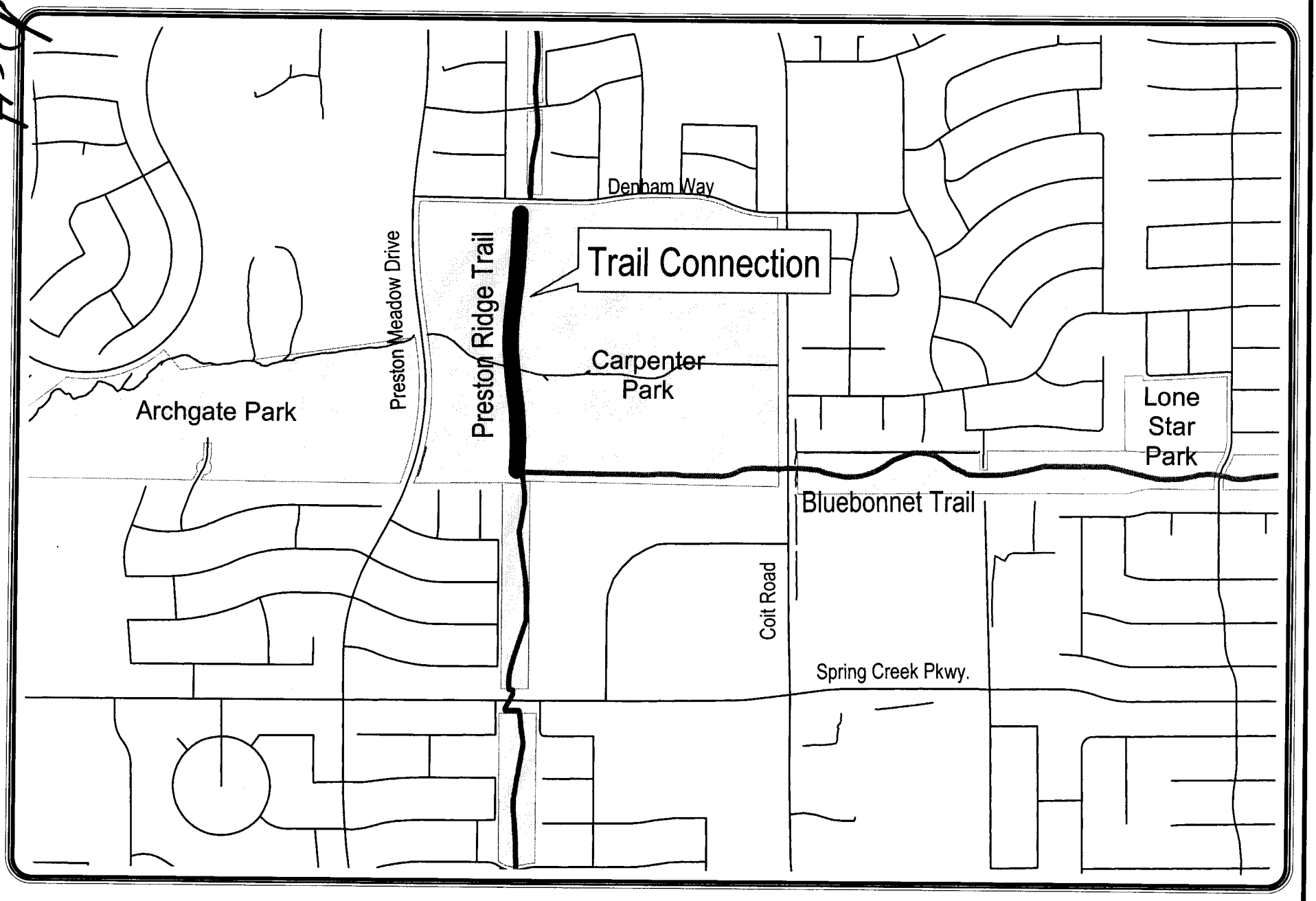
Sharron Mason, Buyer — Date

"BID TABULATION STATEMENT"

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

PURCHASING DIVISION
CITY OF PLANO TEXAS

B-3



Preston Ridge Trail - Carpenter Park

Parks & Recreation Department
Park Planning

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Telecommunications 397		Initials	Date
Department Head	Edward Jenkins	Executive Director		
Dept Signature:		City Manager		11/25/05
Agenda Coordinator (include phone #):	Dianna Wike, Ext. 7549			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☒ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

Award/Rejection of Bid/Proposal for CSP No. 2005-228-C CSP for Wireless Voice and Data Services to Cingular Wireless in the estimated annual amount of $450,000..

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR:	2005-06, 2006-07, 2007-08, 2009-2010	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): VARIOUS FUNDS

COMMENTS: This item approves an annual contract, with the option for four (4) additional one-year renewals, and includes price quotes for wireless services. Expenditures will be made in various departments within the approved budget appropriations. The current estimated annual expenditure is $450,000.

STRATEGIC PLAN GOAL: A contract for wireless communication services relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Staff recommends proposal of Cingular Wireless in the estimated annual amount of $450,000, as the best proposal meeting specifications for the purchase of WIRELESS VOICE AND DATA SERVICES, conditioned upon timely execution of any necessary contract documents.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Evaluation Comparison, Evaluation Matrix	

C-1

REV 08/98

Date: October 17, 20052

To: Dianna Wike, Buyer

From: Lisa Prunty, Telecommunications Coordinator

Ref: 2005-228-C CSP for Wireless Voice and Data Services

Attached is the council agenda item, comparison spreadsheet and evaluation matrix recommending award of CSP# 2005-228-C for Wireless Services to Cingular Wireless. Cingular's proposal ranked highest in our evaluation process. (See attachments for details.)

Thanks you for your assistance and please call if you have any questions regarding this recommendation.

C-2

valuation

	Cingular		Nextel		Sprint		Sprint		Enterprise T-Mobile		Cellco Verizon	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
GENERAL SPECIFICATIONS												
Service Requirements (30 pts.)												
Completed Proposal in order listed	10		10			10		10		10	10	
Ability to meet Network Requirements	10		10		10		10		10		10	
Account Management - Billing	10		10		10		10		10		10	
TOTALS	**30**	**0**	**30**	**0**	**20**	**10**	**20**	**10**	**20**	**10**	**30**	**0**
Customer Service (40 pts.)												
Assigned Account Rep.	10		10		10			10	10		10	
Assigned Account Support Staff	10		10			10		10	10			10
24 hour customer care	10		10		10			10	10		10	
Good turn around time for billing disputes	10		10			10		10	10		10	
TOTALS	**40**	**0**	**40**	**0**	**20**	**20**	**0**	**40**	**40**	**0**	**30**	**10**
Pricing - Airtime / Fees / Equipment / Accessories (30 pts.)												
Fixed rate offered	2		2			2		2		2		2
Per-minute rate with zero recurring cost offered		2		2		2		2		2		2
Pooled minute plan offered	2		2			2		2		2	2	
Local Rates with best discount		2		2		2		2		2	2	
National Rates with best discount		2		2		2		2		2	2	
Data Plan Rates with best discount	2			2		2		2		2		2
Waived Activation Fees	2		2			2		2		2	2	
Waived Early Termination Fees	2		2			2		2		2	2	
Waived Upgrade Fees	2			2		2		2		2		2
Offered a Basic handset free of charge	2		2			2		2		2	2	
Best Equipment Upgrade Offer	2		2			2		2		2		2
Offered free standard hardware accessory package with new activation	2			2		2		2		2		2
Best Discount off accessories	2			2		2		2		2		2
Call detail / Tax exempt invoices (free of charge)	2		2		2		2		2		2	
Automated account management at no additional cost	2		2		2			2	2		2	
TOTALS	**24**	**6**	**16**	**14**	**4**	**26**	**2**	**28**	**4**	**26**	**16**	**14**
Overall Totals	**94**	**6**	**86**	**14**	**44**	**56**	**22**	**78**	**64**	**36**	**76**	**24**

**Sprint, Sprint and T Mobile did not provide completed proposals*

23

C-4

Vendors	Functional Requirements Voice and Data	Customer Service	Airtime Pricing and Discounts	Blackberry
Cingular Wireless **(Direct Provider)** GSM GPRS EDGE UMTS offer for 2 year commitment	Yes Radio = coming 9/23/05	Assigned support team	Custom Plans - unlimited local plan/200 LD/120TX ROAM for 69.00 zero recurring -no 9.99 / .11 per min. pooled - yes data Text Messaging = 100 Free or .10 pay per use 18% discount published voice 15% discount data connect 38% discount data connect unlimited 10% all other data services	One time BES Exchange v.4.0 upgrade = 989.10 Single licence fee = 89.10 5 pack = 386.10 10 pack = 629.10
Enterprise Technologies T Mobile (Authorized vendor) GSM GPRS Incomplete	Yes Radio = No	Service rep Assigned support team	Custom Plans - no zero recurring -no pooled - yes data Text Messaging = some free dependent on plan no discounts offered	One time BES Exchange v.4.0 upgrade = 1159.32 Single licence fee = 119.02 5 pack = 462.32 10 pack = 743.20
Nextel **(Direct Provider)** iDEN SMR WiFi Hotsports 2 year commitment required	Yes Radio = Yes No voice serv when outside network	Assigned support team	Custom Plans - no Unlimited national plan for 99.99 (local direct connect) zero recurring - no 15.49 / .08 per min pooled - yes data Text Messaging = 300 included 15% discount published voice 15% discount data connect 5.00 per month off Blackberry email plan	One time BES Exchange v.4.0 upgrade = 899.00 Single licence fee = 78.00 5 pack = 342.00 10 pack = 565.00
Sprint CDMA EV-DO Did not answer specific questions	Yes Radio = PSC Ready Link	??	14% discount??	One time non recurring fee = 2999.00 / 3999.00 Single licence fee = 99.00 5 pack = 429.00 10 pack = 699.00
Sprint Spectrum CDMA EV-DO Did not answer specific questions	Yes Radio = PSC Ready Link	Dedicated Rep	25% discount ?? 14% discount??	One time non recurring fee = 2999.00 / 3999.00 Single licence fee = 99.00 5 pack = 429.00 10 pack = 699.00
Cellco dba **Verizon Wireless**	Yes	Assigned Rep	Custom Plans - ?	

AMPS CDMA AMPS EV-DO	Radio = Yes		zero recurring -no 11.99 + .25 per min. pooled - yes 19% discount data Text Messaging = per us / select plan 19% discount published voice 19% discount data connect 20% combined with voice 19% off push to talk plans	No licensing pricing submitted	

Fees	Equipment Pricing	Warrant / Upgrade Credit	Accessories Pricing	Billing Capabilities
None	Orders - online thru assigned team thru national business ordering 24-48 delivery - free shipping 1 year upgrades 100.00 off published 2 year retail prices	1 year warranty no upgrade credit	car charger, case, earbud with each new activation 30% discount	Premier Mgmt Avialable detailed billing free
35.00 activation fee 150.00 cancel fee	retail	1 year warranty upgrade credit - fair mkt value ??	Not inluded no discounts offered	electronic upon request
Shipping 15.00 to 150.00 upgrade fee	Orders by phone, email or fax i265 = .99 with .99 rebate 24-48 delivery - we pay shipping 1 year upgrades 39% off nat'l promotion prices	1 year warranty Buy back program ??	accessories at additional cost (special price for for case, earbud, clip, charger) 20% discount	Smart CD
??	??	??	??	Yes
36.00 activation fee	No mention of order process No mention of discounts 149.99 least expensive phone	??	accessories at additional cost ??	EBT and EDI 200. set up fee If paper still required a 250.00 MRC applies
Waive activation and cancel	No mention of order process	?	Accessories at additonal cost	IBAS

	Several free phones		25% off	No invoice included

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Technology Services		Initials	Date
Department Head	David Stephens	Executive Director		10.28.05
Dept Signature:	David Stephens	City Manager		10/28/05
Agenda Coordinator (include phone #):	Kathy Kargol, ext 7342			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER EXISTING CONTRACT

CAPTION

Purchase from Existing Contract/Agreement to authorize the purchase of maintenance and support of HP printers and servers in the amount of $56,439.60 from Hewlett-Packard Company through a Department of Information Resources (DIR) contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-BUSOP-178)

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,102,740	0	**2,102,740**
Encumbered/Expended Amount	0	-252,243	0	**-252,243**
This Item	0	-56,440	0	**-56,440**
BALANCE	0	1,794,057	0	**1,794,057**

FUND(S): **TECHNOLOGY SERVICES FUND**

COMMENTS: Funds are included in the 2005-06 Technology Services budget. The remaining balance will be used throughout the year for other maintenance agreements.

STRATEGIC PLAN GOAL: Maintenance support contracts relate to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve an expenditure of $56,439.60 to Hewlett-Packard Company through the Department of Information Resources (DIR) for the maintenance and support of HP printers and servers. The city is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies any State Law requiring the local government to seek competitive bids for the items. (DIR-BUSOP-178)

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

REV 08/98

d-1

Memorandum

To: David Stephens, Director of Information Services

From: Chester M. Helt, Infrastructure Manager

Date: 10/21/2005

Re: Annual HP Maintenance Contract

Technology Services recommends renewing with Hewlett-Packard Company through the Department of Information Resources (DIR) for a Service Agreement on Hewlett Packard equipment. The agreement covers support on HP Net Servers and various models of HP printers located throughout the City.

The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies the applicable State Laws requiring local government to seek competitive bids for the maintenance items.

d-2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Parks and Recreation		Initials	Date
Department Head	Don Wendell	Executive Director	RS	11-4-05
Dept Signature:	Don Wendell	City Manager		11/7/05
Agenda Coordinator (include phone #):	**Linda Benoit (7255)**			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER PURCHASE OFF EXISTING CONTRACT

CAPTION

Authorizing the purchase of sports field lighting equipment for Phase II Lighting Improvements at Schell Park, fields 1 & 2, including installation, poles, wiring, switch gear, and controls in the amount of $141,100 from Techline Sports Lighting, L.P., through the Texas Association of School Board Purchasing Cooperative Program, Contract #204-04, and authorizing the City Manger or his designee to execute any and all documents necessary to effectuate this purchase.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: **2005-06**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	536,655	711,345	600,000	**1,848,000**
Encumbered/Expended Amount	-536,655	-350,018	0	**-886,673**
This Item	0	-141,100	0	**-141,100**
BALANCE	0	220,227	600,000	**820,227**

FUND(S): **CAPITAL RESERVE**

COMMENTS: Funds are included in the 2005-06 Capital Reserve Fund. This item, in the amount of $141,000, will leave a current year balance of $220,227 for the Athletic Fields project

STRATEGIC PLAN GOAL: Field lighting equipment relates to the City's Goal of "Premier City for Families."

SUMMARY OF ITEM

Staff recommends the purchase of sports lighting equipment from Techline Sports Lighting L.P., through the Texas Association of School Board Purchasing Cooperative Program (contract #204-04).

This Phase II project will provide purchase and installation of new poles, fixtures, wires, switch gear, weather-proof enclosures, and controls for fields 1 and 2 at Schell Park. Lighting at these fields was originally installed in the 1970's. The lighting no longer meets the standards found at other athletic facilities, and the equipment is no longer functioning properly.

CITY OF PLANO
COUNCIL AGENDA ITEM

Purchases under this program have already been through an official competitive sealed bid process as prescribed by the State of Texas law. The City of Plano is eligible to participate in the program.

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

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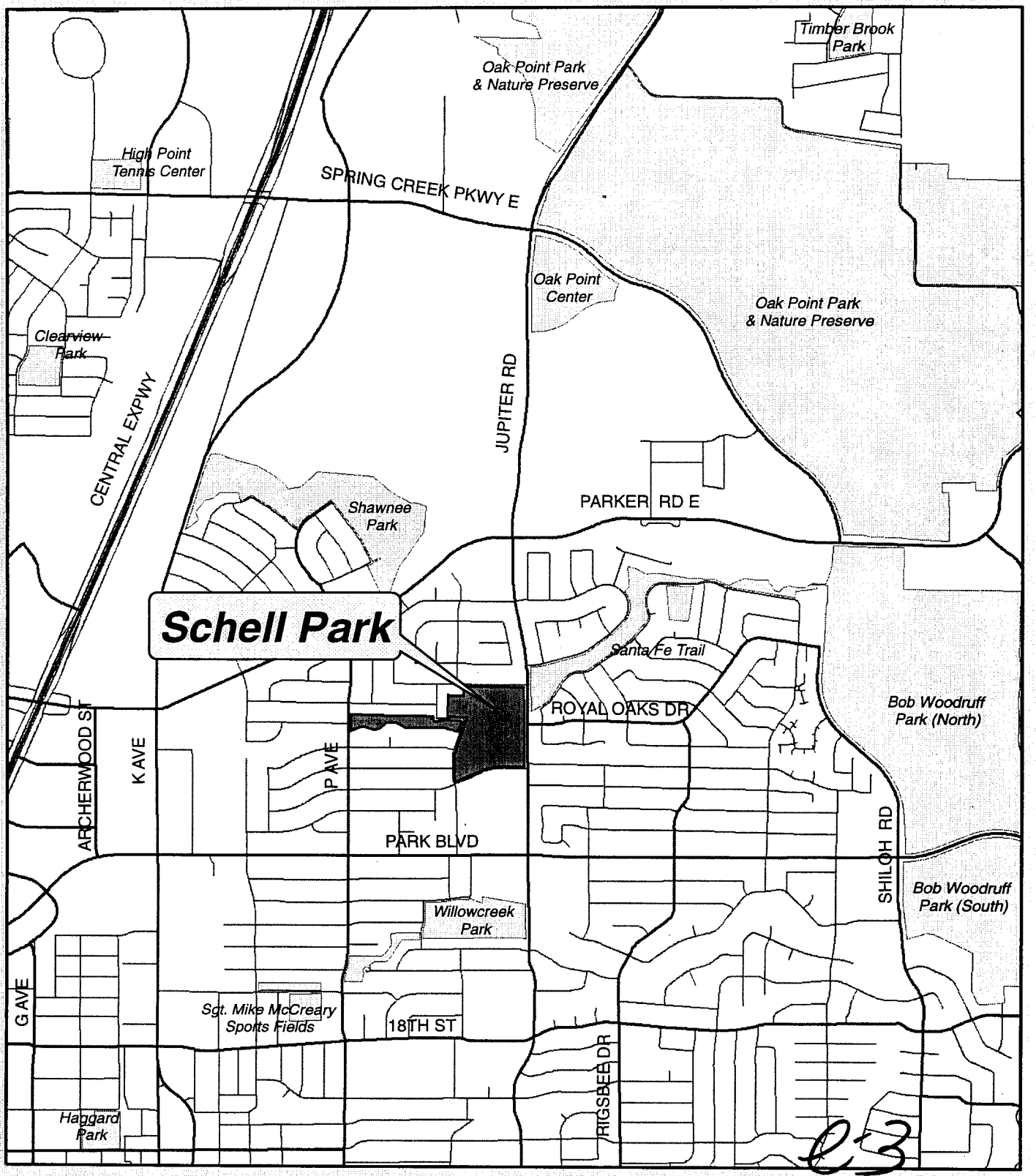
Park Planning Division
City of Plano, Texas

Location Map

Schell Park

0.25 0.125 0 0.25 Miles



C3

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Parks and Recreation		Initials	Date
Department Head	Don Wendell	Executive Director		11-7-05
Dept Signature:	Don Wendell	City Manager		11/7/05
Agenda Coordinator (include phone #):	**Linda Benoit (7255)**			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER PURCHASE OFF EXISTING CONTRACT

CAPTION

Purchase from Existing Contract/Agreement to authorize the purchase of fiber and copper connectivity for City of Plano offices in the Cox Building in the estimated amount of $25,873 from Henkels & McCoy, Inc., through a City of Plano contract, and authorizing the City Manager or his designee to execute all necessary documents. (Contract # C114-04)

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2005-06**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	117,008	0	**117,008**
Encumbered/Expended Amount	0	-49,223	0	**-49,223**
This Item	0	-25,873	0	**-25,873**
BALANCE	0	41,912	0	**41,912**

FUND(S): **TECHNOLOGY SERVICES FUND**

COMMENTS: Funds are included in the 2005-06 Telecommunications budget. The remaining balance will be used throughout the year for other Telecommunications projects.

STRATEGIC PLAN GOAL: This item relates to the City's Goal of "Service Excellence."

SUMMARY OF ITEM

Request for authorization to purchase supply and installation of fiber and copper connectivity for City of Plano offices and facilities in the Cox Building, which is currently under renovation. The offices and other spaces are to be utilized by the Creative Arts Division of the Parks and Recreation Department. Services will include all wire pulling and connection, installation of all necessary panels and patching, and installation of 29 work station terminals in the Cox Building.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Quote from Henkels & McCoy, Inc.	

8-1

REV 08/98

HENKELS & McCOY

Telecommunications Contractor

515 HUFFINES BLVD
LEWISVILLE, TX 75057
(972) 512-2926 FAX (972) 512-2959

August 4, 2005
City of Plano
1520 K Avenue
P.O. Box 860358
Plano, Texas 75086-0358

Attn: David Kidd
RE: Courtyard / Cox Building Tie

Scope of Work
Henkels & McCoy, Inc. is pleased to submit pricing to provide fiber and copper connectivity, consisting of 12 strands of single-mode fiber and a 200 pair copper cable. These cables will originate from the Courtyard Theater (CT) Communication Room to the southeast corner of the Cox building. Terminations at CT will be to existing 100 pr. protectors for the copper and to an existing fiber cabinet for the fiber. At the Cox building we will install a 19" freestanding rack and house this rack with a new fiber cabinet and mount 2 x 100 pr. protectors on the wall. The cable pathway for these will be from an existing 4" conduit from the CT to a hand-hole and from the hand-hole to contractor provided conduit which stub out from the Cox Building and into the lawn of the Courtyard Theatre. We will enter the Cox building through existing conduits which run to the Telecom Closet.

Price for the above Scope is:	Labor	$ 7,470.00
	Material	$ 5,454.00
	Total	**$ 12,924.00**

Henkels & McCoy will also provide terminate and test per contract Twenty-Nine (29) standard voice and data workstations @ a cost of $ 363.80 = **$ 10,550.20**

Additional Cost not covered in the contract is the following: **$ 2,399.00**
2- 48 port patch panels
3-Horz. Managers
2-Vert. Managers
58- Cat-6, 5 ft. Patch Cords
58- Cat-6, 9 ft. Patch Cords

Labor	**265 hrs @ $36.50**	**$ 9,672.50**
Material		**$ 16,200.70**

Grand Total for Combined work is: **$ 25,873.20**

12 Fiber Single-mode OSP	370-342-asmodelst-12	520	Ft	$0.31	$ 161.20
ORMMAC Fiber Cab.	OR-615-MMC-72P-00	1	Ea	$244.63	$ 244.63
Coupler Panels	OR-615SCDSM3-L	4	Ea	$41.40	$ 165.60
SC S/M Connectors 3M	8100-YS	24	Ea	$9.03	$ 216.72
Fan-Out	FAN-BT25-06	4	Ea	$13.17	$ 52.68
200 pr Copper OSP	E-020024DFC	520	Ft	$2.79	$ 1,450.80
Building Entrance Protector	489ACA1-100	2	Ea	$677.44	$ 1,354.88
Plug in Modules	4C1S	200	Ea	$3.64	$ 728.00
19" rack		1	Ea	$188.18	$ 188.18
OSP Conduit 4" PVC Work		110	Ft	$ 39.90	$ 4,382.00

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Category 6 CMP	CMP-00424LAN-7-06	9000	ft	$0.45	$ 4,050.00
Category 5E CMP	CMP-00424LAN-6-01	5000	FT	$0.18	$ 900.00
J-HOOK 3/4"	CAT12AB	75	ea	$1.15	$ 86.25
Faceplate QUAD	OR-40300546	29	ea	$1.46	$ 42.34
RJ-45 Module CAT-6	TJ600-26	58	EA	$6.05	$ 350.90
RJ-25C Module CAT-3	63700005	58	EA	$2.72	$ 157.76
Icons Data (BLU)	40326200	58	EA	$0.18	$ 10.44
Icons Voice (WH)	40309100	58	EA	$0.18	$ 10.44
48 Port Patch Pnl C-6	PHD66U48	2	EA	$56.25	$ 112.50
Horz. Management	808004759	3	EA	$ 33.75	$ 101.19
Vert. Manager	60400435	2	EA	$ 135.00	$ 270.00
Cover	60400436	2	EA	$ 90.00	$ 180.00
Patch Cord 7'	ORMC607-05	58	EA	$ 8.00	$ 465.00
Patch Cord 10'	ORMC610-05	58	EA	$ 8.94	$ 519.10

Assign CRO number: _____

Authorization signature: _____ **Date:** _____

Please print: _____

Thank you for allowing Henkels & McCoy the opportunity to provide you with this proposal if further assistance is required please call me at (972) 512-2922.

Sincerely;
Al Hussey
Area Manager
Henkels & McCoy, Inc.

f-3

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Equipment Services		Initials	Date
Department Head	Karl Henry	Jim Foster / Executive Director		11-8-05
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):	Linda M. Robinson x4180			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER PURCHASE OFF EXISTING CONTRACT

CAPTION

Purchase from Existing Contract/Agreement to authorize the purchase of two (2) Dodge Charger Police Vehicles in the amount of $52,360.00 from Columbus Country Dodge, through Texas Association of School Board Purchasing Buyboard Contract and authorizing the City Manager or his designee to execute all necessary documents. (208-04)

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	44,200	0	**44,200**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-52,360	0	**-52,360**
BALANCE	0	**-8,160**	0	**-8,160**

FUND(S): EQUIPMENT REPLACEMENT FUND

COMMENTS: Funds are included in the FY 2005-06 approved budget for the replacement purchase of (2) Dodge Chargers, which are being substituted for (2) Ford Crown Victoria's. Savings realized from purchases of other budgeted rolling stock will be utilized for the shortage on this item.

STRATEGIC PLAN GOAL: Police vehicle replacement relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Equipment Services requests authorization to purchase two Dodge Charger Police vehicles from Columbus Country Dodge, through its contract with the Texas Association of School Board Purchasing Buyboard Program. These units are replacements budgeted from the FY 05/06 Equipment Replacement Fund and are yet to be determined for Department 532/Police, Account 01-532-8421; Supplement 00071001. The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271, Subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (208-04)

Total purchase price including buyboard fee is $52,360.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Agenda, Memo, Quote Sheet	

REV 08/98

Linda Robinson

From: January Cook
Sent: Tuesday, November 01, 2005 10:57 AM
To: Linda Robinson
Cc: Reid Choate
Subject: RE: Agenda's for 11 Chevy Impalas and 2 Dodge Chargers-11/14/05

Approved by Diane Palmer. Please proceed with your process.

Thank You

January M. Cook, CPPB
Senior Buyer/Purchasing Div.
Voice: (972) 941-7376
Fax: (972) 461-6879
januaryc@plano.gov

From: Linda Robinson
Sent: Monday, October 31, 2005 1:06 PM
To: January Cook
Cc: Karl Henry; Reid Choate; Jimmy Foster; Marty Childers; Greg Rushin; Steve Nagy; Glen Brashear; Diane Palmer; Steve Teiper
Subject: Agenda's for 11 Chevy Impalas and 2 Dodge Chargers-11/14/05

For your review and approval. Please advise so I may proceed accordingly.
Thank you,

Linda M. Robinson

Senior Admin. Assistant

Equipment Services Division

(972) 769-4180 | (972) 769-4259 Fax

lindaro@plano.gov

G-2

11/1/2005

Plano
All-America City
1994

MEMORANDUM

DATE: October 31, 2005

TO: January M .Cook, Senior Buyer

FROM: Reid Choate, Technical Coordinator

SUBJECT: Request to purchase two (2) Dodge Charger Pursuit Police Vehicles (LXDH48) through the Texas Association of School Board Cooperative Purchasing Buyboard Contract #208-04 awarded to Columbus Country Dodge.

Base Price:	$19,217.00 x 2 =	$38,434.00
Published Options:	$ 4,313.00 x 2 =	$ 8,626.00
Unpublished options:	$ 2,450.00 x 2 =	$ 4,900.00
Buyboard Fee:		$ 400.00
TOTAL Price:		**$52,360.00**
Budgeted Amount:		$44,200.00

NOTE: These units are budgeted from the FY 05/06 Equipment Replacement Fund for Dept 532/Police and units to be replaced are yet to be determined.
Account #01-532-8421; Supplement #00071001

Please reference Purchase Order Requisition No: **903529 .**

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

Cc: Jimmy Foster
Karl Henry
Marty Childers
Greg Rushin
Steve Nagy
Glen Brashear
Stephen Teiper
Diane Palmer

g-3

CITY OF PLANO

10/25/05
Page - 1

P.O. Number 903529 OR
Cost Center 071

Supplier
BABY JACK CHRYSLER AUTOMOTIVE LTD
COLUMBUS COUNTRY DODGE CHRYSLER JEEP
ATTN: AVERYT KNAPP
P O BOX 27
CALDWELL TX 77836

Ship To
CITY OF PLANO
FLEET & EQUIPMENT SERVICES DIVISION
4200 W PLANO PARKWAY
PLANO TX 75093

Ordered 10/25/05 Freight
Requested 10/25/05 Order Taken By
Delivery

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
DODGE CHARGER PURSUIT VEHICLES	2	EA	19,217.0000	38,434.00	10/25/05
INVOICE TO FOLLOW					
BUYBOARD CONTRACT #208-04.					
AWARDED TO COLUMBUS COUNTRY DODGE.					
REQUEST TO PURCHASE TWO (2) DODGE					
CHARGER PURSUIT POLICE PACKAGE VEHICLES (LXDH48)					
THROUGH THE TEXAS ASSOCIATION OF SCHOOL					
BOARD COOPERATIVE PURCHASING PROGRAM.					
NOTE: THESE UNITS ARE BUDGETED FROM THE FY05/06					
EQUIPMENT REPLACEMENT FUND FOR DEPT. 532/POLICE.					
THE UNITS TO BE REPLACED ARE YET TO BE DETERMINED.					
DOLLAR AMOUNT BUDGETED $44,200.00.					
ACCOUNT #01-532-8421.					
SUPPLEMENT # 00071001.					
REQUISITION REQUESTED BY REID CHOATE.					
PUBLISHED OPTIONS	2	EA	4,313.0000	8,626.00	10/25/05
INVOICE TO FOLLOW					
UNPUBLISHED OPTIONS	2	EA	2,450.0000	4,900.00	10/25/05
INVOICE TO FOLLOW					
BUYBOARD FEE		EA	400.0000	400.00	10/25/05
INVOICE TO FOLLOW					

g-4

TermNet 30 Days

Total Order
52,360.00

CONTRACT PRICING WORKSHEET

End User: CITY OF Plano	Contractor: Baby Jack Auto Group
Contact Name: Reid Choate	
Email: reidc@plano-gov	Prepared By: Averyt Knapp/Adrienne Gattis
Phone #: 972-769-4182	Email: aknapp@caldwellcountry.com
Fax #: 972-461-9349	Asst Email: agattis@caldwellcountry.com
Location City & State Plano, Tx	Phone #: 800-299-7283 or 979-567-6116
Date Prepared: Oct 24, 2005	Fax #: 979-567-0853

Product Description: DODGE Charger Police LXDH48

A Base Price: Buyboard 208-04 — A 19,217.

B Published Options

Code	Description	Cost	Code	Description	Cost
29A	Police Hemi 5.7L Group	3580.		tax id 1-86-1078172-8	
X5	Cloth w/vinyl rear	120.		Columbus Country DODGE	
LNH	Chrome LH Spotlight	200.		P.O. Box 550	
CKJ	vinyl floor	75.		Columbus, TX 78934-0550	
CW6	Release Handle	25.			
JPR	Power Seat	380.			
TBW	Full Spare	160.			
	(5% tax B options discount (-227.)			Subtotal B	4313.

C Unpublished Options

Code	Description	Cost	Code	Description	Cost
PSF	Plano Special Paint	2450.			
	& Hood				
				Subtotal C	2450.

D Other Price Adjustments (Installation, Delivery, Etc...)

Subtotal D

E Unit Cost Before Fee & Non-Equipment Charges(A+B+C+D) — 25,980.

Quantity Ordered — X 2

Subtotal E — 51,960.

Buyboard — Subtotal F — 400.

G Non-Equipment Charges (Trade-In, Warranty, Etc...)

H Total Purchase Price (E+H+G) — 52,360. ✓

Estimated Delivery Date: 60-90-120 (paint)

g-5

Prepared By:
administrator
Baby Jack Automotive
c/o Averyt Knapp, PO BOX 27
Caldwell, TX 77836
Phone: (800) 299-7283
Fax: (979) 567-0853
Email: aknapp@caldwellcountry.com

2006 Fleet/Non-Retail Dodge Charger 4dr Sdn Police RWD LXDH48

WINDOW STICKER

2006 Dodge Charger 4dr Sdn Police RWD	Interior: DB Drk/Lt Slate Gray
* 5.7L/345 CID * Gas V8	Exterior 1: XR Brilliant Black Crystal Prl
5-Speed Automatic	Exterior 2:

CODE	MODEL	MSRP
LXDH48	2006 Dodge Charger 4dr Sdn Police RWD	$22,320.00
	OPTIONS	
—	NATIONAL REGION	
—	NATIONAL DELIVERY	$0.00
NAS	50-STATE EMISSIONS	$0.00
EZB	5.7L HEMI MULTI-DISPLACEMENT V8 ENGINE	$0.00
DGJ	5-SPEED AUTOMATIC TRANSMISSION W/OD	$2,230.00
29A	29A POLICE CUSTOMER PREFERRED ORDER SELECTION PKG	$0.00
TWM	P225/60VR18 PERFORMANCE BSW TIRES	$3,580.00 ✓
X5__	HD CLOTH FRONT BUCKET SEATS	$0.00
P__	STANDARD PAINT	$120.00 ✓
LNH	CHROME DRIVER-SIDE SPOT LAMP	$0.00
CKJ	BLACK VINYL FLOOR COVERING	$200.00 ✓
TBW	FULL-SIZE SPARE TIRE W/MATCHING WHEEL	$75.00 ✓
CW6	EMERGENCY RELEASE HANDLES	$160.00 ✓
JPR	8-WAY PWR DRIVER SEAT	$25.00 ✓
	SUBTOTAL	$380.00 ✓
		$29,090.00

options $4540.
5% (- 227.) Buyboard
total $4313

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

GM AutoBook, Data Version: 105.2, Data updated 10/4/2005 10:42:00 AM

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October 13, 2005 12:13:58 PM

Customer File:

g-6

Prepared By:
administrator
Baby Jack Automotive
c/o Averyt Knapp, PO BOX 27
Caldwell, TX 77836
Phone: (800) 299-7283
Fax: (979) 567-0853
Email: aknapp@caldwellcountry.com

2006 Fleet/Non-Retail Dodge Charger 4dr Sdn Police RWD LXDH48

SELECTED MODEL & OPTIONS

SELECTED OPTIONS - 2006 Fleet/Non-Retail LXDH48 4dr Sdn Police RWD

CATEGORY Code	Description	MSRP
CPOS PKG		
29A	29A POLICE CUSTOMER PREFERRED ORDER SELECTION PKG -inc: 5.7L V8 engine, 5-speed auto trans, 160 MPH speedometer, 18" x 7.5" steel wheels w/bright hub caps, 19 gallon fuel tank, 4-wheel HD anti-lock disc brakes, 800 CCA maintenance-free battery, tilt steering wheel w/column mounted shift lever, engine hour meter, engine oil cooler, equipment mounting bracket, GVW/payload rating, HD cloth front bucket & rear bench seats, high speed engine controller, load leveling & height control, mini floor console, P225/60R18 performance BSW tires, performance steering, performance suspension, security alarm, severe duty II engine cooling, underhood lamp	$3,580.00
TIRES		
TWM	P225/60VR18 PERFORMANCE BSW TIRES (STD)	$0.00
SEAT TYPE		
C8__	HD CLOTH FRONT BUCKET SEATS -inc: HD cloth rear bench (STD)	$0.00
PAINT TYPE		
P__	STANDARD PAINT	$0.00

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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October 24, 2005 9:16:58 AM

Customer File:

9-7

The Local Government Purchasing Cooperative

For the Period 10/1/2005 to 9/30/2007

Final Catalog Award Report for Additional Vehicles

10 Optional Equipment

Vendor	Vendor Catalog Info	Percent Discount	Award
Philpott Motors Ltd.		5%	Yes
Columbus Dodge Chrysler Jeep		5%	Yes
Columbus Ford Mercury		5%	No
Gunn Dodge		0%	Yes

P.O. Box 400
Austin, Texas 78767-0400
512-467-0222
800-695-2919
Fax: 800-211-5454
www.buyboard.com

September 16, 2005

Sent Via E-mail: aknapp@caldwellcountry.com

Mr. Averyt Knapp
Columbus Dodge Chrysler Jeep
4850 I 10
Columbus, TX 78934

Proposal Name & Number: Additional Vehicles

Dear Mr. Knapp:

Congratulations, your company has been successful on the above referenced proposal! This contract will be effective immediately. A tabulation is attached for your review. The items your company has been awarded are as follows:

1. Mega Cab Pick Up, Item #2
2. Magnum Police Vehicle, Item #3
3. Dodge Charger, Item #4
4. Dodge Charger Police Vehicle, Item #5
5. Options, Item #10

Receipt of a purchase order directly from a Cooperative member is not within the guidelines of the coop. Accepting orders directly from member entities may result in a violation of the State of Texas competitive bid statute and cancellation of the proposal award. Therefore, all orders must be processed through the Cooperative in order to comply. We request your assistance in immediately forwarding by fax (1-800-211-5454) to the cooperative any orders received directly from member entities. If by chance an order sent directly to you has been unintentionally processed, please fax it to the Cooperative (1-800-211-5454) and note it as **RECORD ONLY** to prevent duplication.

On behalf of the Texas Association of School Boards, we appreciate your interest in the Cooperative and we are looking forward to your participation in the program. If you have any questions, please contact me at 512-467-0222, ext. 7154 or 1-800-695-2919.

Sincerely,

Sharon McAfee
Bid Administration Manager

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Equipment Services		Initials	Date
Department Head	Karl Henry	Jim Foster / Executive Director		11-8-05
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):	Linda M. Robinson x4180			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER PURCHASE OFF EXISTING CONTRACT

CAPTION

Purchase from Existing Contract/Agreement to authorize the purchase of eleven (11) Chevy Impala (9C3) Unmarked Police Sedans in the amount of $190,058.00 from Caldwell Country Chevrolet, through Tarrant County Joint Venture Cooperative Purchase Program and authorizing the City Manager or his designee to execute all necessary documents. (2005-001)

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	249,000	249,000	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-190,058	0	**-190,058**
BALANCE	0	**58,942**	0	**58,942**

FUND(S): EQUIPMENT REPLACEMENT FUND $209,000; GENERAL FUND $40,000

COMMENTS: Funds are included in the 2005/06 approved budget. (9) units are ERF replacements, (2) units are new additions to the fleet. The balance of funds will be used for other rolling stock purchases.

STRATEGIC PLAN GOAL: Police vehicle replacements and additions relate to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Equipment Services requests authorization to purchase eleven Chevy Impala (9C3) Unmarked Police Sedans from Caldwell Country Chevrolet, through its contract with Tarrant County Joint Venture Cooperative Purchase Program. Nine of these are replacements budgeted from the FY 05/06 for Department 532/Police, Account 01-532-8421; Supplement 00071001 for units 22020; 22031; 23007; 23009; 23010; 23012; 98238; 99261 and 99265. The other two units are new additions to the fleet for Dept 532/Police per Account 01-532-8421; Supplement 5320008. The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271, Subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (2005-001)

Total purchase price including delivery fees for all 11 units is $190,058.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Agenda, Memo, Quote Sheet,	

Linda Robinson

From: January Cook
Sent: Tuesday, November 01, 2005 10:57 AM
To: Linda Robinson
Cc: Reid Choate
Subject: RE: Agenda's for 11 Chevy Impalas and 2 Dodge Chargers-11/14/05

Approved by Diane Palmer. Please proceed with your process.

Thank You

January M. Cook, CPPB
Senior Buyer/Purchasing Div.
Voice: (972) 941-7376
Fax: (972) 461-6879
januaryc@plano.gov

From: Linda Robinson
Sent: Monday, October 31, 2005 1:06 PM
To: January Cook
Cc: Karl Henry; Reid Choate; Jimmy Foster; Marty Childers; Greg Rushin; Steve Nagy; Glen Brashear; Diane Palmer; Steve Teiper
Subject: Agenda's for 11 Chevy Impalas and 2 Dodge Chargers-11/14/05

For your review and approval. Please advise so I may proceed accordingly.
Thank you,

Linda M. Robinson

Senior Admin. Assistant

Equipment Services Division

(972) 769-4180 | (972) 769-4259 Fax

lindaro@plano.gov

h-2

11/1/2005

Plano
All-America City
1994

MEMORANDUM

Date: October 31, 2005

To: January M. Cook, Senior Buyer

From: Reid Choate, Technical Coordinator

Subject: Request to purchase eleven (11) Chevy Impalas Unmarked Police Sedans (9C3) through Tarrant County Joint Venture Cooperative Purchase per Bid No. #2005-001, contract awarded to Caldwell Country Chevrolet.

Base Price each:	$ 16,568.00 x 11 =	$182,248.00
Published Options:	$ 373.00 x 11 =	$ 4103.00
Unpublished Options:	$ 69.00 x 11 =	$ 759.00
Delivery Charges:	$ 268.00 x 11 =	$ 2,948.00
Total Price Per Unit:	$ 17,278.00 x 11 =	**$190,058.00**

NOTE: Two (2) units are new additions to the fleet per FY 05/06 for Dept 532/Police Budget amount **$40,000.00**; Account #01-532-8421; Supplement #5320008.
The other 9 units are replacements per FY 05/06 for Dept 532/Police for Account #01-532-8421; Supplement #00071001 as follows:
Budget Amount: $21,000.00 x 6 = **$126,000.00** for replacements: 22020; 22031; 23007; 23009; 23010 and 23012.
Budget Amount: **$29,000.00** for replacement 98238.
Budget Amount: $27,000.00 x 2 = **$54,000.00** for replacements: 99261 and 99265.

TOTAL BUDGET AMOUNT FOR 11 UNITS = $249,000.00.

Please reference CRO NO. **358425.**

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

Cc: Jimmy Foster
Karl Henry
Marty Childers
Greg Rushin
Steve Nagy
Glen Brashear
Diane Palmer
Stephen Teiper

h-3

CITY OF PLANO

10/25/05
Page - 1

P.O. Number 358425 OC
Cost Center 071

Supplier BABY JACK II AUTOMOTIVE LTD
CALDWELL COUNTRY CHEVROLET-PONTIAC
P O BOX 27
CALDWELL TX 77836

Ship To CITY OF PLANO
FLEET & EQUIPMENT SERVICES DIVISION
4200 W PLANO PARKWAY
PLANO TX 75093

Ordered 10/25/05 Freight
Requested 10/25/05 Order Taken By
Delivery

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
MIDSIZE POLICE SEDANS	11	EA	16,568.0000	182,248.00	10/25/05

INVOICE TO FOLLOW

TARRANT COUNTY CONTRACT #2001-005.
AWARDED TO CALDWELL COUNTRY CHEVROLET.
PURCHASE OF ELEVEN (11) UNMARKED POLICE
PACKAGE, MIDSIZE SEDANS: 9C3 POLICE IMPALAS.
BASE PRICE $16,568.00.
PUBLISHED OPTIONS $4,103.00.
UNPUBLISHED OPTIONS $759.00.
DELIVERY FEE $2,948.00.
ALL VEHICLES ARE FOR DEPT. 532, POLICE DEPT.
TWO (2) NEW ADDITIONS TO THE FLEET; BUDGETED
AMOUNT $40,000.00.
ACCOUNT 01-532-8421.
SUPPLEMENT # 5320008.
REPLACING NINE (9) UNITS:
22020
22031
23007
23009
23010
23012
98238
99261
99265

h-4

ACCOUNT # 01-532-8421.
SUPPLEMENT # 00071001.
CRO REQUESTED BY REID CHOATE.

PUBLISHED OPTIONS		EA	4,103.0000	4,103.00	10/25/05

P.O. Number 358425 OC

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
INVOICE TO FOLLOW					
UNPUBLISHED OPTIONS		EA	759.0000	759.00	10/25/05
INVOICE TO FOLLOW					
DELIVERY FEE		EA	2,948.0000	2,948.00	10/25/05
INVOICE TO FOLLOW					

	Total Order
TermNet 30 Days	190,058.00

h-5

CONTRACT PRICING WORKSHEET

End User: CITY OF Plano	Contractor: Baby Jack Auto Group
Contact Name: Reid Choate	
Email: reidc@plano.gov	Prepared By: Averyt Knapp/Adrienne Gattis
Phone #: 972-769-4182	Email: aknapp@caldwellcountry.com
Fax #: 972-461-9349	Asst Email: agattis@caldwellcountry.com
Location City & State Plano, TX	Phone #: 800-299-7283 or 979-567-6116
Date Prepared: Oct 21, 2005	Fax #: 979-567-0853

Product Description: Tarrant contract 2005-009

A Base Price: Impala 9C3 Police — A 16,568.

B Published Options

Code	Description	Cost	Code	Description	Cost
B34	Mats	69.			
A98	trunk release	u/c			
6C7	Dome Light-aux.	56.			
AMF	Keyless remote (6 key)	72.			
AP9	cargo net	39.			
man	manuals shop	137.			

Subtotal B: 373.

C Unpublished Options

Code	Description	Cost	Code	Description	Cost
968	Daytime Delete	69.			

Subtotal C: 69.

D Other Price Adjustments (Installation, Delivery, Etc...)

Delivery 900 — Subtotal D: 268.

E Unit Cost Before Fee & Non-Equipment Charges (A+B+C+D): 17,278.

Quantity Ordered: X 11

Subtotal E: 190,058

Subtotal F: —0—

G Non-Equipment Charges (Trade-In, Warranty, Etc...)

H Total Purchase Price (E+H+G): 190,058

Estimated Delivery Date: 60-90

h-6

Prepared By:
administrator
Baby Jack Automotive
c/o Averyt Knapp, PO BOX 27
Caldwell, TX 77836
Phone: (800) 299-7283
Fax: (979) 567-0853
Email: aknapp@caldwellcountry.com

2006 Fleet/Non-Retail Chevrolet Impala Police Pkg 4dr Sdn Unmarked Polic

WINDOW STICKER

2006 Chevrolet Impala Police Pkg 4dr Sdn Unmarked Police Pkg 9C3	Interior:
3.9L/- TBD - CID Gas V6	Exterior 1:
4-Speed Automatic w/OD	Exterior 2:

CODE	MODEL	MSRP
1WS19	2006 Chevrolet Impala Police Pkg 4dr Sdn Unmarked Police Pkg 9C3	$24,035.00
	OPTIONS	
LZ9	ENGINE, 3.9L 3900 V6 SFI	$0.00
___	TRANSMISSION, 4-SPEED AUTOMATIC, ELECTRONICALLY CONTROLLED WI	$0.00
9C3	UNMARKED POLICE PACKAGE,	$0.00
AN3	SEAT, FRONT CLOTH, 40/20/40 SPLIT-BENCH	$0.00
__C	FRONT 40/20/40 SPLIT-BENCH (CLOTH) WITH CLOTH REAR BENCH SEAT	$0.00
___	SOLID PAINT	$0.00
U1C	SOUND SYSTEM, ETR AM/FM STEREO WITH CD PLAYER,	$0.00
AMF	KEYLESS ENTRY, REMOTE FLEET PACKAGE, PROGRAMMABLE,	$75.00
B34	FLOORMATS, CARPETED, FRONT AND REAR	$80.00
AP9	CARGO CONVENIENCE NET, TRUNK	$45.00
A98	TRUNK RELEASE, IGNITION CONTROLLED	$0.00
6C7	LIGHTING, FRONT AUXILIARY DOME	$100.00
V2G	RETAIL AMENITY DELETE	$0.00
VQ1	FLEET PROCESSING OPTION	$0.00
	SUBTOTAL	**$24,335.00**

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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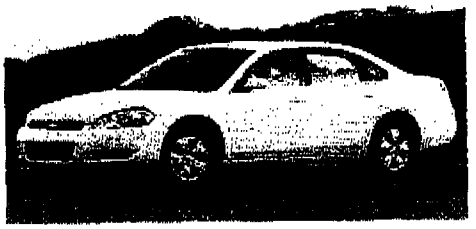
Customer File:

h-7

Prepared By:
administrator
Baby Jack Automotive
c/o Averyt Knapp, PO BOX 27
Caldwell, TX 77836
Phone: (800) 299-7283
Fax: (979) 567-0853
Email: aknapp@caldwellcountry.com



2006 Fleet/Non-Retail Chevrolet Impala Police Pkg 4dr Sdn Unmarked Polic

COLOR AVAILABILITY

COLOR CHART - 2006 Fleet/Non-Retail 1WS19 4dr Sdn Unmarked Police Pkg 9C3

EXTERIOR	INTERIOR	
	Ebny (19C)	Ntrl (52C)
Superior Blue Metallic (22U)	X	X
White (40U)	X	X
Black (41U)	X	X
Dark Silver Metallic (42U)	X	
Amber Bronze Metallic (53U)	X	X
Sport Red Metallic (63U)	X	X
Silverstone Metallic (67U)	X	

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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Customer File:

October 21, 2005 3:02:05 PM

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		11/8/05
Dept Signature:		City Manager		11/8/05
Agenda Coordinator (include phone #):	Pegues (7198)		(Project No. 5625)	

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☒ AWARD OF CONTRACT ☐ OTHER

CAPTION

Approval of contract to approve the terms and conditions of an engineering services contract by and between the City and Dannenbaum Engineering Company – Dallas, L.L.C. in the amount of $189,816 for design of Communications Parkway – Spring Creek Parkway to Tennyson Parkway and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	200,000	1,300,000	**1,500,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-189,816	0	**-189,816**
BALANCE	0	10,184	1,300,000	**1,310,184**

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the 2005-06 Street Improvement CIP. This item, in the amount of $189,816 will leave a current year balance of $10,184 for the Communications – Spring Creek to Tennyson project.

STRATEGIC PLAN GOAL: Street design relates to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

This agreement with Dannenbaum Engineering Company - Dallas, L.L.C. for engineering design of Communications Parkway - Spring Creek Parkway to Tennyson Parkway will provide for installation of a six lane divided thoroughfare from Spring Creek Parkway north to the existing improved roadway approximately 800 feet south of Tennyson Parkway and widening of the existing four lane to a six lane thoroughfare. The project also includes landscaping, irrigation and street light construction.

The contract fee is for $189,816 and is detailed as follows:

Research, Data Collection, Start Up and Coordination	$ 6,707
Design Survey	$ 21,653
Geotechnical Report	$ 4,500
Preliminary Design	$ 75,194
Final Design	$ 51,462
Bid Phase Services	$ 6,051
Construction Administration	$ 17,337
Construction Control Survey	$ 3,383
TOTAL BASIC SERVICES	$186,287
Special Services (Survey for Right of Way Acquisition)	$ 3,529
TOTAL FEE ALL SERVICES	$189,816

CITY OF PLANO
COUNCIL AGENDA ITEM

Funding is available from the Street Improvement Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost $2,000,000.

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

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COMMUNICATIONS PARKWAY – SPRING CREEK PARKWAY TO TENNYSON PARKWAY

PROJECT NO. 5625

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **DANNENBAUM ENGINEERING COMPANY – DALLAS, L.L.C.**, a **TEXAS** Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

W I T N E S S E T H:

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 **COMMUNICATIONS PARKWAY – SPRING CREEK PARKWAY TO TENNYSON 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.

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.

VII. Indemnity

Engineer shall release, defend, indemnify and hold City and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Engineer and to the extent caused by the negligent act or omission or intentional wrongful act or omission of Engineer, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Engineer is legally responsible (hereinafter "Claims"). Engineer is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to approve defense counsel to be retained by Engineer in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Engineer's obligation to

defend City or as a waiver of Engineer's obligation to indemnify City pursuant to this Agreement. Engineer shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Engineer fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Engineer shall be liable for all costs incurred by City.

VIII. Independent Contractor

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

IX. Assignment and Subletting

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

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

City of Plano
Engineering Department
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:

Dannenbaum Engineering Company – Dallas, L.L.C.
Daniel W. Everett, P.E.
4141 Blue Lake Circle #240
Dallas TX 75244

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.

SIGNED on the date indicated below.

DANNENBAUM ENGINEERING COMPANY – DALLAS, L.L.C.
A Texas Limited Liability Company
By: Engineering Holding Corporation,
a Texas Corporation - Manager

DATE: _____ BY: _____
James D. Dannenbaum, President

CITY OF PLANO, TEXAS

DATE: _____ BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____, _____, by **JAMES D. DANNENBAUM, PRESIDENT,** of **ENGINEERING HOLDING CORPORATION,** a Texas corporation, Manager of **DANNENBAUM ENGINEERING COMPANY-DALLAS LLC,** a Texas Limited Liability Company on behalf of said company.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

_____
Notary Public, State of Texas

EXHIBIT A
SCOPE OF SERVICES

COMMUNICATIONS PARKWAY
SPRING CREEK PARKWAY TO TENNYSON PARKWAY
PROJECT NUMBER 5625
CIP NUMBER 32495

PROJECT DESCRIPTION:

1. Extension of Communications with a new "C" level six (6) lane divided thoroughfare (3-11' (F-F) through lanes on each side of the median) from Spring Creek north to the end of the existing improved roadway (approx. 800' south of Tennyson) with appropriate drainage systems.
2. Addition of a third (inside) lane to the existing improved roadway south of Tennyson for approximately its south 450'.
3. Installation of median openings and left turn lanes at appropriate locations.
4. Extension of the existing drainage boxes from the current discharge point at the south end of the existing pavement to eventually discharge to the drainage channel west of the proposed roadway alignment. The box should be sized as required to accommodate the required drainage runoff encountered by the project.
5. Communications is a "C" level thoroughfare, which consists of a 110' right-of-way, 6-11' (F-F) through lanes, a 20' (F-F) median and 2-12' (F-F) outside parkways. The paving section will be with an 8" reinforced concrete (5,000 psi) on 6" lime stabilized subgrade. The exception is that the widening sections in the existing improved area will be with 10" reinforced concrete (5,000 psi) on 6" compacted (not lime stabilized) subgrade.
6. At Spring Creek, the roadway will consist of a 130' right-of-way (65' each side of the centerline) with (on the approach side) 2-10' (F-F) left turn lanes, 3-11' (F-F) through lanes, 1-11' (F-F) right turn lane and a 9' (F-F) outside parkway. The median will be 4' (F-F). On the departure side will be 3-11' (F-F) through lanes and a 20' (F-F) outside parkway. The transition length between the 110' ROW and the 130' ROW will be between 150' and 300'. Additional guidelines regarding the transition length shall be provided to the consultant by the City during the design process.
7. Signal Design will not be included in this project.
8. Landscaping and Irrigation will be installed in median areas between Spring Creek and Tennyson and will generally include tree planting with appropriate irrigation design. Direction regarding landscaping and irrigation will be according to instructions from the City Park Department.
9. Water Improvements will include extension of existing stub-outs to clear existing pavement for future water line tie-ins, along with a 6" tee connection with gate valve and fire hydrant off each extension.

10. Sanitary Sewer improvements are not included in this project.
11. Street Light plans for foundation and conduit installation in the median areas between Spring Creek and Tennyson will be included in the project.
12. Right-of Way acquisition will be required for project construction. The consultant will be required to prepare the related instruments as part of the project. It appears that three (3) separate properties are involved.
13. Survey Work should extend from 200' south of the south curb line of Spring Creek to 300' north of the south end of the existing Communications improvements south of Tennyson.

BASIC SERVICES:

A. Research and Data Collection –

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

B. Design Survey –

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Survey should be to 50' beyond the ROW line and 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 above ground utility structures shall be located and referenced by utility name (i.e. TXU Electric, Verizon Telephone, Atmos Energy/Gas, Etc.). Buried utilities will be located and referenced by utility name (i.e. TXU Electric, Verizon Telephone, Atmos Energy/Gas, etc.) and will be graphically located by visible surface structures, as built plans, Utility Locator (DIGG TESS) markings and information provided (if any) by franchise utility companies. No warranty as to actual location of the buried utilities will be implied. Also survey any drainage channel outfalls to a minimum of 200' beyond the ROW line (or as needed to define conditions 50' beyond the end of proposed grade out).
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 to include all the area defined for survey above.
5. Provide roadway cross sections at a fifty-foot (50') interval relative to the project baseline and at all drives, street intersections, drainage channel/outfall areas or any other location of significance. Cross sections

are for project design review and quantity takeoffs and must be plotted and included as part of the final construction plan set for use during construction. Cross sections should cover the area defined for survey above.

6. When underground utilities are exposed, tie to project control baseline.
7. Identify the street address (if applicable) and the legal description (lot, block, addition, survey/abstract name) of all adjacent properties to the proposed construction and show on drawings.

C. Right-of-way and Easement Requirements – (See Special Services)

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. Geotechnical Report –

1. Perform geotechnical investigation for proposed design in the project area. Submit one copy of geotechnical report to the City with the preliminary design plans.
2. The geotechnical report shall include, but not be limited to the following:
   - A subsurface investigation consisting of soil and rock borings drilled to depth of 2 feet below the flow line of the proposed storm drain main/box to observe general site conditions, explore the subsurface materials, obtain samples for laboratory analysis and observe short-term groundwater levels as encountered during the drilling of the borings.
   - Laboratory testing on selected samples to classify soil and rock types and to determine the engineering properties of the subsurface materials.
   - Soil classification based on laboratory tests, estimation of subgrade support characteristics and recommended subgrade stabilization using lime for a rigid pavement.
3. Utilize existing geotechnical data available from the City of Plano for improvements.
4. Show geotechnical boring locations on the plan view of the construction drawings and cross reference to the geotechnical report. Soil horizon and vertical bore information shall be shown on the vertical profile view of the construction plans.

E. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets (22" x 34" size) at the engineering scale indicated:
   - Cover sheet.
   - Project layout control sheet(s). Scale 1"= 100'.
   - Quantity sheet. (quantities on a sheet by sheet basis)

- Typical sections and detail sheets.
- Construction phasing and temporary traffic control sheets, including temporary traffic signals. Scale 1"= 20'.
- Paving plan & profile sheets for street improvements (show from Spring Creek to Tennyson). Scale 1"= 20'H; 1"=5' V.
- Drainage area maps for street improvements. Scale 1"= 100'.
- Storm drain improvement plan & profile sheets. Scale 1"= 20'H; 1"= 5' V.
- SWPPP sheets meeting EPA and City of Plano requirements. Scale 1"= 40'.
- Landscape and irrigation plan sheets. Scale 1"= 20'.
- Final buttoning and signage plan sheets. If determined to be necessary, this may include buttoning and signing beyond the Spring Creek and Tennyson intersections if needed for proper traffic direction. At a minimum, the plan shall show the entire length between Spring Creek and Tennyson. Scale 1"= 40'.
- Street Lighting plans to show location of existing and proposed street light bases, pull boxes and conduits (should be shown on also on the paving plans). Scale 1"= 40'.
- Cross Sections. Scale 1" = 20' H; 1" = 2' V.

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

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 five (5) sets of preliminary plans, outline of special technical specifications and preliminary statement of probable construction cost to the City for review by:
   - x Engineering
   - x Public Works
   - x Inspectors
   - x Transportation
   - x Parks
7. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.
8. Distribute the preliminary plans and proposed schedule for bidding and start of construction to local utility companies to obtain information regarding impacts to their facilities.

F. Final Design –

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details into the construction plans and prepare additional details as required.
6. 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. Submit three (3) sets of final blue/black line prints, three (3) bound copies of the bid documents and one (1) unbound original bid document set to the City of Plano.
10. Attend a utility coordination meeting to start relocation process with affected franchise utilities. Distribute copy of final plans and proposed schedule for bid letting and construction to all affected franchise utilities.

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 four 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 sets 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. Provide 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. Prepare and process change orders in accordance with City of Plano format.
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.

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 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 three (3) right-of-way parcels 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 four (4) 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 one (1) permanent drainage easement on a per tract basis. Deliver three (3) reviewed and approved originals to the City.
4. Set new iron pins at all new corners, PC's and PT's of new right-of-way.

EXHIBIT B
SCHEDULE OF WORK
COMMUNICATIONS PARKWAY
SPRING CREEK PARKWAY TO TENNYSON PARKWAY
PROJECT NUMBER 5625
CIP NUMBER 32495

Activity	Duration (Calendar Days)	Anticipated Completion Date
1. Notice to Proceed	0	11/15/05
2. Design Survey & Concept Design	30	12/15/05
3. City Review	15	12/30/05
4. Preliminary Plans and ROW Documents	60	3/01/06
5. City Review	30	4/01/06
6. Final Plans and ROW documents	60	6/01/06
7. City Review	30	7/01/06
8. Final Plans with Bid Documents	7	7/08/06
9. City Final Review	7	7/15/06
10. Advertise for Bids	30	8/15/06
11. Receive Bids	0	8/15/06
12. Recommendation	7	8/22/06
13. Prepare Council Agenda	20	9/11/06
14. Council Award	0	9/11/06
15. Prepare, Execute Contract	45	10/26/06
16. Schedule Preconstruction Conference	14	11/09/06
17. Notice to Proceed	10	11/20/06
18. Construction	365	11/20/07

EXHIBIT C
PAYMENT SCHEDULE
COMMUNICATIONS PARKWAY
SPRING CREEK PARKWAY TO TENNYSON PARKWAY
PROJECT NUMBER 5625
CIP NUMBER 32495
(All fees "Not to Exceed" without prior approval)

WORK STAGE SUBMITTAL OR COMPLETION	FEE AMOUNT
BASIC SERVICES	
A. Research, Data Collection, Start Up and Coordination	$ 6,706.52
B. Design Survey	21,653.45
C. Right of Way & Easements Requirements (see Special Services)	
D. Geotechnical Report	4,500.00
E. Preliminary Design 1. Paving/Drainage (63,394.16)) 2. Street Lights/Illumination (4,300) 3. Landscape/Irrigation (5,500) 4. Direct Expense (2,000)	75,194.16
F. Final Design 1. Paving/Drainage (34,544.44) 2. Street Lights/Illumination (9,895.92) 3. Landscape Irrigation (5,500) 4. Direct Expense (1,521.15)	51,461.51
G. Bid Phase Services	6,051.44
H. Construction Administration 1. Overall Project (14,736.88) 2. Landscape/Irrigation (2,600)	17,336.88
I. Construction Control Survey	3,382.98
TOTAL BASIC SERVICES	$ 186,286.94

SPECIAL SERVICES

A. Right of Way and Easement Services	
1. Permanent ROW & Monuments 3 @ $523.09/each	1,569.27
2. Temporary construction Easements 4 @ 359.07/each	1,436.29
3. Permanent Drainage Easements 1 @ 523.09/each	523.09
TOTAL SPECIAL SERVICES	$ 3,528.65
TOTAL FEE ALL SERVICES	$ 189,815.59

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, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.

1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.

1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.

1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the

Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.

1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.

1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.

1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.

1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. <u>Engineer's Insurance - "Occurrence" Basis:</u>

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.

2.2 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

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

___ 18. Garagekeepers' Legal $_____- Comprehensive
$_____- Collision

___ 19. Owners Protective Liability $500,000 Combined single limits

_X_ 20. City named as additional insured on General Liability policy.. This coverage is primary to all other coverages the City may possess.

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

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

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

_X_ 24. The Certificate must state project title and project number.

_X_ 25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

I have reviewed these requirements with the Engineer named below. Additionally:

_X_ 26. The above policy(s) carry the following deductibles:_____

Full limits of coverage available for:
General Liability_____ Professional Liability _____
Automobile Liability_____

_X_ 27. Liability policies are (indicate):

OCCURRENCE [ ] CLAIMS MADE [ ]

_____ _____
Signature Date

_____
Insurance Agent (Print)

_____
Name of Insured

_____
Date

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned, declare and affirm that no person or officer in this sole proprietorship, partnership, corporation, or board has or will have during the term of this contract a prohibited interest as that term is defined in Section 11.02 of the Plano City Charter and the City's Code of Conduct, Chapter 2, Article IV of the City's Code of Ordinances.

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

DANNENBAUM ENGINEERING COMPANY – DALLAS, L.L.C.
A Texas Limited Liability Company
By: Engineering Holding Corporation,
a Texas Corporation - Manager

_____
Name of Engineering Firm

By:_____
Signature

James D. Dannenbaum
_____
(Print Name)

President
_____
Title

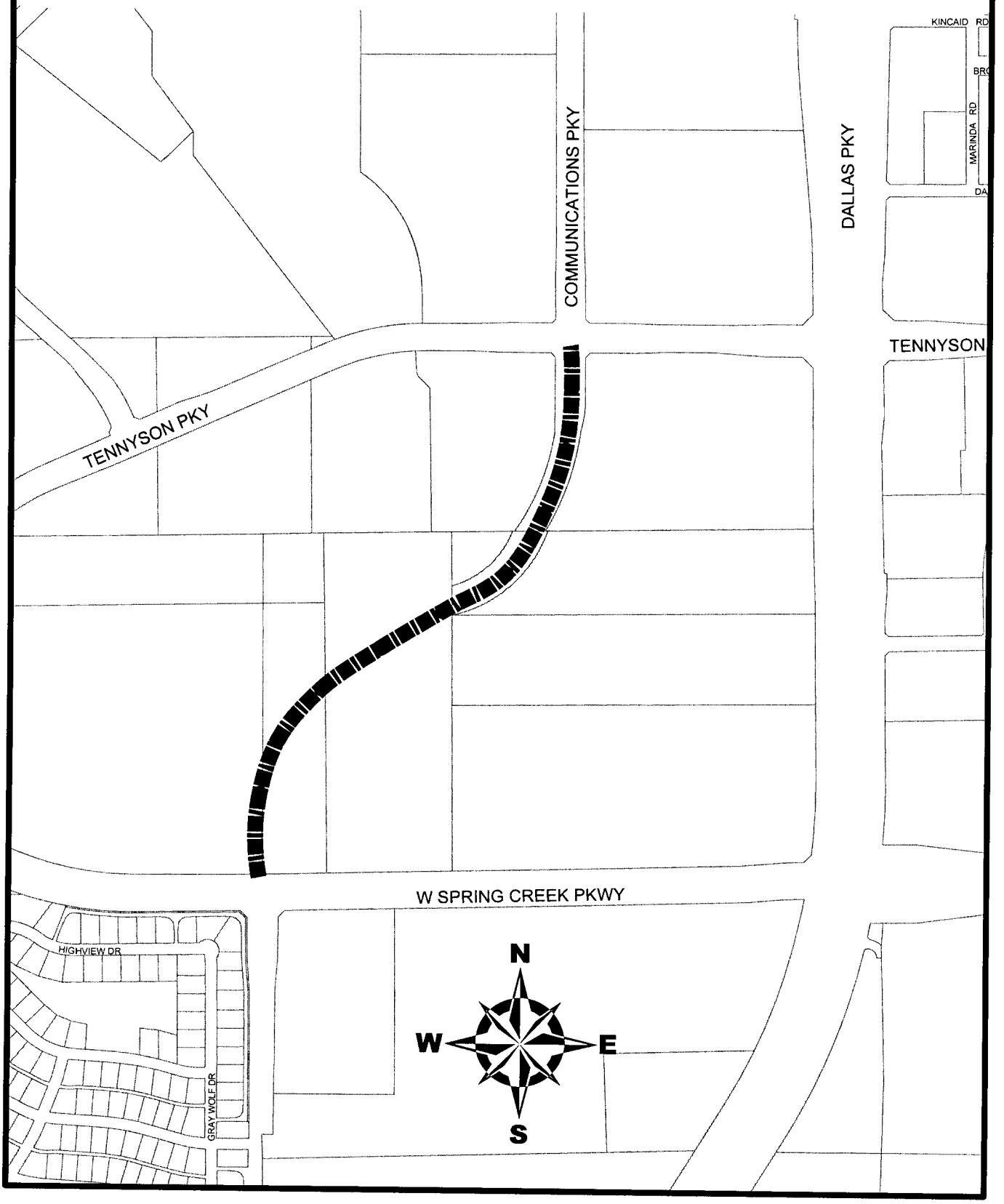
_____
Date

STATE OF TEXAS §
§
COUNTY OF _____ §

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

_____
Notary Public, State of Texas

COMMUNICATIONS PARKWAY
SPRING CREEK PARKWAY TO TENNYSON PARKWAY
PROJECT NO. 5625



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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Telecommunications 397		Initials	Date
Department Head	Edward Jenkins	Executive Director		10/3/05
Dept Signature:		City Manager		10/31/05
Agenda Coordinator (include phone #):	Lisa Prunty x 7504			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER CONTRACT MODIFICATION

CAPTION

Approval of Contract Modification to contract C100-02 Telecommunications Equipment authorizing expenditure for 2 years maintenance and support for the VESTA, MAGIC and ORION systems utilized by PSC.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year'	Future Years	TOTALS
Budget	0	45,000	0	**45,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-104,728	0	**-104,728**
BALANCE	0	-59,728	0	**-59,728**

FUND(S): WIRELINE FEES FUND & 911 RESERVE FUND

COMMENTS: Funding for a 1 year contract is included in the approved FY 2005-06 Operating Budget. The overage needed for a 2 year contract will be funded through the Wireline Fees and 911 Reserve Fund Balance. By opting for a 2 year contract unstead of a 1 year contract, the City will realize savings for the remainder of the contract period.

STRATEGIC PLAN GOAL: This service agreement relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Staff recommends approval of contract modification to C100-02 Telecommunications Equipment with Affiliated Telephone, approving expenditure for 2 years maintenance and support for the VESTA, MAGIC and ORION systems utilized by PSC in the amount of $104,728. These systems were replaced in 2003 and require maintenance and support for an additional 2 years to carry us through to the end of our 5 year contract with Affiliated Telephone. The contract was orginally awarded by Council on 8/12/02.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
ag 131 Vesta Annual Maintenance.doc	

AFFILIATED
communications

Customer Info:

Melissa Tutton
City of Plano-City Hall
1117 East 15th
Plano, TX 75074

Ship To: (if different)

Ship Via: N/A

Price Request: Software Support for Vesta and Magic-2 YRS

Qty	Part Number	Description	Unit Price	Ext. Price
		VESTA M1 System		
		VESTA M1 2.2		
		(14) Positions will expire in 10/05. (2) positions have expired in 2/05.		
2	809800-80017	SPT V RNSTMNT	$2,464.80	$4,929.60
16	809800-23001	SPT VM1 THRU YR5 PEI (optional)	$7,897.50	Optional
16	809800-80072	SPT VM1 THRU YR4 PEI (optional)	$7,108.40	Optional
16	809800-80010	SPT VM1 THRU YR3 PEI (optional)	$6,318.00	Optional
16	809800-80071	SPT VM1 THRU YR2 PEI (optional)	$4,212.00	$67,392.00
16	809800-80037	SPT VM1 THRU YR1 PEI	$2,369.90	Optional
		VESTA with IRR for Radio		
		IRR support expires in 2008 for 2 positions. Support is not required for (2) positions since existing support does not expire until 2008. If VESTA M1 support is purchased beyond 2008 please purchase support for IRR for (2) positions to co-terminate with VESTA M1.		
2	809800-80002	SPT VIRR THRU YR5 PEI (optional)	$1,047.80	Optional

J-2

2	809800-80109	SPT VIRR THRU YR4 PEI (optional)	$943.80	Optional
2	809800-80108	SPT VIRR THRU YR3 PEI (optional)	$838.50	Optional
2	809800-80107	SPT VIRR THRU YR2 PEI (optional)	$559.00	Optional
2	809800-80106	SPT VIRR THRU YR1 PEI (optional)	$314.60	Optional
		IRR support for 8 positions were never purchased. If IRR is being used on these (8) positions please purchase support.		
8	809800-80002	SPT VIRR THRU YR5 PEI (optional)	$1,047.80	Optional
8	809800-80109	SPT VIRR THRU YR4 PEI (optional)	$943.80	Optional
8	809800-80108	SPT VIRR THRU YR3 PEI (optional)	$838.50	Optional
8	809800-80107	SPT VIRR THRU YR2 PEI (optional)	$559.00	$4,472.00
8	809800-80106	SPT VIRR THRU YR1 PEI (optional)	$314.60	Optional
		VESTA-View (Integrated)		
		VESTA-View support expires in 2008 for 2 positions. Support is not required since existing support does not expire until 2008. If VESTA M1 support is purchased beyond 2008 please purchase support for VESTA-View to co-terminate with VESTA M1.		
2	809800-80041	SPT VV INTEG THRU YR5 PEI (optional)	$3,143.40	Optional
2	809800-80064	SPT 3YR INTEG VV PEI (optional)	$2,525.90	Optional
2	809800-80063	SPT VV INTEG THRU YR1 PEI (optional)	$949.00	Optional
	Sub Total			**$76,793.60**

MagIC MIS System
MagIC 2.6

J-3

		MagIC support for (14) positions expire in 10/05 and (2) positions expire in 11/05.		
16	809800-01203	MAGIC SPT THRU YR 5 PEI (optional)	$527.80	Optional
16	809800-01224	MAGIC 4YR SPT PEI (optional)	$473.20	Optional
16	809800-01201	MAGIC SPT THRU YR 3 PEI (optional)	$457.60	Optional
16	809800-01211	MagIC 2 YR PEI SPT (optional)	$280.80	$4,492.80
16	809800-01205	MAGIC SW SPT THRU YR 1	$158.60	Optional
	Sub Total			**$4,492.80**

Grand Total	**$81,286.40**

Quote Summary	
Mapping	$0.00
Product Configuration	$4,929.60
Software Support	$76,356.80
Summary Total	**$ 81,286.40**

Any line items listed as "Optional" in this quote are not included in the total of the proposal, or Quote Summary, and are not considered as part of the system. The Quote Summary is provided as an overview only. The line items and Grand Total reflect the system and price being quoted.

Scope of Work:

This pricing is valid for 90 days from September 29, 2005.

To place an order, please sign and fax back to (972) 852-4067. No coversheet required.

Approval Signature_____ Date_____

P.O. # (If Required)_____

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AFFILIATED
communications

Customer Info:

Melissa Tutton
City of Plano-City Hall
1117 East 15th
Plano, TX 75074

Ship To: (if different)

Ship Via: N/A

Price Request: **Software Support for Orion-2YRS**

Qty	Part Number	Description	Unit Price	Ext. Price
		ORION Mapping MapStar 5.2		
		MapStar support for (14) positions expire in 10/05 and MapStar support for (2) positions expired in 2/05.		
2	809800-01300	ORION SPT RNSTMNT	$1,404.00	$2,808.00
16	809800-01301	OR MPSTR SPT THRU YR5 (optional)	$2,416.70	Optional
16	809800-01305	OR MPSTR SPT YR4 (optional)	$2,174.90	Optional
16	809800-01302	OR MPSTR SPT THRU YR3 (optional)	$1,933.10	Optional
16	809800-01303	OR MPSTR SPT YR2 (optional)	$1,289.60	$20,633.60
16	809800-01350	OR MPSTR SPT THRU YR 1	$725.40	Optional
	Sub Total			**$23,441.60**
		Running SubTotal		**$23,441.60**
		Grand Total		**$23,441.60**

Quote Summary	
Mapping	$2,808.00
Product Configuration	$0.00
Software Support	$20,633.60
Summary Total	**$ 23,441.60**

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Any line items listed as "Optional" in this quote are not included in the total of the proposal, or Quote Summary, and are not considered as part of the system. The Quote Summary is provided as an overview only. The line items and Grand Total reflect the system and price being quoted.

Scope of Work:

This pricing is valid for 90 days from September 29, 2005.

To place an order, please sign and fax back to (972) 852-4067. No coversheet required.

Approval Signature_____ Date_____

P.O. # (If Required)_____

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Budget & Research		Initials	Date
Department Head	Karen M. Rhodes	Executive Director		
Dept Signature:		City Manager		10/25/05
Agenda Coordinator (include phone #):	Carla Rude, X7407			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☒ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

Agreement between the City of Plano and The Shops At Legacy, L.P. whereby the City will provide funding in part for the 4th Annual Holiday Festival of Tree Lights at the Shops of Legacy.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	39,000	0	**39,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-39,000	0	**-39,000**
BALANCE	0	0	0	**0**

FUND(S): **GENERAL FUND**

COMMENTS: This item is included in the approved FY 2005-06 Budget.

STRATEGIC PLAN GOAL: Funding for city-wide festivals relates to the City's Goal of "Premier City for Families".

SUMMARY OF ITEM

Contract between the City of Plano and The Shops At Legacy, L.P. to provide partial funding for the 4th Annual Holiday Festival of Tree Lights at the Shops of Legacy. The City will contribute $39,000 for this annual event benefiting Children's Medical Center Legacy.

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

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REV 08/98

CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS AND
THE SHOPS AT LEGACY L.P.
FOR ANNUAL TREE LIGHTING FESTIVAL

THIS CONTRACT is made and entered into by and between **THE SHOPS AT LEGACY, L.P.** a Texas Limited Partnership, whose address is 7200 Bishop Road, Suite 250, Plano, Texas 75024, hereinafter referred to as "The Shops at Legacy," and the **CITY OF PLANO, TEXAS,** a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

WHEREAS, The Shops at Legacy holds an annual tree lighting event, The Lights of Legacy, benefiting Children's Medical Center Legacy; and

WHEREAS, the City has been asked to contribute to this event; and

WHEREAS, the City wishes to promote visitors to the City of Plano through "The Lights of Legacy."

NOW, THEREFORE, in consideration of the terms and conditions contained herein, City and The Shops at Legacy do hereby agree as follows:

I.
DATE OF EVENT

The date of the annual tree lighting event, The Lights of Legacy, will be November 19, 2005.

II.
COMPENSATION

City agrees to pay The Shops at Legacy, a sum not to exceed **THIRTY-NINE THOUSAND AND 00/100 DOLLARS ($39,000.00)** to be used as follows:

$20,000 for a portion of Tree Lighting
$ 8,000 for a portion of holiday entertainment (Ricki Derek Holiday Swing Band, Strolling Caroler Quartets, Scrooge Magic Show, Two Snow Queens)
$11,000 for a portion of media promotions

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III.
GOVERNING LAW

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, and the exclusive venue for any legal proceedings involving this Agreement shall be Collin County, Texas.

IV.
AFFIDAVIT OF NO PROHIBITED INTEREST

The Shops at Legacy acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render this Agreement voidable. At the time of execution of this Agreement, a representative of The Shops at Legacy shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "A."

V.
ASSIGNMENT AND SUBLETTING

The Shops at Legacy further agrees that it will retain personal control and will give its personal attention to the fulfillment of this Agreement and that it will not assign by Power or Attorney, or otherwise, or sublet said Agreement without the prior written consent of City and that no part or feature of the work will be sublet to any one objectionable to City. The Shops at Legacy further agrees that the subletting of the work, or the performance of the Agreement, shall not relieve The Shops at Legacy from its full obligations to City as provided by this Agreement.

VI.
INDEPENDENT CONTRACTOR

The Shops at Legacy covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that The Shops at Legacy 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, and nothing herein shall be construed as creating a partnership or joint enterprise between City and The Shops at Legacy.

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VII.
INDEMNIFICATION

The Shops at Legacy shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death) claims, property damages (including loss of use), losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of The Shops at Legacy, its officers, agents, employees, subcontractors, licensees, invitees, or any other third parties for whom The Shops at Legacy is legally responsible (hereinafter "Claims"). The Shops at Legacy is expressly required to defend City against all such claims.

In the event the City is a named party to a suit arising out of the subject matter of this Agreement, the City shall have reasonable input into the selection of defense counsel to be retained by The Shops at Legacy in fulfilling its obligation hereunder to defend and indemnify City. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of The Shops at Legacy's obligation to defend City or as a waiver of the Shops at Legacy's obligation to indemnify City pursuant to this Agreement. The Shops at Legacy shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If The Shops at Legacy fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and The Shops at Legacy shall be liable for all costs incurred by City.

VIII.
ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

IX.
SUCCESSORS AND ASSIGNS

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

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X.
LEGAL CONSTRUCTION

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

XI.
AMENDMENT

This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement.

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

THE SHOPS AT LEGACY L.P., a Texas Limited Partnership

By: **K/S Legacy L.L.C.,**
a Texas limited liability company,
General Partner

Date: 10/24/05

By: _____
Fehmi Karahan
Manager

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

_____
Diane C. Wetherbee, CITY ATTORNEY

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X.
LEGAL CONSTRUCTION

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

XI.
AMENDMENT

This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement.

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

THE SHOPS AT LEGACY L.P., a Texas Limited Partnership

By: **K/S Legacy L.L.C., a Texas limited liability company, General Partner**

Date: 10/24/05

By: _____
Fehmi Karahan
Manager

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

_____
Diane C. Wetherbee, CITY ATTORNEY

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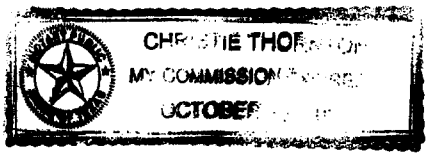
ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF Collin)

This instrument was acknowledged before me on the 24th day of October, 2005 by Fehmi Karahan, _____ of **THE SHOPS AT LEGACY L.P.,** a Texas Limited Partnership, on behalf of said Partnership.



Christie Thornton
Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 2005 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal WS	☒ Yes	☐ Not Applicable
Department:	Library Administration		Initials	Date
Department Head	Joyce Baumbach	Executive Director	RA	11-1-05
Dept Signature:	Joyce Baumbach	City Manager		11/1/05
Agenda Coordinator (include phone #):	**Mary Ann Dunnavant, Ext. 4208**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

Authorizing the purchase of a service agreement from 3M Library Systems, suppliers of maintenance for 3M equipment in the amount of $41,448.56 for the Plano Public Library System; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2005-06**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	118,000	0	**118,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-41,448	0	**-41,448**
BALANCE	0	76,552	0	**76,552**

FUND(S): **GENERAL FUND**

COMMENTS: Funding for this item is included in the approved FY 2005-06 Operating Budget. Remaining funds will be used for other maintenance agreements.

STRATEGIC PLAN GOAL: This service agreement relates to the City's Goal of "Service Excellence" and "Premier City for Families."

SUMMARY OF ITEM

Approval of this service agreement with 3M Library Systems is requested in the amount of $41,448.56. 3M Safety and Security Systems is the sole supplier of equipment to work with existing security systems at the Plano Public Libraries. Sole source purchases are exempt from the competitive bid process as provided in V.T.C.A., Local Government Code, Section 252.022 (a) (7).

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
1. Sole Source Letter From 3M Dated 10/12/05 1. Affidavit of No Prohibited Interest Dated 10/10/05	

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REV 08/98

3M Library Systems
3M Center, Building 46-6E-37
St. Paul, MN 55144-1000
800-328-0067
Fax: 888-263-1916
www.3m.com/library

3M

October 12, 2005

Haggard/Plano Public Library
Attn: Mary Ann Dunnavant
2501 COIT ROAD
Plano, TX 75075

Re: Service Agreement: US38157

Dear Mary Ann,

This letter is in reference to your inquiry regarding 3M as the sole authorized service provider for the 3M Library detection equipment located at Plano Public Library System Facilities.

There are no companies authorized to provide service other than 3M's authorized service provider.

Thank you for your continued business with 3M. If I can be of further assistance, please feel free to contact me the telephone number listed below.

Sincerely,

Kelly Castillo

Kelly L. Castillo
Contracts Administrator
1-800-328-0067, opt 1, opt 2
Fax: 888-263-1916

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO. TEXAS, AUTHORIZING THE PURCHASE OF A SERVICE AGREEMENT FROM 3M LIBRARY SYSTEMS, SUPPLIERS OF MAINTENANCE FOR 3M EQUIPMENT IN THE AMOUNT OF $41,448.56 FOR THE PLANO PUBLIC LIBRARY SYSTEM; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE APPROVED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas desires to purchase a service agreement (See Exhibit "A") for self-check machines, security gates and check-in workstations previously purchased and installed by 3M Library Systems for the City of Plano, Plano Public Library System; and

WHEREAS, 3M Library Systems is the only company that provides service agreements for 3M equipment (see Exhibit "B"); and

WHEREAS, 3M Library Systems has provided a signed "Affidavit of No Prohibited Interest (see Exhibit "C") in compliance with the City of Plano Code of Ordinances Ch.2, art. IV, section 2-103, and; Section 11.02, City Charter of Plano; and

WHEREAS, the City Council is of the opinion that the services are available only from one source, 3M Library Systems, and therefore the purchase is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022 (a) (7); and

WHEREAS, upon full review and consideration of the proposed purchase and all matters attendant and related thereto, the City Council is of the opinion that the purchase should be approved, and that the City Manager or his designee should be authorized to take such action and execute such documents as necessary to effectuate the purchase.

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

Section I. The City Council hereby finds and determines that 3M Library Systems is the sole source for the maintenance of the self-check machines, check-in workstations and security gates to be purchased by the City, and thus, the

purchase of such equipment is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022 (a) (7).

Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents as necessary to effectuate the purchase of the service agreement not to exceed the amount of $41,448.56 from 3M Library Services, which is the sole source supplier of such services.

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

DULY PASSED AND APPROVED this the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane Wetherbee, CITY ATTORNEY

3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

3M

SERVICE AGREEMENT EXPIRATION NOTICE

August 17, 2005

Service Agreement: US38157

Service Agreement Expiration Date: November 6, 2005

3M Account # : HAS0727

PLANO PUBLIC LIBRARY
Attn: KAREN FARRELL
HAGGARD BRANCH
2501 COIT ROAD
PLANO TX 75075-3712

Dear KAREN,

Does your library have funds budgeted for emergencies? Most libraries don't.

That's why I'm writing you about your 3M Service Agreement. Your coverage will expire on the date listed above and your 3M Library Systems equipment will no longer be covered. So if your systems ever need repair, your library will somehow have to find the funds to cover it.

Complete equipment coverage

3M's high technology equipment is extremely complex. And even though great care goes into every product we build, it's impossible to manufacture a system that is 100% reliable for as long as you own it. That's why there is not a smarter investment than a 3M Service Agreement.

Our Service Agreement covers virtually all labor, parts and any other equipment modifications necessary to get - and keep - your systems working.

In short, we take care of practically everything. No matter what the problem, or where you are in the United States.

Same day telephone response

We typically give a telephone response on the same day you call. Even if you call "after hours", we will try to get back to you that day. What's more, we normally have a technician at your site within 12 working hours.

No expensive surprises

No one knows your 3M equipment better than our own 3M service providers. They are available to you, of course, without a 3M Service Agreement.

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3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

Our rates are $200 per hour plus a callout charge of $285 to $385 depending on your service zones. You will also be charged the cost of any necessary replacement parts. So you can see that just a single service call could more than cover the cost of a whole years Service Agreement coverage. Is it really worth it to take a chance?

Renewing is easy

Give yourself some peace of mind and renew your 3M Service Agreement today. Just fax or mail a renewal purchase order to the number or address indicated below. Or use your Visa or MasterCard (just call the number below for information on doing this). We can guarantee your renewal price for only 30 days beyond the date on this notice, make sure you renew soon!

Sincerely,

Kelly Curtis

Service Sales Representative
Telephone: 800-328-0067, Opt 1, Opt 2
Fax: 888-263-1916

Return to: 3M Library Systems Contracts
Attn: Contract Administrator
PO Box 33900
St. Paul, MN 55133-3900

P.S. If someone else is responsible for responding to this notice, please forward this letter to them! Thank You!

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3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

Date: August 17, 2005

Service Agreement: US38157 Renewal Period: 11/7/05 to 11/6/06

Charge to: PLANO PUBLIC LIBRARY

Account #: HAS0727

Contact: KAREN FARRELL

Telephone: 972-769-4207

3M Product(s) Located at: PLANO PUBLIC LIBRARY
HAGGARD BRANCH
2501 COIT ROAD
PLANO TX 75075-3712

3M Acct #: HAS0727

Model	Model Type	Serial ID	Start Date	End Date	Amount
Detection System	3801DM	3810352	11/20/05	11/6/06	$ 941.24
Detection System	3801DM	3810353	11/20/05	11/6/06	$ 941.24
Workstation	995	950443	11/20/05	11/6/06	$ 675.07

3M Product(s) Located at: PLANO PUBLIC LIBRARY
MARIBELLE DAVIS BRANCH
7501 INDEPENDENCE PKWY
PLANO TX 75025

3M Acct #: PBW3775

Model	Model Type	Serial ID	Start Date	End Date	Amount
Detection System	3802BC	3823862	11/20/05	11/6/06	$ 1,248.88
Software	3174	6211289	11/20/05	11/6/06	$ 0.00
Selfcheck	6210	6211289	11/20/05	11/6/06	$ 3,377.27
Software	3174	6211601	11/20/05	11/6/06	$ 0.00
Selfcheck	6210	6211601	11/20/05	11/6/06	$ 3,377.27
Software	3174	6211677	11/20/05	11/6/06	$ 0.00
Selfcheck	6210	6211677	11/20/05	11/6/06	$ 3,377.27
Workstation	995	950444	11/20/05	11/6/06	$ 675.07
Workstation	995	951281	11/20/05	11/6/06	$ 675.07

3M Product(s) Located at: PLANO PUBLIC LIBRARY
CHRISTOPHER PARR BRANCH
6200 WINDHAVN PKWY

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3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

3M Product(s) Located at: PLANO PUBLIC LIBRARY
CHRISTOPHER PARR BRANCH
6200 WINDHAVN PKWY
3M Acct #: PCG6916 PLANO TX 75093

Model	Model Type	Serial ID	Start Date	End Date	Amount
Detection System	3802BC	3826214	11/20/05	11/6/06	$ 1,248.88
Software	3173	6210404	11/20/05	11/6/06	$ 0.00
Selfcheck	6210	6210404	11/20/05	11/6/06	$ 3,377.27
Software	3174	6211170	11/20/05	11/6/06	$ 0.00
Selfcheck	6210	6211170	11/20/05	11/6/06	$ 3,377.27
Workstation	995	950939	11/20/05	11/6/06	$ 675.07

3M Product(s) Located at: PLANO PUBLIC LIBRARY
HARRINGTON BRANCH
1501 18TH ST
3M Acct #: RST6977 PLANO TX 75074-6001

Model	Model Type	Serial ID	Start Date	End Date	Amount
Detection System	3802DM	3820386	11/20/05	11/6/06	$ 1,248.88
Software	3174	6211171	11/20/05	11/6/06	$ 0.00
Selfcheck	6210	6211171	11/20/05	11/6/06	$ 3,377.27
Software	3174	6211984	11/7/05	11/6/06	$ 0.00
Selfcheck	6210	6211984	11/7/05	11/6/06	$ 3,502.00
Workstation	995	950019	11/20/05	11/6/06	$ 675.07

3M Product(s) Located at: PLANO PUBLIC LIBRARY
SCHIMELPFENIG BRANCH
5024 CUSTER RD
3M Acct #: SBQ0170 PLANO TX 75023

Model	Model Type	Serial ID	Start Date	End Date	Amount
Detection System	3802DM	3820345	11/20/05	11/6/06	$ 1,248.88
Software	3174	6211288	11/20/05	11/6/06	$ 0.00
Selfcheck	6210	6211288	11/20/05	11/6/06	$ 3,377.27
Software	3174	6211602	11/20/05	11/6/06	$ 0.00

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3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

3M Product(s) Located at: PLANO PUBLIC LIBRARY
SCHIMELPFENIG BRANCH
5024 CUSTER RD
3M Acct #: SBQ0170 PLANO TX 75023

Selfcheck	6210	6211602	11/20/05	11/6/06	$ 3,377.27
Workstation	995	950290	11/20/05	11/6/06	$ 675.07

TOTAL $ 41,448.56

Please Add Applicable Tax: $
Payment Terms are "Net 30"

Notes:

EFFECIVE 11/20/05 CONSOLIDATED SA 16838 TO THIS SA:

HAS0727 3801DM SERIAL 3810352
HAS0727 3801DM SERIAL 3810353
HAS0727 955 SERIAL 950443

PBW3775 MODEL 3174 SERIAL 6211289
PBW3775 MODEL 6210 SERIAL 6211289
PBW3775 MODEL 3174 SERIAL 6211601
PBW3775 MODEL 6210 SERIAL 6211601
PBW3775 MODEL 3174 SERIAL 6211677
PBW3775 MODEL 6210 SERIAL 6211677
PBW3775 MODEL 955 SERIAL 950444
PBW3775 MODEL 955 SERIAL 981281
PBW3775 MODEL 3802BC SERIAL 3823862

PCC6916 3173 SERIAL 6210404
PCC6916 6210 SERIAL 6210404
PCC6916 3174 SERIAL 6211170
PCC6916 6210 SERIAL 6211170
PCC6916 995 SERIAL 950939
PCC6916 3802BC SERIAL 3826214

RST6977 3174 SERIAL 6211171
RST6977 6210 SERIAL 6211171
RST6977 995 SERIAL 950019
RST6977 3802DM SERIAL 3820386

SBQ0170 MODEL 3174 SERIAL 6211288
SBQ0170 MODEL 6210 SERIAL 6211288
SBQ0170 MODEL 3174 SERIAL 6211602
SBQ0170 MODEL 6210 SERIAL 6211602
SBQ0170 MODEL 995 SERIAL 950290
SBQ0170 MODEL 3802DM SERIAL 3820345

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3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

Please indicate your intentions below:

_____ I wish to renew the Service Agreement **US38157** (Please attach your Purchase Order and return it to the address listed below.)

Please indicate billing frequency preference:

____Annual ____ Semi-annual ($100.00 Fee) ____ Quarterly ($200.00 Fee) ____ Monthly ($600.00 Fee)

____Indicate here if you wish to pay by check. (Please DO NOT enclose a check. You will be invoiced at a later date.)

____ I DO NOT wish to renew the Service Agreement.

Reason for Cancellation: _____

_____

____ I am interested in purchasing additional Library Systems equipment. Please have my Sales Representative contact me.

Please enter below the name of the person authorizing the renewal or cancellation of the Service Agreement.

_____	_____	_____	_____
Name(please print)	Telephone Number	Fax Number	Date

_____
E-mail address

Service Sales Representative
Telephone: 800-328-0067, Opt 1, Opt 2
Fax: 888-263-1916

Return to: 3M Library Systems Contracts
Attn: Contract Administrator
PO Box 33900
St. Paul, MN 55133-3900

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Terms and Conditions

WHAT WE WILL DO:

In consideration of payment of the Service Agreement price, 3M will:

HARDWARE: furnish labor and replacement parts necessary to maintain the Equipment specified in this Service Agreement in proper operating condition during the term of this Agreement, provided the Equipment is installed as authorized by 3M and used as directed. This Agreement covers Equipment failure during normal usage. 3M agrees to provide:

• On-site remedial maintenance during On-Site Coverage Hours (8:00AM – 5:00 PM Local Time) when 3M is notified that the Equipment is not in good working order. 3M will provide a toll-free telephone number for Customer to place, and 3M will receive, Equipment maintenance service calls twenty-four (24) hours per day, seven (7) days per Week.

• All labor, service parts and Equipment modifications 3M deems necessary to maintain the Equipment in good working order as specified when the equipment was originally purchased. All service parts will be furnished on an exchange basis and will be new parts or parts of equal quality. For certain Equipment, 3M reserves the right to replace the entire unit with new equipment or equipment of equal quality when 3M determines that replacement is more economical than on-site repair. All Equipment and service parts removed for replacement become the property of 3M.

SOFTWARE: furnish over-the-phone software support and remote troubleshooting of the 3M Software specified in this Agreement, provided that the 3M Software is installed and used as directed by 3M. 3M agrees to provide:

• All software configuration modifications and updates 3M deems necessary to maintain the 3M Software in good working order.

• A toll-free telephone number for Customer to place, and 3M to receive, software support calls. Over-the-phone software support calls may be placed twenty-four (24) hours per day, seven (7) days per week. Calls will be addressed during 3M Software Support Coverage Hours (7:00 AM – 6:00PM Central Time).

WHAT IS NOT COVERED:

The basic maintenance fee does not include, and 3M is not obligated to repair damage/failure caused by:

HARDWARE: (i) failure of Customer to provide, during the entire term of this Agreement and while the Equipment is in use, a proper operating environment and supply of power as prescribed by 3M; (ii) accident; (iii) Acts of God, including but not limited to fire, flood, water, wind and lightning; (iv) neglect, abuse or misuse of the Equipment; (v) failure of Customer to follow 3M's published operating instructions; (vi) modification, service or repair of the Equipment by other than 3M authorized personnel; (vii) use of Equipment for purposes other than the purpose for which it was designed; (viii) painting or refinishing the Equipment; (ix)removal/ relocation of the Equipment; (x) replacement of broken or damaged cabinetry; to include items such as lattices, base covers, book check covers, etc.; (xi) electrical work external to the Equipment; (xii) cosmetic restoration (e.g., filling of holes in floor or walls, plugging or wire run openings, removal of tape residue, etc.) after removal or relocation of the Equipment for any reason; (xiii) restoration of the Equipment performance when it has been degraded by placement of unauthorized interference sources within the affected range of said Equipment; (xiv) service requests related to use of markers (strips/tags) other than those manufactured by 3M, (xv) replacement of components to give the equipment capabilities beyond which 3M deems necessary to maintain the equipment's operation as originally purchased.

SOFTWARE: (i) modification, or repair of the 3M Software by other than 3M authorized personnel; (ii) use of the 3M Software for purposes other than the purpose for which it was designed; (iii) virus / hacker activity; and (iv) Non-3M Software related updates and upgrades including, but not limited to, Operating System, Anti-Virus, Intrusion Detection software updates and upgrades.

RENEWAL: This Agreement is NOT automatically renewable. If a renewal agreement is offered by 3M, the Agreement price quoted will reflect the age of the product and the service costs at the time of renewal.

ENTIRE AGREEMENT: This instrument sets forth the entire agreement between the parties, and no representation, promise or condition not contained herein shall modify these terms whether made prior to or subsequent to the execution of this Agreement.

3M Safety and Security Systems Division
3M Center, Building 225-4N-14
St. Paul, MN 55144-1000
www.3M.com/library

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Printed in U.S.A. 78-8123-7221-3 Rev 3

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3M Library Systems
3M Center, Building 46-6E-37
St. Paul, MN 55144-1000
800-328-0067
Fax: 888-263-1916
www.3m.com/library

3M

October 12, 2005

Haggard/Plano Public Library
Attn: Mary Ann Dunnavant
2501 COIT ROAD
Plano, TX 75075

Re: Service Agreement: US38157

Dear Mary Ann,

This letter is in reference to your inquiry regarding 3M as the sole authorized service provider for the 3M Library detection equipment located at Plano Public Library System Facilities.

There are no companies authorized to provide service other than 3M's authorized service provider.

Thank you for your continued business with 3M. If I can be of further assistance, please feel free to contact me the telephone number listed below.

Sincerely,

Kelly Castillo

Kelly L. Castillo
Contracts Administrator
1-800-328-0067, opt 1, opt 2
Fax: 888-263-1916

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AFFIDAVIT OF NO PROHIBITED INTEREST

3M represents, to the best of its knowledge, that no officer or employee of the City of Plano, Texas has or will have during the term of this contract a prohibited interest, as that is defined in City of Plano Charter section 11.02 and the City of Plano's Code of Conduct, in 3M Company.

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

3M Company

By: Michael P. Deckoski
(Signature)

MICHAEL P. DECKOSKI
(Print Name)

DIVISION GENERAL MANAGER
(Title)

Date: 10/10/05

STATE OF MINNESOTA §

COUNTY OF RAMSEY §

SUBSCRIBED AND SWORN TO before me this 10th day of October, 2005

Catherine LeClair
Notary Public in and for the State of Minnesota

CATHERINE LECLAIR
Notary Public
Minnesota
My Commission Expires January 31, 2010

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		10/28/05
Dept Signature:		City Manager		10/28/05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND DALLAS MTA L.P., D/B/A VERIZON WIRELESS, A TEXAS LIMITED PARTNERSHIP, TO LOCATE, PLACE, ATTACH, INSTALL, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM ON CERTAIN SPECIFIC PORTIONS OF THE TENNYSON WATER TOWER IN THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: **05/06**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): **GENERAL FUND**

COMMENTS: This item will provide additional revenue of $16,800 per year for five years.

SUMMARY OF ITEM

This Resolution approves a Communications Facilities License Agreement with Dallas MTA L.P. d/ba/ Verizon Wireless for communications faciliites on the Tennyson Water Tower.

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

M-1

REV 08/98

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND DALLAS MTA L.P., D/B/A VERIZON WIRELESS, A TEXAS LIMITED PARTNERSHIP, TO LOCATE, PLACE, ATTACH, INSTALL, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM ON CERTAIN SPECIFIC PORTIONS OF THE TENNYSON WATER TOWER IN THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Communications Facilities License Agreement by and between the City of Plano, Texas and Dallas MTA, L.P. d/b/a Verizon Wireless., (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

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

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

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

Section II. The City Manager or, in his absence, an Executive Director, 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.

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DULY PASSED AND APPROVED on this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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STATE OF TEXAS	§	
	§	**COMMUNICATIONS FACILITIES**
	§	**LICENSE**
COUNTY OF COLLIN	§	

KNOW ALL BY THESE PRESENTS:

This non-exclusive License for Communications Facilities ("Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter referred to as the "CITY") and **DALLAS MTA, L.P. d/b/a VERIZON WIRELESS** (hereinafter referred to as "LICENSEE"), for the use of certain premises and/or facilities according to the following terms and conditions:

W I T N E S S E T H:

WHEREAS, CITY desires to provide LICENSEE with facilities for housing and operating certain communications equipment, including the installation of antennas or antenna systems and the space required to run cable between the equipment and the antenna or antenna systems; and

WHEREAS, LICENSEE is a communications services company duly authorized to provide certain telecommunications services and desires to lease certain property owned by CITY for installation and operation of IMPROVEMENTS, as defined herein, to operate a communications facility and all related purposes; and

WHEREAS, CITY owns the premises and facilities described below and desires to allow LICENSEE to enter and utilize designated areas of the facilities and premises.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location

1.1 The premises and facilities (hereinafter referred to as the "PREMISES") provided by CITY are described in the SITE PLAN attached hereto and incorporated herein as **Appendix "A"**. Included upon the PREMISES shall be CITY's water tower (the "Tower"), LICENSEE's Equipment Compound, the Antenna Facilities, as defined herein, and the cabling run between the Antenna Facilities and the Equipment Compound (hereinafter referred to as

M-4

"IMPROVEMENTS"). As a part of the SITE PLAN, LICENSEE shall provide to CITY a map that identifies all of LICENSEE's cell sites within the City of Plano and within a one-mile radius of the boundaries of the City of Plano. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"**. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the PREMISES designated for use by LICENSEE on the SITE PLAN.

1.2 **Site Plan**. The SITE PLAN must be approved by CITY prior to the execution of this Agreement, with approval or disapproval not to be unreasonably withheld, conditioned or delayed. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under this Agreement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under this Agreement shall be in strict compliance with the SITE PLAN. If LICENSEE's installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by CITY, then CITY shall have the right to terminate this Agreement upon notice to LICENSEE, who has an opportunity to cure as provided under Section 6 herein. Any proposed material modifications to LICENSEE's SITE PLAN must be approved in writing by CITY before LICENSEE may make any changes to its SITE PLAN as originally approved by CITY. Any material modifications or structural additions to CITY water towers, including Tower, must have approval from Matt Hickey, P.E., with Birkhoff, Hendricks and Conway, L.L.P., and be included with the submitted SITE PLAN. Approval of such modifications is within the sole discretion of CITY. When making its determination, CITY may consider comments from neighboring property owners.

1.3 LICENSEE has inspected, examined and investigated the status of the title and condition of the PREMISES to the extent that LICENSEE has deemed necessary, and LICENSEE understands, acknowledges and agrees that it is entering into this Agreement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LICENSEE has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of CITY or any person purporting to act on behalf of CITY, other than those which may be expressly set forth in this Agreement.

1.4 LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND

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HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.

2. Use of Premises

2.1 **Permitted Use.** CITY agrees to allow installment of LICENSEE's IMPROVEMENTS, in accordance with the terms of this Agreement. LICENSEE's use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LICENSEE shall obtain the written approval of the City prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE understands, acknowledges and agrees that the use of the PREMISES by LICENSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the attached SITE PLAN. LICENSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of CITY, which may be given or withheld for any reason or for no reason, in the CITY'S sole, absolute and unrestricted discretion.

2.2 **Prohibited Use.** LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

2.3 **Subletting of Use Premises or Improvements.** LICENSEE may not sublet to or license others to use the PREMISES or LICENSEE's IMPROVEMENTS without the prior written consent of CITY. Any such attempt by LICENSEE shall be without effect and may at CITY's option result in the termination of this Agreement.

2.4 **Maintenance, Repair or Replacement of Improvements.** LICENSEE may update, maintain, repair, or replace the IMPROVEMENTS

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located upon the PREMISES from time to time without CITY's approval, provided that the total of all IMPROVEMENTS do not exceed nine (9) antennas (nor increase the Tower loading), together with related equipment, and do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to CITY, such approval not to be unreasonably withheld, conditioned or delayed. LICENSEE shall submit to CITY for approval, a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for CITY's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of Licensee's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, Licensee shall have the right, at any time during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of CITY; provided, however that Licensee shall provide CITY with advance written notice of any such change or addition and provided further that Licensee agrees to comply with the terms and provisions of Section 10 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to CITY by LICENSEE and maintained on file with CITY for the entire term of this Agreement and all renewals thereof.

3. Term

3.1 This Agreement shall be for an initial term of five (5) years, commencing on the Effective Date. The Effective Date shall be the date LICENSEE moves materials or other equipment onto the PREMISES or begins construction on the PREMISES or the 1st day of January, 2006, whichever occurs first. For a period not to exceed one hundred eighty (180) days following the Effective Date, LICENSEE shall have the right to terminate this Agreement by giving thirty (30) days written notice to CITY of such termination if LICENSEE is unable to obtain all licenses and permits or authorizations required for LICENSEE's use of the PREMISES from all applicable government and/or regulatory entities (the "Governmental Approvals") for LICENSEE's intended use of and improvements to the PREMISES.

3.2 LICENSEE is granted the option to renew this license for five (5) additional five (5) year terms, after the initial term expires. Unless LICENSEE gives written notice of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, this Agreement will automatically renew for each said renewal term as long as LICENSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to

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amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LICENSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

4. Management.

4.1 CITY has retained Wireless Capital Partners Inc., to manage and enforce this Agreement. Wireless Capital, Inc. possesses authority to act on behalf of CITY.

4.2 CITY reserves the right to change or revoke this management arrangement. CITY will notify LICENSEE and provide thirty (30) days written notice prior to invoking this right.

5. Payment Terms and Conditions

5.1 **Rent Payment.** In consideration for providing the PREMISES for use by LICENSEE, the LICENSEE shall pay rent to CITY annually, with the first payment being due within thirty (30) days following the Effective Date of this Agreement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LICENSEE shall pay rent to CITY annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount of Sixteen Thousand Eight Hundred and No/100 Dollars ($16,800.00) per annum for the term of this Agreement **("Rent Payment")**. Interest on late payments shall accrue at then prime interest rate. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other than a default by LICENSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LICENSEE.

5.2 **Rent Adjustment.** The Rent Payment shall be increased by three percent (3%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term **"Lease Year"** shall mean the twelve-month period which commences on the first day of the calendar month in which the Effective Date occurs (if the Effective Date occurs on the first day of a calendar month) or on the first day of the calendar month following the calendar month in which the Effective Date occurs (if the Effective Date occurs on a day other than

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the first day of a calendar month). The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by three percent (3%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred three percent (103%) of the prior Lease Year's Rent) shall be the Rent Payment for the Lease Year of the adjustment.

5.3 **Holdover Rent**. The Rent Payment, as defined in Subsection 5.1 above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

5.4 **Additional Fees.** CITY may assess, in addition to the Rent Payment, additional payments by LICENSEE to cover CITY's additional costs (**"Additional Fees"**), which include but are not limited to: (i) costs of utilities associated with the day-to-day operation and maintenance of the Premises; (ii) costs incurred by CITY for providing access to the Premises outside of normal business hours; and (iii) applicable taxes, including property taxes, or business taxes levied on the PREMISES. CITY shall notify LICENSEE of amounts due in Additional Fees in writing, and LICENSEE shall pay Additional Fees simultaneously with the next monthly Rent Payment due on the Premises, or, if notice of Additional Fees occurs within ten (10) days of the due date of the next monthly Rent Payment, simultaneous with the Rent Payment due for the next month. The foregoing shall be subject to the provisions of Section 17 herein.

5.5 **Payment Address.** Rent Payments and Additional Fees shall be made payable to CITY: City of Plano, Attn: Mark Israelson, Intergovernmental Relations Department, PO BOX 860358, Plano TX, 75086; with a reference to "6825 Communications Parkway, Plano, Texas 75074" (Lease Address). CITY shall provide LICENSEE written notice of any change in address for purposes of Rent Payments and Additional Rent at least thirty (30) days in advance of any Rent Payments and Additional Rent payment date.

5.6 **Lawful Currency.** Rent Payments and Additional Fees shall be made according to paragraph 5.5 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES.

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In no event will LICENSEE be obligated to pay any general income taxes measured upon the income of CITY. In the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LICENSEE shall pay to CITY an amount equal to any and all amounts so imposed or levied as a component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that CITY may have with Dallas MTA, L.P. d/b/a Verizon Wireless or its parent or any subsidiary or affiliate.

5.7 **Dishonored Checks.** Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by CITY for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check.

6. Termination

6.1 **Termination for Cause.** Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, CITY may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LICENSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LICENSEE shall equitably compensate CITY in accordance with the terms of this Agreement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by CITY. LICENSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should CITY choose to exercise its option to terminate.

6.2 **Event of Default**. Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

(a) if LICENSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;

(b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 6.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

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6.3 **Termination by LICENSEE**. This Agreement may be terminated by LICENSEE, without penalty or further liability, as follows:

(a) upon written notice, if LICENSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by LICENSEE; or if LICENSEE determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(b) on sixty (60) days written notice for any reason, other than 6.2(a) or (b) above, so long as LICENSEE pays CITY a termination fee equal to six (6) months rent at the current rate or rent at the current rate prorated to the end of CITY's fiscal year in which the termination occurs, whichever is greater.

6.4 **Notice and Opportunity to Cure**. Upon the occurrence of an Event of Default, CITY shall deliver to LICENSEE a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, CITY may terminate this Agreement and the license granted herein by delivering to the LICENSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 6.2(b).

6.5 **Primary Function of PREMISES.** The parties understand and agree that the primary function of the PREMISES is to serve as a water tower for the City of Plano and that the interests of LICENSEE are superseded by the public health, safety, and welfare of the citizens of Plano served by the water tower. In the event that the Plano City Council or the Plano City Manager declares a public emergency or if there exists a threat to the water tower facilities or potable water supply that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LICENSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LICENSEE is not able to timely respond, CITY may remove LICENSEE's IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LICENSEE.

6.6 **Removal of Improvements.** If LICENSEE's IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 6.5 above, LICENSEE shall have the right to set up a portable mounted antenna, a

cell on wheels (COW), and/or some other similar temporary structure approved by CITY, such approval not to be unreasonably withheld, conditioned or delayed, on CITY premises to allow LICENSEE to continue to provide communications services and all related purposes. LICENSEE may maintain its COW for a period of thirty (30) days past the date of removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days, LICENSEE must obtain written approval from CITY, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LICENSEE at the end of the initial thirty (30) day period, CITY shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LICENSEE to continue its operations as authorized by this Agreement.

7. City's Right of Entry Onto Premises

7.1 CITY and CITY's agents, employees or contractors may enter upon the PREMISES, except LICENSEE's secured areas, for the purpose of performing repairs and maintenance work to the PREMISES. If maintenance work is required, CITY agrees to provide LICENSEE with reasonable notice prior to commencing such work to allow LICENSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LICENSEE will be required to remove such IMPROVEMENTS shall be within the reasonable discretion of CITY. If, however, in the reasonable discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify LICENSEE, but may enter the PREMISES, except LICENSEE's secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LICENSEE. In no event shall CITY be liable for any expenses associated with LICENSEE's removal of IMPROVEMENTS or for lost or anticipated profits. LICENSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the LICENSEE's equipment shelter, as identified in the SITE PLAN.

8. Access

8.1 LICENSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time, by contacting and providing notice to CITY. LICENSEE must be accompanied by CITY personnel at all times when accessing the PREMISES. If CITY is contacted by LICENSEE after the normal business hours of CITY for the purpose of accessing the aforementioned location, LICENSEE agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access.

8.2 LICENSEE's right of access is a contractual right for the benefit of LICENSEE only and nothing contained in this Agreement shall be construed to

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constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 23.9 herein, such right of access shall inure to the benefit of LICENSEE's assignee.

9. Damages to Property

9.1 **Damage and Restoration of Property.** LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the PREMISES and CITY property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LICENSEE's operations, by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to CITY.

9.2 **Failure to Restore Property**. If LICENSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 9.1, CITY shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LICENSEE shall pay CITY the cost thereof, plus an administrative fee of ten percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LICENSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LICENSEE's control excepted.

10. Electrical, Radio and Intermodulation Interference

10.1 LICENSEE shall operate its IMPROVEMENTS in a manner that will not cause radio frequency interference to the CITY or other licensees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LICENSEE's IMPROVEMENTS. LICENSEE's installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

10.2 Prior to installation of any IMPROVEMENTS on the PREMISES, LICENSEE shall conduct bandwidth testing of its IMPROVEMENTS and CITY equipment to check bandwidth conflict between CITY's monitoring control system and LICENSEE's system. If such conflict occurs, LICENSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to LICENSEE.

10.3 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY or to any other licensee who is using the PREMISES prior to or at the time of LICENSEE's installation of its IMPROVEMENTS. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

10.4 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY at anytime during or after installation or operation of LICENSEE's IMPROVEMENTS. Moreover, LICENSEE's use will not in any material way adversely affect or interfere with CITY's signal operation or its communication system. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

10.5 CITY will not grant a license to any other party for the use of CITY's PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LICENSEE's signal operation or its communication system. Such provision shall be similar to the provisions required of LICENSEE herein. Furthermore, license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LICENSEE to check bandwidth conflict between third-party equipment and LICENSEE's equipment. If such conflict occurs, CITY shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LICENSEE. If the conflict cannot be remedied to the reasonable satisfaction of LICENSEE, CITY shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LICENSEE shall have the right to terminate this Agreement upon ten (10) days written notice to

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CITY if another user of the PREMISES causes interference with LICENSEE's operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LICENSEE experiences interference caused by a third-party licensee, LICENSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including, but not limited to, lost or anticipated profits.

10.6 LICENSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for the enforcement of any of LICENSEE's rights provided by Section 10.5 of this Agreement.

10.7 Upon report to LICENSEE, and all other third parties with communications equipment on that CITY-owned property, of interference with any CITY-owned/operated radio emergency system, LICENSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LICENSEE's operations, LICENSEE agrees, within twelve (12) hours of first notification, to propose a plan of action to eliminate such interference. CITY and LICENSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

10.8 If such interference results from LICENSEE's operations, LICENSEE must correct such interference within twenty-four (24) hours of CITY's original notification to LICENSEE or shall discontinue all use of LICENSEE's IMPROVEMENTS upon the PREMISES. LICENSEE's IMPROVEMENTS cannot be reactivated until LICENSEE can demonstrate that the cause of such interference has been eliminated.

10.9 Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

11. Condition of Premises

11.1 CITY shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for CITY uses of the PREMISES and surrounding property, and in a manner which will not interfere with LICENSEE's reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LICENSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LICENSEE's cost and

expense. Title to all remaining improvements shall belong to CITY. However, upon vacation of the PREMISES, LICENSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LICENSEE's control, as reasonably determined by CITY. If, as reasonably determined by CITY, the PREMISES are not surrendered in satisfactory condition, the LICENSEE shall pay CITY within thirty (30) business days of demand an amount equal to the actual cost to reasonably restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs.

11.2 LICENSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

11.3 LICENSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

11.4 In the event CITY or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LICENSEE shall take reasonable measures at LICENSEE's cost to cover all of LICENSEE's IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by LICENSEE due to the actions or omissions of any third-party licensees upon the PREMISES. CITY shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to CITY undertaking such painting, construction, or other alterations.

11.5 By taking possession of the PREMISES, LICENSEE accepts the PREMISES in the condition existing as of the Effective Date. CITY makes no representation or warranty with respect to the condition of the PREMISES and CITY shall not be liable for any latent or patent defect in the PREMISES. CITY agrees to notify LICENSEE of the existence of any latent defects of which CITY has knowledge.

12. Construction, Installation and Operation

12.1 **Construction, Installation and Operation.** LICENSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LICENSEE intends to commence construction of its IMPROVEMENTS, LICENSEE shall provide to the CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the

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steps necessary to complete LICENSEE's construction and installation; (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LICENSEE's construction and installation work; and (iv) copies, certificates or other proof that LICENSEE or LICENSEE's contractors and subcontractors have obtained all necessary permits and licenses for the performance of LICENSEE's work. CITY's failure to respond in writing to LICENSEE's proposal within twenty (20) days of CITY's receipt of the proposal shall constitute CITY's rejection of the proposal, and LICENSEE shall not commence LICENSEE's work. CITY's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval that LICENSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LICENSEE's work.

12.2 **Marking and Lighting Requirements**. LICENSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LICENSEE's installation and maintenance of IMPROVEMENTS under this Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LICENSEE's installation or maintenance of IMPROVEMENTS under this Agreement. If the LICENSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, CITY may thereafter terminate this Agreement upon thirty (30) days written notice to LICENSEE.

12.3 **Inspection and Tests.** Upon the Effective Date and for the term of this Agreement, LICENSEE shall have reasonable access as provided in Section 8 above to the SITE and PREMISES as are necessary and approved by CITY for the purpose of inspection and planning. LICENSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LICENSEE shall provide to CITY a copy of the report. LICENSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

12.4 **Payment, No Mechanics Liens.** LICENSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LICENSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LICENSEE. CITY shall not be responsible for or with respect to the performance of LICENSEE's Work. LICENSEE shall pay or cause to be paid all costs associated with LICENSEE's work. LICENSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's,

materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LICENSEE's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LICENSEE shall obtain the complete discharge and release thereof at LICENSEE's sole expense or expenditure (without any cost being imposed upon CITY.) However, LICENSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LICENSEE provides a bond or other form of security reasonably acceptable to CITY in an amount sufficient to hold CITY fully and completely harmless from any and all liability therefor or on account thereof.

12.5 **Improvements to Premises; Removal.** All IMPROVEMENTS constructed, installed and operated by or on behalf of LICENSEE shall remain LICENSEE's personal property and are not fixtures. LICENSEE shall remove all IMPROVEMENTS at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and LICENSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore the PREMISES or SITE to the same condition as existed prior to such damage at its sole cost and expense. LICENSEE shall provide to CITY in writing, by not later than the end of the prescribed thirty (30)-day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LICENSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed thirty (30) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LICENSEE removes all IMPROVEMENTS and so notifies CITY.

12.6 **Liability for Damage/Outages.** LICENSEE shall be solely responsible for any damage caused by LICENSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless CITY, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LICENSEE's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

13. Communication Tower

13.1 This provision shall be implemented only in the instances where LICENSEE will be leasing ground space from the CITY and constructing a suitable support structure ("Communication Tower") upon which LICENSEE will install, operate, maintain, and repair LICENSEE's IMPROVEMENTS.

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13.2 The LICENSEE shall have the right to construct a suitable support structure to be structurally capable of supporting up to three (3) wireless communications carriers. Structural design shall be provided to CITY for review and shall be in compliance with approved Site Plan reference para. 1.2. Possession of the Communication Tower remains that of LICENSEE. LICENSEE agrees to receive and reasonably negotiate requests of other wireless communications carriers ("COLLOCATEES"), according to then current Master Lease Agreement ("MLA") between LICENSEE and the COLLOCATEE, if applicable, to collocate their communications equipment at the PREMISES, but LICENSEE retains the sole right of approval for said COLLOCATEES, including but not limited to, type and placement of antennas and ancillary coax cable runs. and will not unreasonably withhold, condition or delay approval of COLLOCATEES. LICENSEE agrees to pay the CITY forty percent (40%) of any compensation received by LICENSEE from all such COLLOCATEES. LICENSEE shall not allow any carrier to use space designated by LICENSEE for LICENSEE's own use. In the event CITY leases ground space to any COLLOCATEE, CITY shall retain one hundred percent (100%) of the rental compensation derived therefrom.

13.3 LICENSEE shall have the right to perform necessary tests including, but not limited to, Radio Frequency tests, and a structural analysis on such Communication Tower. Such costs shall be paid by the COLLOCATEE. A copy of any such structural analysis shall be provided to CITY.

13.4 CITY will provide notice to LICENSEE at least thirty (30) days prior to the commencement of co-location construction. LICENSEE shall not unreasonably withhold or obstruct access to such Communication Tower for the purposes of co-location.

14. Compliance with Laws

14.1 **By LICENSEE** LICENSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LICENSEE's services, LICENSEE's construction, installation and operation work, IMPROVEMENTS and LICENSEE's use of the PREMISES. Without limiting the generality of the preceding sentence, LICENSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (*e.g.*, NEBs, IEEE, Federal Communications Commission ("**FCC**") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LICENSEE shall, at LICENSEE's sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the

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IMPROVEMENTS. In the event LICENSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LICENSEE, LICENSEE shall have the right to terminate this Agreement in accordance with Section 6 of this Agreement.

14.2 **By CITY.** CITY shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to comply in all material respects with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to CITY's leasehold interest in the SITE.

15. Complaint Resolution

If either LICENSEE or CITY receives a written complaint regarding LICENSEE's operations and such complaint, if reasonably determined by the City to be valid and if the cause of such complaint would cause LICENSEE to be in default of this Agreement, LICENSEE shall respond within twenty-four (24) hours of receipt of such written complaint. LICENSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LICENSEE has taken to resolve the Incident including, when necessary, all future actions LICENSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LICENSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LICENSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If CITY must step in and resolve a complaint regarding LICENSEE's operations, LICENSEE shall reimburse CITY for all reasonable expenses incurred. If CITY imposes upon LICENSEE a resolution to an Incident that does not involve a breach of the Agreement by LICENSEE, the breach by LICENSEE of any federal, state, or local law or ordinance or the commission by LICENSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LICENSEE does not wish to resolve the Incident in the manner directed by CITY, LICENSEE may terminate this Agreement upon thirty (30) days notice without penalty.

16. Utility Easements and Utility Cost

16.1 LICENSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LICENSEE consumes in connection with the installation and operation of

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LICENSEE's IMPROVEMENTS and which are separately metered and charged to LICENSEE by any public utility service company, without any expense therefor being imposed upon CITY.

16.2 If LICENSEE first obtains CITY's written consent, which may be given or withheld for any reason or no reason in the CITY's sole discretion, LICENSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such consent, LICENSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LICENSEE's exclusive use).

16.3 LICENSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LICENSEE fails to pay any such charge required to be paid by LICENSEE pursuant to this Section, CITY may, but shall not be required to, pay such charge on LICENSEE's behalf. If CITY pays any such charge on behalf of LICENSEE or incurs any cost with respect to any grant of any public utility service easement for the benefit of LICENSEE pursuant to this Section, LICENSEE shall reimburse and pay to CITY an amount equal to all such charges so paid and all such easement costs so incurred, within thirty (30) days after receipt of CITY's demand, as Additional Fees.

16.4 **Additional Utility/Power Equipment.** In the event that LICENSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LICENSEE's IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

17. Taxes

17.1 LICENSEE agrees to timely reimburse CITY for all taxes that are assessed against CITY, if any, due to the real property taxes attributable to LICENSEE's IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LICENSEE on or about the PREMISES; provided, however, CITY shall use its best efforts to provide prior notification of any taxes for which LICENSEE is to be charged, so LICENSEE will have the opportunity to appear before the taxing authority and contest any assessment.

17.2 If LICENSEE fails to pay any such taxes after such contest of any assessment and for which LICENSEE is obligated, CITY may, but shall not be required to, pay such taxes on LICENSEE's behalf. If CITY pays any such taxes on behalf of LICENSEE pursuant to the preceding sentence, LICENSEE shall reimburse and pay to CITY an amount equal to any such taxes so paid, plus an

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administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

18. Liability and Indemnification

18.1 LICENSEE shall at all times comply with all laws and ordinances and all applicable rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location, use, operation, and removal of the IMPROVEMENTS, authorized herein, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, shall fully release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants or employees against any and all claims, damages, lawsuits, losses, costs, or expenses which may be sustained or incurred by CITY, its officers, officials, agents, servants or employees as a result of LICENSEE's installation, operation, or removal of such IMPROVEMENTS.

18.2 LICENSEE undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors and subcontractors, all risk of dangerous conditions, if any on or about the PREMISES, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, LICENSEE hereby agrees to release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon CITY, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of LICENSEE's installation, operation, maintenance, condition or use of the PREMISES or LICENSEE's IMPROVEMENTS or LICENSEE's failure to comply with any applicable federal, state, or local statute, ordinance or regulation.

18.3 LICENSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 18. LICENSEE further agrees to release, defend, indemnify, and hold CITY, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local

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environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

19. Insurance

19.1 LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LICENSEE's sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. LICENSEE must provide insurance in compliance with **Appendix "B",** attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LICENSEE shall provide a certificate of insurance for the added term that shows LICENSEE meets all insurance requirements under Appendix B.

19.2 In the event that LICENSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LICENSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide CITY with separate certificates of insurance or such other documentation as is reasonably required by CITY to evidence that each such third party obtains and maintains insurance coverage consistent with the insurance requirements of this Agreement throughout the term of its contract with LICENSEE; and (b) such third party shall execute the Contractor Agreement, a copy of which is attached hereto and incorporated herein as **Appendix "B-1"**. All such insurance certificates and other documents evidencing coverage shall contain an affirmative statement of the contractor, subcontractor, or other third party that such third party shall notify the City of Plano in the event that the policy lapses or is canceled for any reason.

20. Notice

20.1. Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

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CITY	LICENSEE
City of Plano c/o Mark Israelson. Intergovernmental Relations PO Box 860358 Plano TX, 75086	Dallas MTA, L.P. d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, New Jersey 07921 Attn: Network Real Estate

CITY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party.

21. Remedies

21.1 LICENSEE's failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LICENSEE shall be given fifteen (15) days from receipt of written notice from CITY (that such payment is overdue for the third time within such 12-month period) to cure. If LICENSEE fails to make payment as required; if LICENSEE abandons or vacates the PREMISES; or if LICENSEE becomes insolvent; and has not filed for bankruptcy, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have hereunder or by operation of law, with fifteen (15) days notice, require LICENSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall CITY or anyone acting on CITY's behalf attempt to remove LICENSEE's communications equipment, except as provide for in Section 6.5 herein. Upon such occurrence, CITY may either (a) declare this Agreement and license granted herein at an end, in which event LICENSEE shall immediately pay CITY a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LICENSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate CITY for all detriment proximately caused by LICENSEE's failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LICENSEE upon such terms and conditions as CITY may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to CITY hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LICENSEE shall pay CITY any deficiency monthly, notwithstanding that CITY may have received Rental Fees in excess of the

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Rental Fees stipulated in this Agreement in previous or subsequent months, and CITY may bring an action therefor as such monthly deficiency shall arise.

21.2 No re-entry and taking of possession of the PREMISES by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to LICENSEE by CITY.

22. Force Majeure

22.1 Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days notice.

23. Miscellaneous Provisions

23.1 **Modifications**. LICENSEE's operations and all CITY approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

23.2 **Entire Agreement**. This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

23.3 **Capacity**. Both LICENSEE and CITY represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

23.4 **Governing Law**. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be **in a court with jurisdiction over** Collin County, Texas.

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23.5 **Amendment**. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

23.6 **Legal Construction; Severability**. In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

23.7 **Nonwaiver**. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

23.8 **Independent Contractor**. LICENSEE covenants and agrees that LICENSEE is an independent contractor and not an officer, agent, servant or employee of CITY; that LICENSEE 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 LICENSEE, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and LICENSEE.

23.9 **Successors and Assigns**.

(a) CITY and LICENSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CITY nor LICENSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY. LICENSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LICENSEE's IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of CITY. CITY's consent may be conditioned upon LICENSEE successfully obtaining contracts from such third parties wherein

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those parties agree to directly compensate CITY for all benefits incurred by the use of the PREMISES.

(b) Notwithstanding anything in Section 23.9(a) to the contrary, LICENSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LICENSEE's assets in the market where the Premises are located without CITY'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LICENSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.

(c) If CITY shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, CITY shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LICENSEE's rights under this Agreement. If the PREMISES are so disposed of, LICENSEE shall not disavow any of LICENSEE's obligations pursuant to this Agreement but shall attorn to the purchaser or transferee thereof for the performance of CITY's obligations under this Agreement.

23.10 **Applicable Laws**. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

23.11 **Subordination to Mortgage**. As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which CITY shall notify LICENSEE in writing, shall be deemed to be prior in time and senior to the rights of the LICENSEE under this Agreement. LICENSEE subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. CITY and LICENSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LICENSEE hereunder.

23.12 **Contract Interpretation**. Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

EXECUTED on the _____ day of _____, 200___.

LICENSEE:

DALLAS MTA, L.P. d/b/a VERIZON WIRELESS,
By Verizon Wireless Texas, LLC, its general partner

BY: _____
Hans F. Leutenegger
Area Vice President – Network, South Area

CITY:

CITY OF PLANO, TEXAS, a home rule municipal corporation

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

CITY'S TAX ID #: 75-6000640

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ACKNOWLEDGMENTS

STATE OF NORTH CAROLINA §
§
COUNTY OF MECKLENBURG §

This instrument was acknowledged before me on the _____ day of _____, 200__, by **HANS F. LEUTENEGGER**, Area Vice President – Network, South Area of Verizon Wireless Texas, LLC, general partner of Dallas MTA, L.P. d/b/a Verizon Wireless, on behalf of said partnership.

_____
Notary Public in and for

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 200 _, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

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APPENDIX A

Legal Description

Parent Tract Description

BEING a tract of land, located in the H. B. Miller Survey, Abstract 614, and being a part of a tract of land conveyed to Laverne W. Baccus, Trustee for Earlene B. Croom by a deed now of record in Volume 2869, Page 246 of the Deed Records of Collin County, Texas, said tract being more particularly described as EXHIBIT "A" TO SPECIAL WARRANTY DEED RECORDED AS INSTRUMENT NO. 96-0092889, DEED RECORDS OF COLLIN COUNTY, TEXAS.)
AND
BEING a tract of land, located in the H. B. Miller Survey, Abstract 614, and being part of a tract of land conveyed to Laverne W. Baccus for Fred W. Baccus Trust by a deed now of record in Volume 2477, Page 814 of the Deed Records of Collin County, Texas, said tract being more particularly described as EXHIBIT "A" TO THE SPECIAL WARRANTY DEED RECORDED AS INSTRUMENT NO. 96-0092892, DEED RECORDS OF COLLIN COUNTY, TEXAS.)

Licensee's Lease Site Description

A tract of land lying in and being part of a certain 1.2394 acre tract situated in H. B. Miller Survey, Abstract 614, Collin County, Texas as described in Instrument No. 96-0092889, Deed Records of Collin County, Texas; said tract being more particularly described as follows:
Commencing at the Northwest corner of said 1.2394 acre tract; Thence N 89°16'52" E on the North line of said 1.2394 acre tract, a distance of 19.19 feet to a point on said North line; Thence S 00°43'08" E perpendicular to said North line, a distance of 9.59 feet to a 1/2" iron rod set for the Northwest corner, said corner being the Point of Beginning; Thence N 89°38'08" E a distance of 29.00 feet to a 1/2" iron rod set for the Northeast corner; Thence S 00°21'52" E a distance of 30.00 feet to a 1/2" iron rod set for the Southeast corner; Thence S 89°38'08" W a distance of 29.00 feet to a 1/2" iron rod set for the Southwest corner; Thence N 00°21'52" W a distance of 30.00 feet to the Point of Beginning, containing 870.00 square feet or 0.020 acres, more or less.

Access Note:

Licensee has common access to the Licensee's Lease Site via an existing 10' gravel road within an existing Access Easement recorded as Instrument No. 96-0092891 and Instrument No. 96-0092894, Collin County, Texas to Spring Creek Parkway

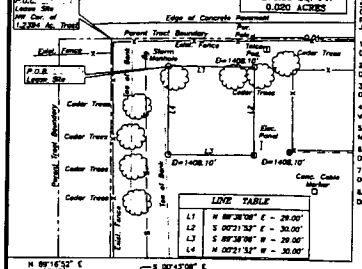
Utility Note:

Licensee has common usage of the existing utilities on the subject property as shown hereon.

SURVEY OF A LICENSEE'S LEASE SITE LYING IN A PORTION OF A 1.2394 ACRE TRACT & A 0.1176 ACRE TRACT OUT OF THE H. B. MILLER SURVEY, ABSTRACT NO. 614, COLLIN COUNTY, TEXAS

LESSEE'S LEASE SITE DETAIL
SCALE: 1"=20'

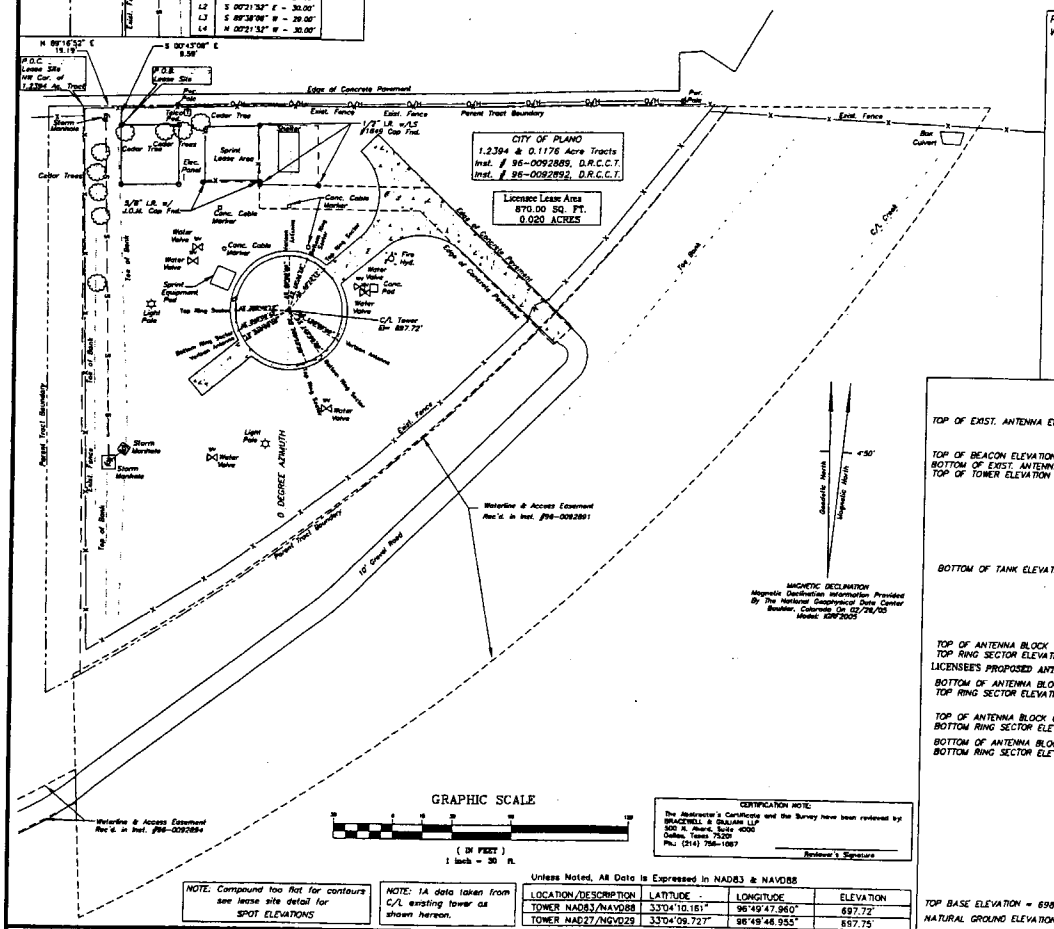
Licensee Lease Area
870.00 SQ. FT.
0.020 ACRES

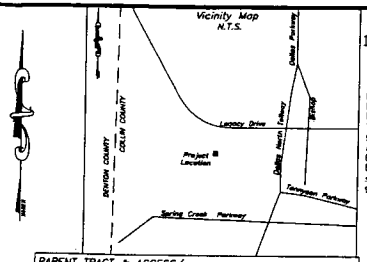


LINE TABLE	
L1	N 89°38'08" E - 29.00'
L2	S 00°21'52" E - 30.00'
L3	S 89°38'08" W - 29.00'
L4	N 00°21'52" W - 30.00'

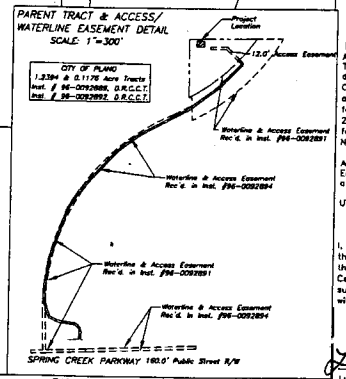
EASEMENTS:
The easements listed hereon were taken from the title report conducted by:
COURTHOUSE SPECIALISTS
5025 N. Central Expressway, Suite 3030
Dallas, Texas 75205
Ph.: 214-443-9355
Job No.: 18143 Effective Date: 03/16/05 at 4 P.M.

1. Right of Way Easement dated April 25, 1938, to Denton County Electric Cooperative, recorded in Volume 468, Page 227. DOES AFFECT the Parent Tract and the Licensee's Lease Site as a blanket easement and is not plottable.
2. Water Line easement dated February 3, 1966, to Lebanon Water Supply Corporation, filed for record in Volume 669, Page 268. DOES AFFECT the Parent Tract and the Licensee's Lease Site as a blanket easement and is not plottable.
3. Water Line easement dated February 3, 1966, to Lebanon Water Supply Corporation, filed for record in Volume 669, Page 290. DOES AFFECT the Parent Tract and the Licensee's Lease Site as a blanket easement and is not plottable.
4. Landowners Agreement and Utilities Easement dated April 28, 1976, to Pieno Management Corporation, filed for record in Volume 1004, Page 848, Supplemented in Volume 1110, Page 885. DOES NOT AFFECT the Parent Tract and the Licensee's Lease Site.
5. Agreement defining area embraced within the easements of Denton County Electric Cooperative, Inc., dated March 14, 1980 and filed for record in Volume 1362, Page 312. DOES AFFECT the Parent Tract and Licensee's Lease Site as a blanket agreement for easement in Item #1.
6. Assignment of Right of Way Easements dated August 30, 1988 to City of Plano and recorded in Volume 2918, Page 214. DOES AFFECT the Parent Tract and Licensee's Lease Site which are items #2 and #3 stated above.
7. Water Line and Access Easement dated October 25, 1996 to City of Plano and recorded as instrument No. 96-0092891. DOES AFFECT the Parent Tract and the Licensee's Lease Site as shown in the Parent Tract and Easement Detail at ingress and egress to the Parent Tract.
8. Water line and Access Easement dated October 25, 1996 to City of Plano and recorded as instrument No. 96-0092894. DOES AFFECT the Parent Tract and the Licensee's Lease Site as shown in the Parent Tract and Easement Detail at ingress and egress to the Parent Tract.



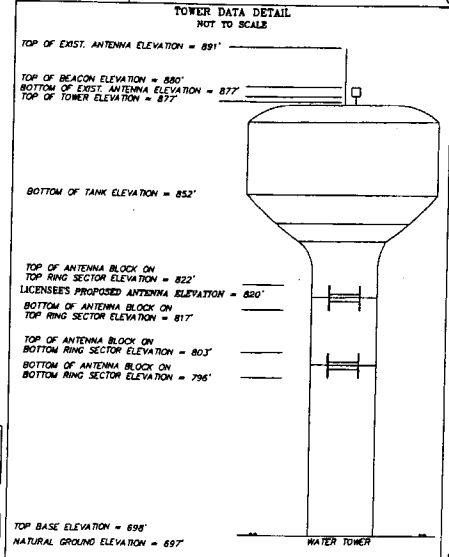


PARENT TRACT & ACCESS/ WATERLINE EASEMENT DETAIL
SCALE: 1"=300'



MAGNETIC DECLINATION
Magnetic Declination Information Provided By The National Geophysical Data Center Boulder, Colorado On 02/28/05
Model: IGRF2005

TOWER DATA DETAIL
NOT TO SCALE



GRAPHIC SCALE
(IN FEET)
1 inch = 30 ft.

NOTE: Compound too flat for contours see lease site detail for SPOT ELEVATIONS

NOTE: 1A data taken from C/L existing tower as shown hereon.

CERTIFICATION NOTE:
The Abstractor's Certificate and the Survey have been reviewed by:
BRACEWELL & GUILIANI LLP
500 N. Akard, Suite 4000
Dallas, Texas 75201
Ph.: (214) 758-1087
Reviewer's Signature

Unless Noted, All Data is Expressed in NAD83 & NAVD88

LOCATION/DESCRIPTION	LATITUDE	LONGITUDE	ELEVATION
TOWER NAD83/NAVD88	33°04'10.181"	96°49'47.960"	697.72'
TOWER NAD27/NGVD29	33°04'09.727"	96°49'46.955"	697.75'

PARENT TRACT DESCRIPTION
BEING a tract of land, located in the H. B. Miller Survey, Abstract 614, and being a part of a tract of land conveyed to Laverne W. Baccus, Trustee for Earlene B. Croom by a deed now of record in Volume 2869, Page 245 of the Deed Records of Collin County, Texas, said tract being more particularly described as EXHIBIT "A" TO SPECIAL WARRANTY DEED RECORDED AS INSTRUMENT NO. 96-0092889, DEED RECORDS OF COLLIN COUNTY, TEXAS.)
AND
BEING a tract of land, located in the H. B. Miller Survey, Abstract 614, and being part of a tract of land conveyed to Laverne W. Baccus for Fred W. Baccus Trust by a deed now of record in Volume 2477, Page 814 of the Deed Records of Collin County, Texas, said tract being more particularly described as EXHIBIT "A" TO THE SPECIAL WARRANTY DEED RECORDED AS INSTRUMENT NO. 96-0092892, DEED RECORDS OF COLLIN COUNTY, TEXAS.)

SURVEY OF A LICENSEE'S LEASE SITE LYING IN A PORTION OF A
1.2394 ACRE TRACT & A 0.1176 ACRE TRACT OUT OF THE H. B. MILLER
SURVEY, ABSTRACT NO. 614, COLLIN COUNTY, TEXAS

LICENSEE'S LEASE SITE DESCRIPTION
A tract of land lying in and being part of a certain 1.2394 acre tract situated in H. B. Miller Survey, Abstract 614, Collin County, Texas as described in Instrument No. 96-0092889, Deed Records of Collin County, Texas; said tract being more particularly described as follows:
Commencing at the Northwest corner of said 1.2394 acre tract; Thence N 89°16'52" E on the North line of said 1.2394 acre tract, a distance of 19.19 feet to a point on said North line; Thence S 00°43'08" E perpendicular to said North line, a distance of 9.59 feet to a 1/2" iron rod set for the Northwest corner, said corner being the Point of Beginning; Thence N 89°38'08" E a distance of 29.00 feet to a 1/2" iron rod set for the Northeast corner; Thence S 00°21'52" E a distance of 30.00 feet to a 1/2" iron rod set for the Southeast corner; Thence S 89°38'08" W a distance of 29.00 feet to a 1/2" iron rod set for the Southwest corner; Thence N 00°21'52" W a distance of 30.00 feet to the Point of Beginning, containing 870.00 square feet or 0.020 acres, more or less.

ACCESS NOTE: LICENSEE has common access to the Licensee's Lease Site via an existing 10' gravel road within an existing Access Easement recorded as instrument No. 96-0092891 and Instrument No. 96-0092894, Collin County, Texas to Spring Creek Parkway, a public road.

UTILITY NOTE: LICENSEE has common usage of the existing utilities on the subject property as shown hereon.

I, Lucien C. Schaffer, Jr., a Registered Professional Land Surveyor licensed under the laws of the State of Texas, hereby certify that this survey (i) was made on the ground on February 28, 2005 for Licensee and Bracewell & Guiliani LLP, (ii) correctly shows the subject property and the location of easements, ROW and set back lines thereon that are visible or reflected on Abstractor's Certificate Number 18143 with an effective date of March 16, 2005 at 4 P.M., (iii) reflects the conditions found at the time of survey, (iv) except as shown hereon, reflects no encroachments or overlapping of improvements, and (v) that this survey conforms with the current Texas Society of Professional Surveyor's Category 3, Condition II survey criteria.

Lucien C. Schaffer 4-21-05
Lucien C. Schaffer Jr., TX R.P.L.S. #4803 Date

STATE OF TEXAS REGISTERED LUCIEN C. SCHAFFER JR. 4803 PROFESSIONAL LAND SURVEYOR

NOTES CONCERNING SURVEY:
1: This survey is based on "ABSTRACTOR'S CERTIFICATE"
PROVIDED BY: Courthouse Specialists
5025 N. Central Expressway, Suite 3030
Dallas, Texas 75205
DATED: March 16, 2005 at 4 P.M.
ABSTRACTOR: Chanon Motheral

2: Bearings shown hereon are based on the Texas State Plane Coordinate System, Texas North Central Zone, NAD83 Datum.

3: The elevations shown hereon are based on the NAVD88 Datum.

4: The latitude and longitude shown hereon are based on the NAD83 Datum and meet or exceed the minimum requirements for a FCC/FAA 1A survey which is defined as plus or minus 15 feet horizontal and plus or minus 3 feet vertical. This information was established and determined by GPS on 02/28/05.

5: The lease site shown on this survey DOES NOT lie within the 100 year flood plain and is located within the Flood Zone "X" per the Federal Emergency Management Agency (FEMA) as shown on the Flood Insurance Rate Map (FIRM), Community Panel Number 480859C 0405 G, which bears an effective date of January 19, 1995. Flood Zone determination is made through graphic plotting only and no other responsibility is herein assumed for accuracy of the base flood elevation or flood zone areas shown on the FIRM.

6: This survey does not provide any determination concerning wetlands, fault lines, toxic waste or any other environmental issues. Such matters should be directed to an expert consultant.

7: There may be additional buried or underground utilities in the area which the surveyor is unaware of and no liability for such is assumed herein. TEXAS ONE CALL SYSTEM (1-800-245-4545)

8: THIS IS NOT A BOUNDARY SURVEY OF THE PARENT TRACT.

9: At the time of Survey on 2/28/2005, No visible signs of drilling was taking place on the parent tract.

911 ADDRESS: NONE PROVIDED

Bearings Based on T.S.P.C.
Established GPS on: 02/28/05
Datum: Horz: NAD83 Texas North Central Zone
Vert: Geoid 96

NO.	REVISION	DATE	BY
1.	Lease Site Size changed & fixed legal	4/19/05	jts

DATE SURVEYED: 02/28/05	DATE DRAFTED: 04/08/05
FIELD WORK: C.V.	OFFICE WORK: J.L.S.
CHK'D BY: L.C.S.	JOB NO.: 3010.0363
SCALE: 1" = 30'	

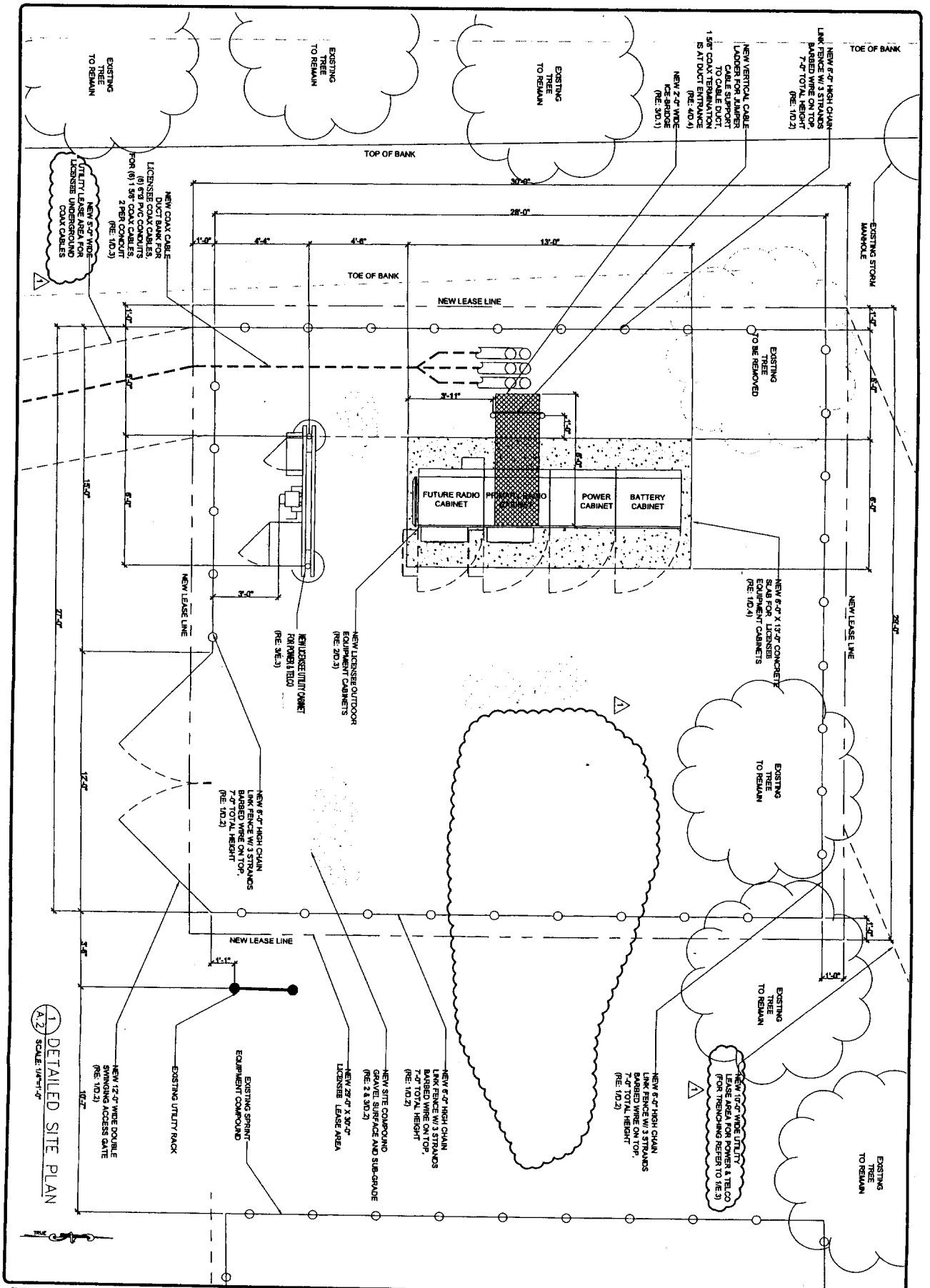
LEGEND
LIGHT POLE (U/G ELEC) — G — GAS LINE
LIGHT POLE (O/H ELEC) — GAS METER
POWER POLE — T — TELEPHONE LINE
GUY LINE — TELEPHONE RISER
_O/H_ OVERHEAD ELECTRIC — SANITARY SEWER MANHOLE
_U/G_ U/G ELECTRIC — X — FENCE LINE
— W — WATER LINE — STORM SEWER MANHOLE
WATER METER — D — STORM SEWER LINE
WATER VALVE — 1/2" IRON ROD SET
IRON PIN FOUND — IRON ROD FOUND

PREPARED BY:
H&S SURVEYING, INC.
Surveying and
Telecommunication Company
SERVING THE CENTRAL U.S.
201 N. BICKFORD, EL RENO, OK. 73036
PH: (405) 262-0249 - FAX. (405) 262-5107
HSSURVEYING1@AOL.COM

PREPARED FOR:
LICENSEE

SURVEY OF:
164670A / TENNYSON CENTER WT
PLANO, COLLIN COUNTY, TEXAS
PREPARED FOR:
LICENSEE
500 WEST DOVE ROAD, SOUTHLAKE, TEXAS 76092

DRAWING NO.
S-1
SHEET 1 OF 1



THESE DRAWINGS ARE THE PROPERTY OF LICENSEE. THEY ARE INTENDED FOR THE EXCLUSIVE USE OF THIS PROJECT. ANY RE-USE OF THESE PLANS (DRAWINGS) WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSEE IS PROHIBITED

DESIGNED BY: GDM	REVIEWED BY: CEC	LICENSEE	TENNYSON CENTER W.T. 164670-A COMMUNICATIONS PARKWAY PLANO, TX 75024
CHECKED BY: KWP	APPROVED BY: PRL		
REASON FOR ISSUE: CONSTRUCTION	PRINTED DATE: 08/12/05		
PLOT SCALE: 1:1	DRAWING NAME: DETAILED SITE PLAN		
SHEET #: A.2	BLDG. PROJECT #:		

REV.#	DATE:	DESCRIPTION:
1	08/12/05	CITY REVIEW

WALLACE DESIGN GROUP
2775 Villa Creek Dr., Suite 150, Dallas, Texas 75234
Phone: (972) 484-6855 Fax: (972) 484-6830

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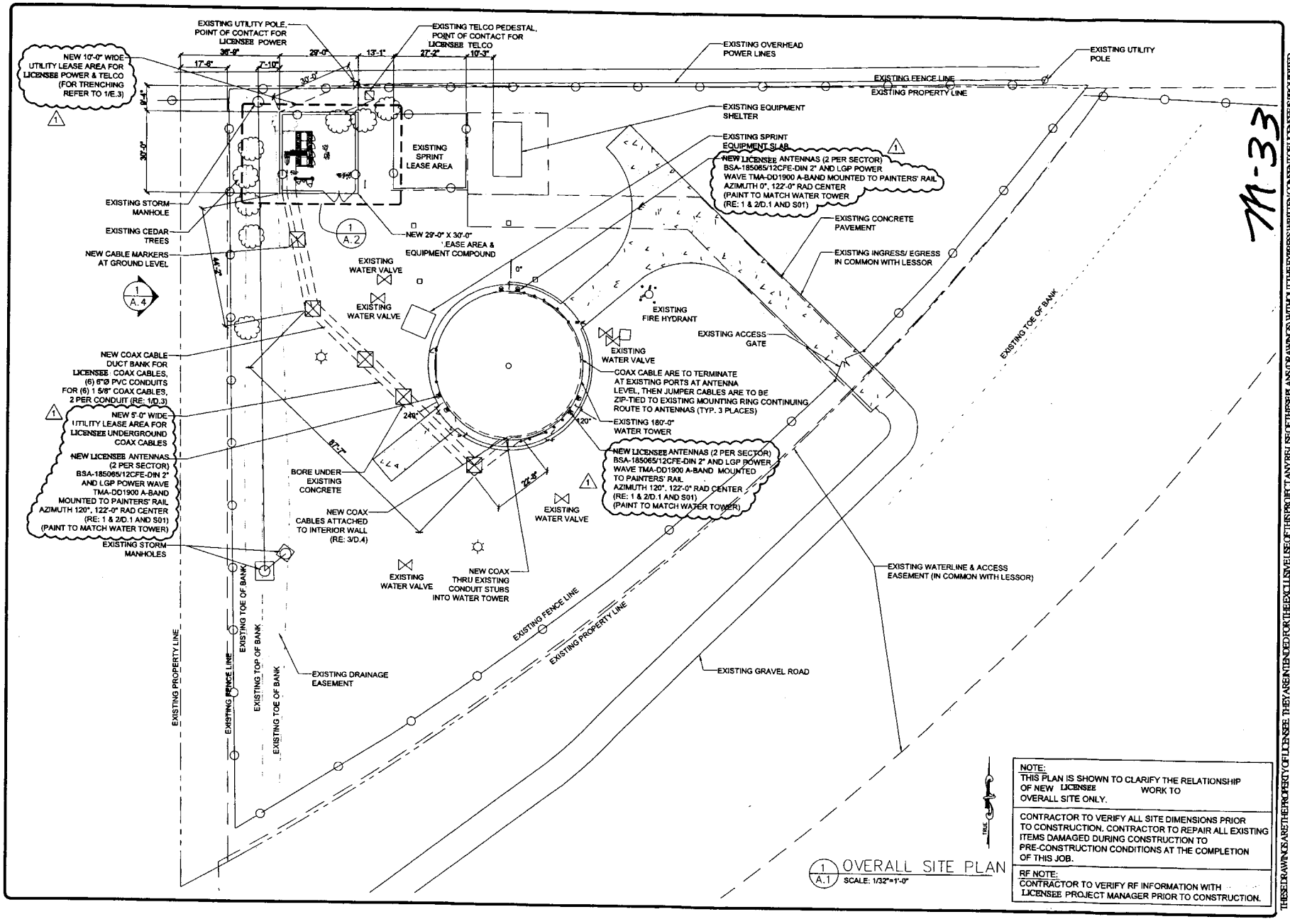

NOTE:
THIS PLAN IS SHOWN TO CLARIFY THE RELATIONSHIP OF NEW LICENSEE WORK TO OVERALL SITE ONLY.

CONTRACTOR TO VERIFY ALL SITE DIMENSIONS PRIOR TO CONSTRUCTION. CONTRACTOR TO REPAIR ALL EXISTING ITEMS DAMAGED DURING CONSTRUCTION TO PRE-CONSTRUCTION CONDITIONS AT THE COMPLETION OF THIS JOB.

RF NOTE:
CONTRACTOR TO VERIFY RF INFORMATION WITH LICENSEE PROJECT MANAGER PRIOR TO CONSTRUCTION.

THESE DRAWINGS ARE THE PROPERTY OF LICENSEE. THEY ARE INTENDED FOR THE EXCLUSIVE USE OF THIS PROJECT. ANY REUSE OF THESE PLANS (DRAWINGS) WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSEE IS PROHIBITED

WALLACE DESIGN GROUP
2775 Villa Creek Dr., Suite 150, Dallas, Texas 75234
Phone: (972) 484-6855 Fax: (972) 484-6850

REV.#	DATE:	DESCRIPTION:
1	08/12/05	CITY REVIEW

REVISED BY	CHECKED BY	APPROVED BY
CEC	PRL	

TENNYSON CENTER W.T.
164670-A
COMMUNICATIONS PARKWAY
PLANO, TX 75024

LICENSEE

DESIGNED BY:	REVIEWED BY:
GDM	CEC
CHECKED BY:	APPROVED BY:
KWP	PRL

REASON FOR ISSUE: CONSTRUCTION
PRINTED DATE: 08/12/05
PLOT SCALE: 2:1
DRAWING NAME: OVERALL SITE PLAN
SHEET #: A.1
KLWA PROJECT #

APPENDIX "B"
INSURANCE

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Licensee, Licensee's agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) or equivalent forms covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.

2. Automobile liability shall include all owned, hired and non-owned vehicles.

3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Licensee shall maintain limits not less than:

1. Commercial General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage. $10,000,000 Aggregate Policy will include coverage for (a) Premises-Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage, Fire Damage, Medical Expense.

2. Automobile liability: $1,000,000 combined single limit per accident, for bodily injury and property damage.

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3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

C. Deductibles and Self-Insured Retentions

N/A

D. Other Insurance Provisions

The policies are to contain, or be generic endorsements with standard certificates for general and automobile liability coverage to contain the following provisions:

1. General Liability and Automobile Liability Coverage

(a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is Insured" automatically provides liability coverage in favor of the City as an additional insured.

(b) The Licensee's insurance coverage shall be primary insurance as respects Licensee's operations. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it in this respect.

(c) [INTENTIONALLY DELETED]

(d) The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

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2. Workers' Compensation and Employer's Liability Coverage

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

3. All Coverages

   Each insurance program required by this clause shall be directed to state that coverage shall not be suspended, voided, canceled or non-renewed, reduced in coverage or in limits, except after ten (10) days prior written notice by mail has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on standard insurance certificate forms and are to be received and approved by the City before work commences.

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APPENDIX "B-1"

CONTRACT BY AND BETWEEN CITY OF PLANO, TEXAS AND _____, d/b/a _____

THIS CONTRACT is made and entered by and between and _____ **d/b/a** _____, hereinafter referred to as "Licensee," _____, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, hereinafter referred to as "City," to be effective subsequent to execution by the Plano City Manager or his designee.

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

I. SCOPE OF WORK

Contractor shall provide all supervision, labor, materials and equipment necessary for the performance of all obligations required under the terms of the contract between Licensee and _____(Contractor's name) dated _____, 200_.

II. THIRD PARTY INTEREST

It is agreed by and between the parties that the City has an interest in the proper performance of this Contract, and that the City may bring suit for failure to comply with the specifications.

Contractor acknowledges that Licensee has no property interest in the premises provided by the City, and agrees that Contractor will not file any Lien against the City's premises should a dispute arise between Licensee and Contractor.

Contractor agrees that it shall not provide any work or services of any nature unless Contractor has obtained the insurance coverage as specified herein.

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III.
VENUE

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

IV.
INDEPENDENT CONTRACTOR

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

V.
INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance as set forth below.

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

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.

2. Automobile liability shall include all owned, hired and non-owned vehicles.

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3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

4. Professional Liability (when applicable).

B. Minimum Limits of Insurance
Licensee shall maintain limits not less than:

1. Commercial General Liability: $500,000 per occurrence for bodily injury, personal injury and property damage. $1,000,000 Aggregate Policy will include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.

2. Automobile liability: $500,000 combined single limit per accident, for bodily injury and property damage.

3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

4. Professional Liability.

C. Deductibles and Self-Insured RetentionsAny deductible or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions
The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
   (a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.

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(b) The Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.

(d) The Licensee's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City..

E. Acceptability of Insurers
The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage
Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to be received and approved by the City before work commences. The City

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reserves the right to require complete, certified copies of all required insurance policies, at any time.

VI.
AFFIDAVIT OF NO PROHIBITED INTEREST

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

VII.
SEVERABILITY

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

VIII.
ENTIRE AGREEMENT

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

IX.
CONTRACT INTERPRETATION

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

X.
SUCCESSORS AND ASSIGNS

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

XI.
HEADINGS

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

XII.
THIRD PARTY BENEFIT

The parties to this Contract agree that Contractor will obtain and maintain insurance coverage as specified herein until completion of all work and services by Contractor for Licensee. Contractor shall release, defend, indemnify and hold harmless City from all damages, attorneys' fees and costs of any kind incurred by City due to Contractor's breach of its obligations hereunder. The parties further agree that this Contract is intended to benefit the City of Plano, its officials, officers, employees, agents, successors and assigns, each of which may enforce its terms in a court of competent jurisdiction either individually or collectively.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Contract by signing below. The effective date of this Contract shall be the date of City Council approval.

_____,
d/b/a _____

BY: _____
Name:
Title:

CONTRACTOR:

BY:_____
Name:_____
Title:_____

CITY OF PLANO, TEXAS

Date: _____

BY:_____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 200_, by _____, of _____ a Texas corporation, on behalf of said corporation as general partner of _____, dba _____.

_____
Notary Public in and for
The State of _____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 2002 by _____, _____ of _____, a _____ corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

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STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 200__ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

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EXHIBIT "A"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer in this sole proprietorship, partnership, corporation, or board has or will have during the term of this contract a prohibited interest as that term is defined in Section 11.02 of the Plano City Charter and the City's Code of Conduct, Chapter 2, Article IV of the City's Code of Ordinances.

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

_____
Name of Contractor

By:_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200__.

_____
Notary Public, State of Texas

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		10/26/05
Dept Signature:		City Manager		10/27/05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ORDERING ATMOS ENERGY, MID-TEX DIVISION TO SHOW CAUSE REGARDING THE REASONABLENESS OF ITS EXISTING NATURAL GAS DISTRIBUTION RATES WITHIN THE CITY; REQUIRING ATMOS ENERGY, MID-TEX DIVISION TO SUBMIT A RATE PACKAGE BASED ON A RATE YEAR ENDING JUNE 30, 2005; DIRECTING THAT SUCH FILING SHALL BE MADE BY DECEMBER 31, 2005; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; AND PROVIDING AN EFFECTIVE DATE

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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): **GENERAL FUND**

COMMENTS: This item has no financial impact

SUMMARY OF ITEM

This Resolution requires Atmos to show the reasonableness of its gas rates and requires the reimbursement of legal expenses.

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

REV 08/98

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ORDERING ATMOS ENERGY, MID-TEX DIVISION TO SHOW CAUSE REGARDING THE REASONABLENESS OF ITS EXISTING NATURAL GAS DISTRIBUTION RATES WITHIN THE CITY; REQUIRING ATMOS ENERGY, MID-TEX DIVISION TO SUBMIT A RATE PACKAGE BASED ON A RATE YEAR ENDING JUNE 30, 2005; DIRECTING THAT SUCH FILING SHALL BE MADE BY DECEMBER 31, 2005; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas ("City") is a regulatory authority under the Gas Utility Regulatory Act ("GURA") and has original jurisdiction over the gas utility rates of Atmos Mid-Tex; and

WHEREAS, the City has the authority under §§ 103.001 and 104.151, GURA, to initiate a proceeding to determine whether the existing rates of a gas utility are unreasonable or in any way in violation of any provision of law; and

WHEREAS, upon making a finding of unreasonableness, the City may determine the just and reasonable rates to be charged by Atmos Mid-Tex; and

WHEREAS, Atmos Energy Corporation, the parent company of Atmos Mid-Tex has recently experienced system-wide cost reductions due to the doubling of its nationwide customer base with the acquisition of the assets of TXU Gas, and has reported to its investors that it has experienced a significant increase in profits related to its Texas divisions; and

WHEREAS, Atmos Mid-Tex is charging rates approved based on the higher expenses and equity-to-debt ratio of TXU Gas, rather than rates that would be justified based on Atmos' lower expenses and equity-to-debt ratio; and

WHEREAS, ratepayers of Atmos Mid-Tex, including the City and its residents, will suffer further unreasonable adverse impact from the GRIP rate increases approved by the Texas Railroad Commission and the second GRIP filing recently made by Atmos Mid-Tex; and

WHEREAS, the Commission's failure to consider testimony and argument offered by Cities during its consideration of the Company's piecemeal GRIP rate applications leaves Cities no functional choice but to exercise its statutory right to

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exercise original jurisdiction over Atmos' base rates and compel a comprehensive rate review; and

WHEREAS, the City has reason to believe that Atmos Mid-Tex is over-earning and that its rates are excessive; and

WHEREAS, Cities and their residents are about to experience unprecedented increases in the cost of natural gas during the heating season and protection of the public interest requires a comprehensive review of Atmos' cost of service to determine whether rates and services are just and reasonable; and

WHEREAS, Atmos Mid-Tex should be required to justify its rates on a system-wide basis; and

WHEREAS, the coalition of cities formed to review Atmos' GRIP filings (the Atmos Cities Steering Committee, or "ACSC") can most efficiently review the Atmos filing on behalf of the City; and

WHEREAS, the reasonable costs associated with the City's review of the Company's rates are reimbursable from Atmos Mid-Tex.

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

Section I. Atmos Mid-Tex is hereby directed to show cause regarding the reasonableness of its existing natural gas distribution rates within the City. Atmos shall file with the City information sufficient to determine the Company's rate base, expenses, investment, and rate of return. Such filing shall be on a system-wide basis and shall be based upon a rate year ending June 30, 2005. Atmos Mid-Tex is directed to file its rate filing package to comply, at a minimum, with the regulations and requirements of the Railroad Commission. The filing shall be made with the City on or before December 31, 2005. An electronic copy of the filing shall be made with the City simultaneously with the written filing on December 31, 2005. This filing shall be the same filing as made with the first coalition city to pass the same or similar Show Cause Resolution.

Section II. City's designated representatives shall have the right to obtain additional information from Atmos through the filing of written requests for information, to each of which Atmos shall respond in writing within fourteen (14) calendar days from the receipt of each such request for information.

Section III. A public hearing shall be conducted by the City. Based upon such hearing, the briefing of staff, and the consultants' findings, a determination of the reasonableness of the existing rates of Atmos shall be made by the City and, if necessary,

just and reasonable rates shall be determined to be thereafter observed and enforced for all services of Atmos within the City.

Section IV. The City may, from time to time, amend this procedural schedule and the filing requirements, and enter additional orders as may be necessary in the public interest and to enforce the provisions hereof.

Section V. Atmos Mid-Tex shall promptly reimburse the City's reasonable monthly costs associated with the City's activities related to the rate review.

Section VI A copy of this Resolution shall be sent to Atmos Mid-Tex, care of Richard T. Reis, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to the coalition of cities, at Lloyd Gosselink, P.O. Box 1725, Austin, Texas 78767-1725.

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

DULY PASSED AND APPROVED this the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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MEMORANDUM

TO: **City Council**

THROUGH: **Tom Muehlenbeck, City Manger**

FROM: **Mark D. Israelson, Assistant to the City Manager** MDI

DATE: **October 26, 2005**

SUBJECT: **STAFF REPORT ON ATMOS MID-TEX SHOW CAUSE RESOLUTION**

Purpose of the Resolution:

Municipalities have original jurisdiction over gas utility rates within the city. Municipalities have authority under the Gas Utility Regulatory Act ("GURA") to initiate a proceeding to determine whether the existing rates being charged by a gas utility are unreasonable or in violation of the law. This resolution exercises that authority and requires Atmos Mid-Tex Division to file a rate filing package with the City in order for the City to determine whether Atmos' rates are excessive.

Why this Resolution is necessary:

The last rate case at the Railroad Commission affecting the gas distribution system now owned by Atmos Mid-Tex was GUD No. 9400. At that time, the system was owned by TXU Gas Company, which had very different operating expenses and debt structure from Atmos. The rates currently being charged, therefore, are not based on Atmos' cost of service or on its capital structure. As a result, Atmos is most likely over-earning and receiving a greater return than was authorized by the Commission in GUD No. 9400:

- In GUD No. 9400, the Commission authorized TXU Gas to earn an 8.25% return on investment.
- Atmos' adjusted Earnings Monitoring Report indicates that it has earned a return of 8.899%, representing an excess return of $4.9 million.
- After implementation of the first Pipeline GRIP surcharge, Atmos' return increases to 9.101%, or $5.8 million,
- After implementation of the first Distribution GRIP surcharges, Atmos will earn a return of 9.464%, or $9.3 million.

Atmos has made numerous public statements regarding the reduction of its operating expenses and the increased revenues it has been making from its Texas systems:

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- For example, in its first quarter financial review, Atmos reported that it expects to achieve $25 million in savings as a result of the purchase of the TXU Gas assets, and an additional $6 million in annualized savings as a result of moving its customer call center in-house.
- Subsequent reports by the Company have shown that those savings have been met, and exceeded; in August 2005, Atmos reported $45 million year-to-date reductions to the general and administrative costs of TXU Gas used for rate-setting purposes in GUD No. 9400.

The ratemaking fostered by the GRIP interim surcharges prevents a thorough, comprehensive review of Atmos' cost of service, and would be illegal under traditional ratemaking in the public interest. Once the GRIP surcharge is in place, it is updated annually until the next general rate case; however, that next case can be delayed by the Company for more than five years. Second, while predicated as a surcharge to promptly recover investment in new and replacement ***infrastructure*** designed to improve system safety and reliability, a substantial portion of the GRIP requests have been based upon new office furniture, computers and other cost efficiency measures more likely to benefit shareholders than ratepayers. Some of the investments included by Atmos in its GRIP filings have a depreciable life of five years or less. Thus, a rate case over five years after the GRIP surcharge is implemented will be too late to determine the reasonableness of such investments as they will have already been completely depreciated.

Explanation of "Be It Resolved" Paragraphs:

1. This paragraph requires Atmos to file a rate filing package with the City by December 31, 2005, based upon a test year ending June 30, 2005. The filing is directed to be on a system-wide basis, meaning that every city in the coalition will receive the same filing and will be able to review the filing jointly. In August 2005, the City of Dallas adopted a show cause resolution and required Atmos to file by November 15, 2005, based upon the same test year. This paragraph also requires Atmos to file an electronic version of its filing package. Although the Company keeps all of its information in electronic form, Atmos has caused delays of weeks and even months in recent filings by refusing to provide information in electronic form promptly after making paper filings. It is necessary for the consultants to have the filing electronically in order to test the validity of the Company's schedules. As a minimum standard, the rate filing package is required to be filed in conformance with the regulations and requirements of the Railroad Commission.

2. This paragraph notifies the Company that the City and its consultants will be undertaking discovery to obtain necessary information from the Company, and requires the Company to respond to all discovery requests within fourteen (14) calendar days. This is designed to avoid the unreasonable and unprecedented delays experienced with discovery requests submitted after recent filings.

3. This paragraph sets out the procedure to be followed by the City, including a public hearing. At the end of the City's review, it will make a finding on the reasonableness of the Company's rates, and possibly set new rates.

4. This paragraph gives the City flexibility to amend its procedures and the filing requirements. This flexibility may be necessary in order to counteract dilatory or evasive actions by the Company.

5. This paragraph requires the Company to reimburse the City for its reasonable costs associated with the review of the Company's filing.

6. This paragraph directs that a copy of the signed resolution be sent to a representative of the Company and a representative of the coalition of cities.

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		10/27/05
Dept Signature:		City Manager		10/27/05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PUBLIC RIGHT-OF-WAY USE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND TOLLWAY-121 PARTNERS, LTD, A TEXAS LIMITED PARTNERSHIP, TO LOCATE, PLACE, ATTACH, INSTALL, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: **05/06**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): **GENERAL FUND**

COMMENTS: This item will provide additional revenue of $2,286.50 for a ten years of rental payments.

SUMMARY OF ITEM

This Resolution approves a Public Right-of-Way Use Agreement with Tollway-121 Partners Ltd. for work that they will complete for the Granite Phase III project.

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

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REV 08/98

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PUBLIC RIGHT-OF-WAY USE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND TOLLWAY-121 PARTNERS, LTD, A TEXAS LIMITED PARTNERSHIP, TO LOCATE, PLACE, ATTACH, INSTALL, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Public Right-of-Way Use Agreement by and between the City of Plano, Texas and Tollway-121 Partners Ltd., (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

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

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

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

Section II. The City Manager or, in his absence, an Executive Director, 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 on this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

PUBLIC RIGHT-OF-WAY USE AGREEMENT

This Agreement is made this the _____ day of _____, 2005, by and between the **City of Plano, Texas** ("City"), a Texas home rule municipal corporation, and **TOLLWAY-121 PARTNERS, LTD**, a limited partnership, duly organized and existing under the laws of the State of Texas ("Company").

RECITALS:

WHEREAS, Company desires to locate, place, attach, install, operate and maintain, subject to the terms of this Public Right-of-Way Use Agreement, 2 conduits each containing 6 coaxial cables (hereinafter called "Structure") under McDermott Road located in Plano, Collin County, Texas, as shown on the attached Exhibit "A," for the purpose of connecting Company's antennas situated on the Oncor monopole located in the median of McDermott Road to a telecommunications cabinet to be located on the south side of McDermott Road; and

NOW, THEREFORE, the City and Company agree as follows:

1. Definitions.

Capitalized terms used in this Agreement and not otherwise defined within this Agreement shall have the following meanings:

(a) *Affiliate* shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

(b) *Company* shall mean Tollway – 121 Partners, Ltd., a limited partnership, only and shall not include any Affiliate or third party.

(c) *City* shall mean the area within the corporate limits of the City of Plano, Texas, and the governing and administrative body thereof.

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(d) *Effective Date* shall mean the date of execution by the City.

(e) *Person* shall mean an individual, corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust or any other form or business entity or association.

(f) *Public Rights-of-Way* shall mean only those portions of the public rights-of-way and street crossings in the City identified in Exhibit "A" of this Agreement, which is attached hereto and hereby made a part of this Agreement for all purposes.

(g) *PUC* shall mean the Texas Public Utility Commission.

(h) *Structure* shall mean Company's 2 conduits each containing 6 coaxial cables located under McDermott.

2. **Grant of Rights**.

2.1 General Use of Public Rights-of-Way.

Subject to the terms and conditions set forth in this Agreement, the City Charter, and the ordinances of the City, the City hereby grants Company a non-exclusive license to locate, place, attach, install, operate and maintain its Structure in the Public Rights-of-Way, as defined in Section 1 hereof. Company hereby acknowledges and agrees that the location, attachment, installation, operation, maintenance, removal, reattachment, reinstallation, relocation and/or replacement of Structure or any other structure or equipment constitutes an actual use of the Public Rights-of-Way, that the City has the right to manage and regulate the use of such Public Rights-of-Way, and that the City is entitled to recover reasonable compensation from Company on account of such use of the Public Rights-of-Way.

Both the City and Company ("Parties") hereby acknowledge and agree that this Agreement addresses only the use of the Public Rights-of-Way by Company to locate, place, attach, install, operate and maintain its Structure and does not grant Company or

any Affiliate or contractor of the Company the use of the Public Rights-of-Way for any other reason. If Company, an Affiliate of Company, or any assignee, successor in interest or contractor of Company contends that Company, an Affiliate of Company, or any assignee, successor in interest or contractor of Company wishes to construct and/or install additional facilities in any of the City's public rights-of-way other than the Public Rights-of-Way defined in Section 1, Company shall first notify the City in writing and shall obtain a written permit or agreement for the use of the Public Rights-of-Way in that respect.

2.2 Scope. Any and all rights granted to Company under this Agreement, which shall be exercised at Company's sole cost and expense, shall be subject and subordinate to the prior and continuing right of City, its successors and assigns, to use any and all parts of the Public Rights-of-Way exclusively or concurrently with any other Person or Persons having the legal right to use such Public Rights-of-Way. In addition, any and all rights granted to Company under this Agreement shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Public Rights-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Company a real property interest in land, including, but not limited to, any fee, leasehold interest, or easement. Any work performed by or on behalf of Company shall be subject to the prior and customary review and regulation by the City. Company shall not allow any liens, including, but not limited to, mechanic's or materialman's liens, to be enforced against City's premises by reason of any such work.

2.3 Non-exclusive. This Agreement and all rights granted to Company herein are strictly non-exclusive. The City reserves the right to grant other and future agreements, consents and franchises for the use of public rights-of-way in the City, including the Public Rights-of-Way used by Company pursuant to this Agreement, to other Persons as the City deems appropriate. This Agreement does not establish any priority for the use of the Public Rights-of-Way by Company or by any present or future franchisees, users or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between franchisees, users and other permit holders, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

2.4 Other Permits. This Agreement does not relieve Company of any obligation to obtain permits, licenses, and other approvals from the City necessary for the construction, repair, or maintenance of the Structure.

3. **Term.**

This License shall continue in force for a period of ten (10) years from the Effective Date and may thereafter be renewed for such time and upon such terms as the parties may then agree. If any law or agency rule or regulation is adopted that affects the City's ability or right to manage the Public Rights-of-Way, Company agrees to meet with the City and to negotiate with diligence and in good faith an agreement or amendment to this Agreement that reasonably resolves the City's and Company's concerns regarding such law or agency rule or regulation.

4. **Fees and Payments.**

4.1 Public Right-of-Way Use Fee. On the Effective Date, Company shall pay the City as compensation for its use of the Public Rights-of-Way for the entire term of this Agreement, the sum of Two Thousand Two Hundred Eighty-Six Dollars and Fifty Cents ($2,286.50), which represents (i) ONE DOLLAR AND FIFTY CENTS ($1.50) per linear foot of the Public Rights-of-Way plus (ii) Two Hundred Dollars ($1,000.00) per public street crossing for a term of ten (10) years. Company hereby acknowledges and agrees that the amount of this Right-of-Way Use Fee constitutes just and reasonable compensation to the City for Company's use of the Public Rights-of-Way as provided by this Agreement.

4.2 Other Payments. In addition to the Right-of-Way Use Fees, Company shall pay the City all sums that may be due the City for property taxes, license fees, permit fees, or other taxes, charges or fees that the City may from time to time impose.

4.3 Interest. All sums due the City under this Agreement that are not paid when due shall bear interest at the rate of ten percent (10%) per annum, computed monthly.

4.4 Company acknowledges that it understands that this Agreement and the fee charged in Section 4.1 above relate only to the Public Rights-of-Way specifically identified in Exhibit "A." Additional portions of the public rights-of-way and/or street crossings shall require a new license and an additional fee.

5. **Use of Public Rights-of-Way**

5.1 Construction and Maintenance. In all matters relating to this Agreement, Company shall comply with the City of Plano Right-of-Way Management Ordinance, as

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adopted by Ordinance No. 2001-3-20 and as amended from time to time, and all other pertinent laws, rules, and regulations of the City and the State of Texas. Approval by City of this Agreement shall not constitute a warranty by City that Company's plans conform with federal, state and/or local codes and regulations applicable thereto. Company shall comply with all laws or ordinances of the City of Plano, including, but not limited to, those relating to building and excavation permits.

5.2 Work by Others; Alterations Required if Needed to Conform with Public Improvements. The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid sanitary sewer, gas, water, electric, telephone and television cable and other pipelines or cables and conduits and to do and permit to be done any underground and overhead installation that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any of Company's Public Rights-of-Way and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Company, except for the intentional or negligent acts of the City's employees, licensees, contractors or subcontractors for any damages so caused. The City shall not be liable to Company for any other damages; provided, however, nothing herein shall relieve any other person or corporation from any liability for damage to the facilities or the Structure.

5.3 Testing. Company shall cooperate with City in making any test or tests it requires of any installation or condition that, in its reasonable judgment, may have adverse effects on any of the facilities of the City. All costs incurred by the test(s), or any corrections thereof, shall be borne by Company.

5.4 Location, Use or Purpose Changes. No change in the location, use or purpose of the Public Rights-of-Way shall be made by Company without City's written approval.

6. **Miscellaneous Obligations of Company.**

6.1 Removal of Structure. Upon the termination or expiration of this Agreement, Company's right to use Public Rights-of-Way under this Agreement shall cease and Company shall immediately discontinue use of the Structure. Within six (6) months following such termination or expiration and in accordance with directions from the City, Company shall remove the Structure, including, but not limited to, all supporting structures, poles, transmission and distribution Structures and other appurtenances, fixtures or property from the Public Rights-of-Way. If Company has not removed all Structure facilities and equipment from the Public Rights-of-Way within six (6) months following termination or expiration of this Agreement, the City may deem all of the Company's Structure facilities and equipment remaining in the Public Rights-of-Way abandoned and, at the City's sole but reasonable discretion, (i) take possession of and title to such property; and/or (ii) take any and all legal action necessary to compel Company to remove such property.

Within six (6) months following termination or expiration of this Agreement, Company shall also restore any property, public or private, that is disturbed or damaged by removal of the Structure. If Company has not restored all such property within this time, the City, at the City's sole but reasonable discretion, may perform or have performed any necessary restoration work, in which case Company shall, within 10

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days following receipt of an itemized invoice, reimburse the City for any and all costs incurred in performing or having performed such restoration work.

7. **Indemnification and Insurance.**

7.1 **Disclaimer of Liability. EXCEPT DUE TO THE INTENTIONAL OR GROSSLY NEGLIGENT ACT OR OMISSION OF THE CITY, THE CITY SHALL NOT AT ANY TIME BE LIABLE FOR ANY INJURY OR DAMAGE OCCURRING TO ANY PERSON OR PROPERTY FROM ANY CAUSE WHATSOEVER THAT ARISES OUT OF THE ATTACHEMENT, INSTALLATION, OPERATION, MAINTENANCE, REMOVAL, REATTACHMENT, REINSTALLATION, RELOCATION AND/OR REPLACEMENT OF THE STRUCTURE OR THE CONSTRUCTION, MAINTENANCE, REPAIR, USE, OPERATION, CONDITION OR DISMANTLING OF THE STRUCTURE.**

7.2 Indemnification. Company shall provide to the City the indemnification set out in the City's Right-of-Way Management Ordinance, Ordinance No. 2001-3-20, as amended. Company further releases and indemnifies the City from and against any and all liability, cost and expense, including attorney's fees for loss of or damage to the City's property and for injury to or death of Persons (including, but not limited to, the property and employees of each of the parties hereto) when arising or resulting from a breach of this Agreement by Company, whether or not caused or contributed to by any act or omission, negligence or otherwise, of any employee or agent of City, except for intentional or grossly negligent acts of City's employees or agents.

7.3 **Assumption of Risk. COMPANY HEREBY UNDERTAKES AND ASSUMES, FOR AND ON BEHALF OF COMPANY, ITS OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS, AGENTS AND EMPLOYEES, ALL RISK OF**

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DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR – CONTROLLED PROPERTY OR FACILITIES, INCLUDING, BUT NOT LIMITED TO, THE PUBLIC RIGHTS-OF-WAY. IN ADDITION, COMPANY HEREBY AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST AND FROM ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE CITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGES INCURRED OR ASSERTED BY COMPANY OR ANY OF ITS EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, AND ARISING FROM THE ATTACHMENT, INSTALLATION, OPERATION, MAINTENANCE, CONDITION, REMOVAL, REATTACHMENT, REINSTALLATION, RELOCATION AND/OR REPLACEMENT OF THE STRUCTURE UNLESS DUE TO THE INTENTIONAL OR GROSSLY NEGLIGENT ACT OR OMISSION OF CITY.

7.4 Insurance. Company shall comply with the insurance requirements set out in the City's Right-of-Way Management Ordinance, Ordinance No. 2001-3-20, as amended.

8. **Termination.** This Agreement shall terminate:

A. at the end of the term provided for in Section 3 above;

B. upon abandonment of the Public Rights-of-Way or discontinuance of use thereof;

C. upon failure of Company to correct any default under this Agreement after expiration of the applicable cure period as set out in Section 9 and 10 below.

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9. **Defaults**.

The occurrence at any time during the term of this Agreement of one or more of the following events shall constitute an "Event of Default" under this Agreement:

9.1 Failure to Pay Right-of-Way Use Fees. An Event of Default shall occur if Company fails to pay any Right-of-Way Use Fee on or before the respective due date.

9.2 Breach. An Event of Default shall occur if Company materially breaches or violates any of the terms, covenants, representations, or warranties set forth in this Agreement or fails to perform any duty or obligation required by this Agreement.

9.3 Bankruptcy, Insolvency or Receivership. An Event of Default shall occur if Company (i) files a voluntary petition in bankruptcy; (ii) is adjudicated insolvent; (iii) files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; (iv) seeks, consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Company, any of Company's property or revenues, issues, earnings or profits thereof; (v) makes an assignment for the benefit of creditors; or (vi) fails to pay Company's debts generally as they become due.

9.4 Violations of the Law. An Event of Default shall occur if Company violates any existing or future federal, state or local laws or any existing or future ordinances, rules and regulations of the City; provided, however, that no Event of Default shall be deemed to occur or exist during the pendency of any legal action which the City or Company may initiate against the other under or in connection with such law, ordinance, rule or regulation.

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10. **Uncured Defaults and Remedies**.

10.1 Notice of Default and Opportunity to Cure. If an Event of Default occurs, the City shall provide Company with written notice and shall give Company the opportunity to cure such Event of Default. For an Event of Default which can be cured by the immediate payment of money to the City, Company shall have thirty (30) calendar days from the date it receives written notice from the City to cure the Event of Default. For any other Event of Default, Company shall have sixty (60) calendar days from the date it receives written notice from the City to cure the Event of Default. If any Event of Default is not cured within the time period specified herein, such Event of Default shall, without further notice from the City, become an "Uncured Default" and the City immediately may exercise the remedies provided in Section 10.2.

10.2 Remedies for Uncured Defaults. Upon the occurrence of an Uncured Default, the City shall be entitled to exercise, at the same time or at different times, any of the following remedies, all of which shall be cumulative and without limitation to any other rights or remedies the City may have:

10.2.1 Termination of Agreement. Upon the occurrence of an Uncured Default, the City may terminate this Agreement immediately upon written notice to Company. Upon such termination, Company shall forfeit all rights granted to it under this Agreement, and, except as to Company's unperformed obligations and existing liabilities as of the date of termination, this Agreement shall automatically be deemed null and void and shall have not further force or effect. Company shall remain obligated to pay, and the City shall retain the right to receive, Right-of-Way Use Fees and any other payments due up to the date of

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termination. In this event, Company shall comply with the provisions of Section 6.1 of this Agreement. The City's right to terminate this Agreement under this Section does not and shall not be construed to constitute any limitation on the City's right to terminate this Agreement for other reasons as provided by and in accordance with this Agreement.

10.2.2. Legal Action Against Company. Upon the occurrence of an Uncured Default, the City may commence against Company an action at law for monetary damages or in equity for injunctive relief or specific performance of any of the provisions of this Agreement that, as a matter of equity, are specifically enforceable.

11. **Provision of Information**.

Company shall provide copies of all documents that affect this Agreement and that Company files with or sends to the PUC and, upon the City's request, copies of records that affect this Agreement and that Company is required to maintain under PUC regulations.

12. **Assignment of Agreement.**

The rights granted by this Agreement inure to the benefit of Company. Except to an Affiliate of the Company, Company shall not (i) assign, transfer, sell, or otherwise convey any of its rights, privileges, duties or interests as granted to Company by this Agreement; or (ii) lease to any Person or allow use by any Person other than Company all or any portion of its Structure unless (i) Company first notifies the City in writing; (ii) Company obtains the City's advance written consent, which consent shall not unreasonably be withheld; and (iii) such Person enters into a written agreement with the

City relating to that Person's use of the Public Rights-of-Way, including terms for any compensation that the City may charge for such use. In the event Company assigns or transfers the Agreement to an Affiliate of Company, Company shall provide City with written notice thereof.

13. **Notices**.

13.1 All notices that shall or may be given pursuant to this Agreement shall be in writing and delivered or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

If to the City:

City of Plano
Attn: Intergovernmental Relations
P.O. Box 860358
1520 Avenue K, Suite 350
Plano, TX 75086-0358
Fax Number (972) 423-9587

With a copy to:

City of Plano
Attn: City Attorney
P.O. Box 860358
1520 Avenue K, Suite 340
Plano, TX 75086-0358
Fax Number (972) 424-0099

If to Company:

Tollway – 121 Partners Ltd.
ATTN: David R. Cunningham
c/o Granite Properties, Inc.
5900 Granite Parkway, Suite 750
Plano, Texas 75024
Fax Number (972) 731-2311

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13.2 Date of Notices; Changing Notice Address. Notices shall be deemed given three (3) days after deposit in the mail; or the next day in the case of facsimile, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

14. **No Waiver**.

The failure of the City to insist upon the performance of any term or provision of this Agreement or to exercise any rights that the City may have, either under this Agreement or the law, shall not constitute a waiver of the City's right to insist upon appropriate performance or to assert any such right on any future occasion.

15. **Miscellaneous Provisions**.

15.1 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

15.2 Severability of Provisions. If any one or more of the Provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provision(s) of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement.

15.3 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of Texas, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that venue for the trial of such action shall be vested exclusively in the

state courts of Texas, County of Collin, or in the United States District Court for the Eastern District of Texas.

15.4 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold consent.

15.5 Waiver of Breach. The waiver by either party of any breach or violation of any Provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of this Agreement.

15.6 Representations and Warranties. Each of the parties to this Agreement represent and warrant that at the time of signing of this Agreement it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

15.7 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

15.8 No Third Party Beneficiaries. This Agreement is for the benefit of Company, any transferee or assignee in accordance with the provisions contained

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herein, and the City, and not for the benefit of any third party. No Provision of this Agreement shall be construed as creating any third party beneficiaries.

15.9 Force Majeure. City and Company shall not be required to perform any covenant or obligation in this Agreement, nor be liable to the other in damages, so long as the cause of such failure to perform, or delay in performance, is caused or prevented by an act of God or force majeure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

LICENSOR:
CITY OF PLANO, TEXAS,
A Home Rule Municipal Corporation

By Authority of Resolution
No._____

By: _____
Thomas H. Muehlenbeck
City Manager

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane Wetherbee, CITY ATTORNEY

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LICENSEE:
Tollway – 121 Partners, Ltd.
A Texas Limited Partnership,

By: SF Realty, Inc., a Texas Corporation,
Its General Partner

_____

By: Stacy Schusterman,
Title: President

ATTEST:

_____

_____

DATE

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ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

_____
Notary Public in and for the State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 20___, by Stacy Shusterman, President of SF Realty, Inc., a Texas Corporation, General Partner of **Tollway – 121 Partners, LTD.**, a Texas limited partnership, on behalf of said corporation and limited partnership.

_____
Notary Public in and for
The State of _____

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Exhibit "A"

(See attachments)

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Parks and Recreation		Initials	Date
Department Head	Don Wendell	Executive Director		11-4-05
Dept Signature:	Don Wendell	City Manager		11/7/05
Agenda Coordinator (include phone #):	**Linda Benoit (7255)**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

Approving the terms and conditions of a lease agreement by and between the City of Plano and Plano Sports Authority, Inc., a duly authorized Texas nonprofit corporation and the City of Plano, Texas for the use of a portion of Enfield Park for the construction of a multi-use indoor sports facility; authorizing its execution by the City Manager or, in his absence, an Executive Director; and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

This Resolution authorizes the execution of a lease agreement with Plano Sports Authority (PSA) for the use of the southeast corner of Enfield Park (4.5 acres) for the construction of a multi-purpose indoor athletic facility.

The facility will include 8 basketball courts, 1 sheet of ice, 1 multi-purpose turf area, concession and spectator areas. In addition, the facility will provide space for training, offices, and educational/historical purposes related to the martial arts.

CITY OF PLANO
COUNCIL AGENDA ITEM

Key points of the agreement include:

- The term of the lease will be 30 years with renewal options.
- The consideration will be $10 per year and other good and valuable consideration including facilities and services to the Plano citizens.
- PSA has an agreement with the Plano Independent School District to improve overflow parking adjacent to Clark Stadium which will serve the facility. The agreement is for 550 spaces.
- PSA will also construct 312 new parking spaces at the northwest corner of Enfield Park to offset any parking required by park users.
- The City has the right to utilize space on a rent free basis when surplus space is available.
- The City will incur no costs for the design, construction, and operation of the facility.

The project was reviewed and approved by the Parks and Recreation Planning Board on February 10, 2004.

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

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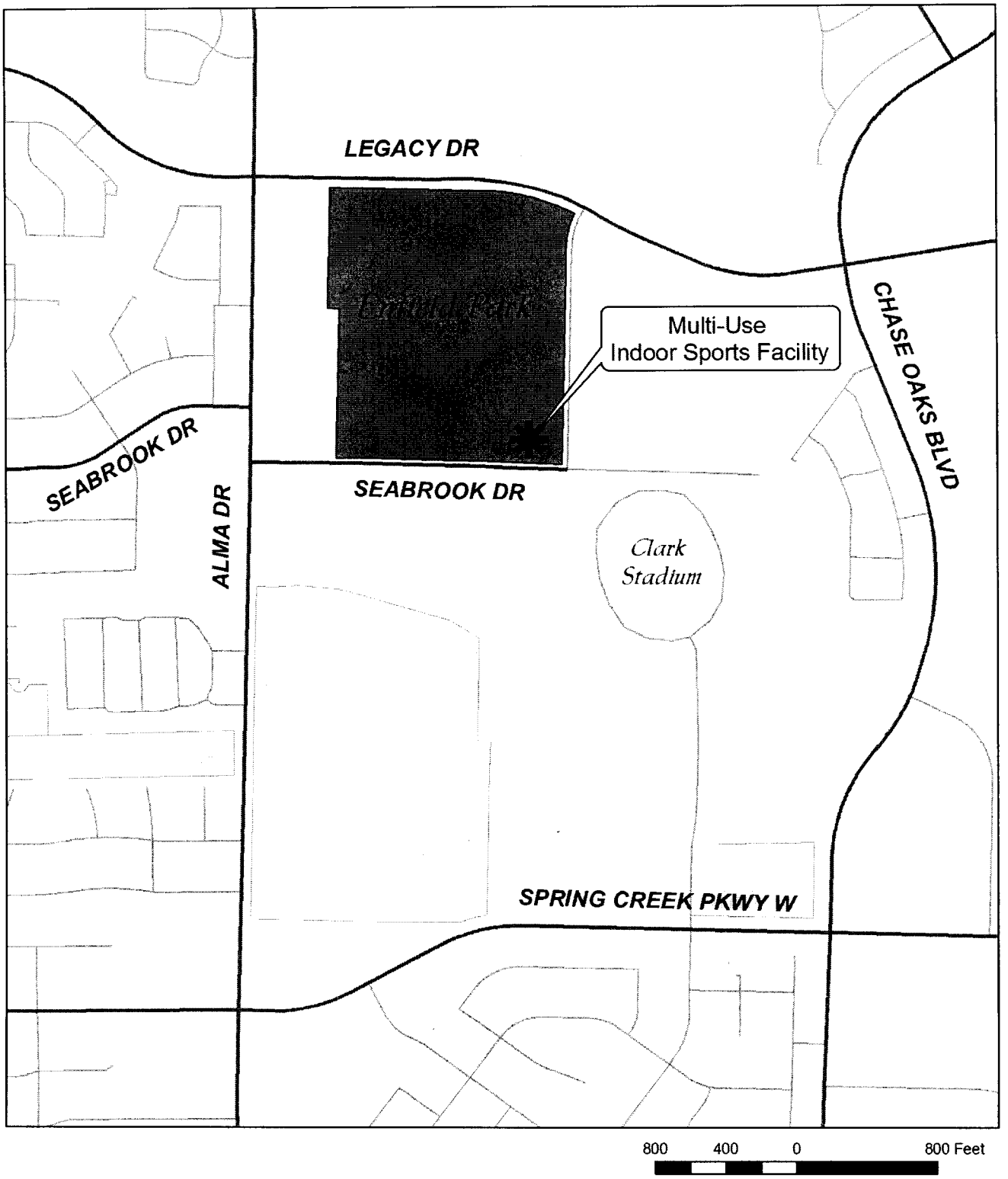
Park Planning Division
City of Plano, Texas

Location Map

Multi-Use Indoor Sports Facility at Enfield Park



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RESOLUTION NO._____

A RESOLUTION OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LEASE AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND PLANO SPORTS AUTHORITY, INC., A DULY AUTHORIZED TEXAS NONPROFIT CORPORATION AND THE CITY OF PLANO, TEXAS FOR THE USE OF A PORTION OF ENFIELD PARK FOR THE CONSTRUCTION OF A MULTI-USE INDOOR SPORTS FACILITY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City Council has been presented a proposed Lease Agreement by and between City of Plano and Plano Sports Authority, Inc., a duly authorized Texas nonprofit corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement'); and

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

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

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

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

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

DULY PASSED AND APPROVED this the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

Exhibit "A" to Resolution No. _____

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

LEASE AGREEMENT

This Lease Agreement (hereinafter referred to as "Lease") is entered into on this the ___ day of ____, 2005, by and between **PLANO SPORTS AUTHORITY, INC.**, a duly authorized Texas nonprofit corporation, (hereinafter referred to as "LESSEE"), and the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation located in Collin County, Texas, (hereinafter referred to as "LESSOR") acting by and through its City Manager or his designee.

I.
GRANT AND TERM

Section 1.01. GRANT. LESSOR does lease and demise unto LESSEE, and LESSEE leases from LESSOR, a certain area and improvements thereon, either currently existing or to be constructed, located within Enfield Park, Plano, Collin County, Texas (hereinafter referred to as the "Leased Premises"), being more particularly described in the legal description attached hereto as Exhibit "A". Exhibit "A" is incorporated by reference as if written herein word for word.

Section 1.02. EFFECTIVE DATE. This Lease shall be and become effective on the date first entered above (the "Effective Date").

Section 1.03. TERM. The Initial Term of this Lease shall be for thirty (30) years, beginning on the Effective Date as described in Section 1.02 above. At the end of the initial term (hereinafter referred to as "Initial Term"), LESSEE shall have the option to extend this Lease for two (2) additional ten (10) year terms upon the written request of LESSEE presented not later than sixty (60) days prior to the date of termination of the Initial Term or extended term and, subject to the prior written consent of the LESSOR, which consent shall not be unreasonably withheld or denied so long as LESSEE, during the last five (5) years of the Initial Term of the Lease or any extension thereof, continues to operate the improvements in a manner consistent with the purposes set forth below and so long as the services offered by LESSEE continue to be attractive to the citizens of the City and in the best interest of the citizens of the City. The rental rate and balance of the terms shall remain the same.

Section 1.04. CONDITION OF LEASED PREMISES. LESSOR has not made and does not make and specifically disclaims any representations, guarantees, promises, covenants, agreements or warranties of any kind or character whatsoever unless otherwise provided for herein, whether express or implied, concerning or with respect to the nature, quality or condition of the Leased Premises, the suitability of the Leased Premises for uses allowed under this Lease, or merchantability or fitness for a particular purpose. LESSEE acknowledges it has examined the Leased Premises and accepts such premises in their "AS IS" condition when accepted. Except as may otherwise be provided for herein, LESSOR shall not be required to maintain or to make

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any improvements, repairs or restorations upon the Leased Premises or to the improvements located thereon. LESSOR shall never have any obligation to repair, maintain or restore, during the terms of this Lease, any improvements on the Leased Premises.

Section 1.05. EARLY TERMINATION. Either party shall have the right to terminate this Lease in the event that LESSEE has not commenced construction of the Improvements on or prior to the thirty-sixth (36th) month following the Effective Date of this Lease. In such regard, LESSEE shall not commence construction of the Improvements until it has secured commitments from its capital fund raising program currently underway providing for contributions in respect to construction of the Improvements in amounts equal to or in excess of thirty three percent (33%) of the budgeted costs for the Improvements. At such time as LESSEE commences construction of the Improvements it shall thereafter proceed with diligence and reasonable efforts to cause construction to be completed within a reasonable time thereafter, force majure excepted.

II.
CONSIDERATION

Section 2.01. CONSIDERATION DURING THE TERM. Consideration for the term of this Lease shall be **TEN DOLLARS ($10.00)** per year and other good and valuable consideration, including but not limited to services to Plano citizens, and citizens of surrounding municipalities by LESSEE, and the use of the facilities by the LESSOR as set forth in Section 3.03 below. All monetary amounts due shall be payable to the City of Plano, Attention: Parks and Recreation Department, Post Office Box 860358, Plano, Collin County, Texas, 75086-0358 and shall be due on the Effective Date of this Lease and annually each year thereafter on the anniversary of the Effective Date.

III.
USAGE OF THE LEASED PREMISES

Section 3.01. USE OF LEASED PREMISES. It is the intent of the parties that this Lease shall be to construct, maintain and operate a multi-purpose indoor athletic facility, offices, and other multi-use spaces (hereinafter referred to as "Improvement") to serve the Plano community. The Leased Premises shall be used only for the following purposes:

(a) To provide year around, supervised recreational, competitive and instructional athletic activities and tournaments for all interested children and adults who voluntarily elect to participate in the programs offered by LESSEE, and

(b) To promote charitable and educational athletic activities and to promote community awareness for all participants regardless of race, age, color, religion, sex, disability, ancestry, national origin or place of birth by sponsorship of various programs adopted or offered by LESSEE.

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(c) To provide administrative support for the organizations utilizing the facility to conduct activities, events, and for historical/educational purposes.

In addition, because the Leased Premises are located on designated park property, LESSEE agrees to use the Leased Premises for uses consistent with or in furtherance of public use and enjoyment of the park and in a manner which will not interfere with the use of the park for park purposes. The Leased Premises shall also be used in accordance with the City of Plano Zoning Ordinance.

LESSOR and LESSEEE shall have an annual planning meeting (hereinafter referred to as "Annual Planning Meeting") to review programs and activities such as events, tournaments, leagues, etc. conducted on, or in the immediate vicinity of, the Leased Premises. This shall include, but not be limited to, Clark Stadium, High Point Park, Enfield Park, and the multi-purpose indoor facility. LESSOR and LESSEE, through the respective offices of the Director of Parks and Recreation and PSA's Executive Director, shall coordinate uses to minimize conflict in the area. LESSEE shall make all reasonable effort to meet with and / or secure known dates and schedules from the Plano Independent School District (PISD) for events at Clark Stadium. A representative from PISD may be invited to the Annual Planning Meeting.

LESSEE shall operate the Improvements within the hours set forth in the City of Plano ordinance governing park sites (hereinafter referred to as the "Park Ordinance".) Hours of operation may be extended by permit by the Director of Parks and Recreation as provided for in the Park Ordinance.

Section 3.02. STATEMENT OF PUBLIC BENEFIT. A primary purpose of this Lease is to provide athletic services to the Plano community. LESSEE agrees to provide LESSOR during the term of this Lease, and during any and all of its subsequent extensions, periodic documentary evidence of the public benefit of its services or other activities. It is mutually agreed by both LESSEE and LESSOR that the required documentation of public benefit will be in the form of an annual written report prepared by LESSEE and submitted to the Parks and Recreation Department to be made available for public record. LESSEE agrees to submit said report annually to LESSOR in person or by U.S. mail on or before the anniversary of the initial Effective Date of the Lease. LESSEE's annual reports should contain qualitative and/or quantitative information about the programs, services, or other activities of the organization on the Leased Premises; non-confidential information about the clients, customers, members or other users of the organization's services (or other activities) on the Leased Premises; and a statement of the revenues and support generated and expenses incurred by the organization during its most recently completed fiscal year on the Leased Premises.

Section 3.03. LIMITED USE OF THE IMPROVEMENTS BY LESSOR. LESSEE will provide meeting room space to all LESSOR's boards or departments, appointed and ad hoc committees, commissions, training programs for all departments (fire, police, etc.), and planning sessions for special events. The Improvements will be available for the foregoing purposes on a year-round basis (excluding major holidays) between the hours of 9:00 AM and 10:00 PM, on a rent-free basis. LESSOR recognizes that there is no formal meeting spaces planned in the PSA utilized facilities, and only athletic spaces or other public spaces would be available.

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"Plano Parks and Recreation Department" shall have first priority of surplus space in the improvements for programs on a rent free basis, subject to availability and prior approval from the executive director of the Lessee. It is the intent of this section for the city and/or PSA to provide appropriate sports and leisure programs for the community without conflict or competition between programs and in accordance with the needs and best interest of the community. Youth activity shall continue to be a priority; however, programs needed to serve adults of the community shall also be the coordinated interest and concern of both "Lessor and Lessee."

Reasonable storage space, to the extent available and not used for LESSEE's ongoing programs and activities, will be provided for the above programs to the LESSOR. To the extent that LESSEE is able to offer storage space to satisfy LESSOR's program storage needs, the terms of such arrangement will be negotiated between LESSOR and LESSEE and coordinated through the respective offices of the Director of Parks and Recreation and PSA's Executive Director.

All arrangements for LESSOR's use of space in the Improvements as contemplated above will be coordinated through LESSOR's appropriate City staff members and the Executive Director of LESSEE. Space for meeting purposes, court space, and any other public space in the Improvements may be reserved by LESSOR, Plano Parks and Recreation Department, or other parties unaffiliated with LESSOR on a space available basis, with LESSEE's functions to take priority over all other usage by LESSOR or its designees. To the extent that LESSOR desires to use space in the Improvements as aforesaid, LESSOR shall notify LESSEE in writing of its desired usage no later than thirty (30) days prior to the date of the intended usage.

All usage of LESSEE's Improvements by LESSOR or its departments shall be subject to reasonable restrictions and requirements dealing with adequate registration of the programs and its participants, including the execution of liability waivers and the completion of required information forms.

In no event shall LESSEE be obligated to provide any personnel with respect to such usage.

Section 3.04. CONDUCT OF ACTIVITIES. LESSEE shall conduct its services and activities in a substantial, business-like, and good faith manner for the benefit of the public, and shall not take any actions to unreasonably annoy, disturb, endanger or be offensive to others.

Section 3.05. INGRESS AND EGRESS. LESSEE shall have the right to obtain ingress and egress by means of all existing roadways, to be used in common with others that have rights of passage thereon. LESSEE and LESSOR hereby agree that LESSOR is under no obligation to construct any roadways, driveways, or drainage systems to provide ingress or egress to LESSEE.

LESSEE'S request for a traffic signal at the intersection of Stadium Drive and Legacy Drive shall be reviewed and considered by LESSOR during the standard site plan and development process for the Improvements in the City of Plano. A Traffic Impact Analysis may be required as a part of the site plan review process.

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Section 3.06. CONCESSION RIGHTS. LESSEE shall have the right to provide or to contract with third parties for all concessions, goods and services, subject to approval by the Director of Parks and Recreation, which approval shall not be unreasonably withheld or delayed. Food and beverage concessions sold inside the facility shall not require Director approval; however any such service shall meet all applicable laws and ordinances applicable to food and beverage sales. Any goods and services, including a Pro Shop, provided or operated by third party vendors must be offered at prices reasonable and comparable to prices being paid in the Dallas metroplex and shall only be provided during LESSEE sponsored activities.

Section 3.07. SIGNAGE. LESSEE shall comply with all requirements of the City of Plano sign ordinance. Any permanent improvement to be located on the exterior of the Leased Premises may bear the name and/or logo of Plano Sports Authority, Inc. The advertising of major corporate sponsors located on the exterior of the Leased Premises is prohibited without the prior approval of the LESSOR.

IV.
UTILITIES

Section 4.01. UTILITIES. LESSEE agrees to secure and maintain all utilities required for the operation of the Leased Premises, including but not limited to the telephone, gas (if desired), electricity, and water used in or on the Leased Premises and for the removal of trash or debris there from. LESSOR shall in no way be responsible for utilities for the Leased Premises, nor shall LESSOR be responsible for utility connections; however, said connections shall in all respects conform to the regulations and ordinances of the City of Plano and the State of Texas. All the utilities to the Leased Premises shall be installed underground. All parking surfaces on the Leased Premises shall be constructed of reinforced concrete. LESSOR and LESSEE may coordinate and share utility service costs and or facilities, such as dumpsters for disposal of trash, if appropriate.

V.
INSPECTIONS, REPAIRS AND ALTERATIONS

Section 5.01. REPAIRS BY LESSEE. LESSEE agrees, at its own expense, to maintain the Leased Premises and Improvements in a sanitary, safe and clean condition during the term of this Lease and any extension thereof. LESSEE shall be solely responsible for, and shall provide at its own expense, janitorial services for the Leased Premises and maintain a good operating condition and repair the Leased Premises and any and all of its existing or future permanent Improvements, including but not limited to the roof, outer walls, all electrical, plumbing and mechanical systems, and the interior finish of any permanent improvements to the Leased Premises, the parking lots, external walkways, and lawn and grounds. Upon the expiration of the term of this Lease, the Leased Premises shall be surrendered to LESSOR together with all improvements at the end of the term or any extension thereof, in good condition, normal wear and tear and insured casualty excepted.

Section 5.02. LESSOR'S RIGHT TO INSPECT AND OPTION TO MAKE REPAIRS. LESSEE agrees that LESSOR may enter upon the Leased Premises at any time during the term of this Lease or any extension thereof during business hours and upon reasonable prior notice for the purpose of inspection. LESSOR shall have the right

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and privilege, through its representatives, agents and officials, to make inspections of the Leased Premises and Improvements and thereafter to make recommendations to LESSEE of any repairs that in accordance with the provisions of Section 5.01 above. However, LESSOR has no duty or obligation to inspect the Leased Premises. LESSEE agrees and covenants that it shall commence repairs within forty-five (45) days) from the date that such recommendations are made unless LESSEE disputes, in good faith, whether or note repairs are required. Such repairs shall be made in an expeditious and conscientious manner. In the event that LESSEE shall fail to commence such recommended and undisputed repairs within the time provided, it is understood and agreed that LESSOR may, within its discretion, make such repairs as it deems necessary for and on behalf of LESSEE; and in such event, the cost of such repairs shall be paid by LESSEE within thirty (30) days following its receipt of the billing for said repairs. LESSOR has no duty or obligation to make repairs to the Leased Premises.

Section 5.03 DAMAGES. Should LESSOR undertake any repairs, LESSEE hereby waives any claim for damages, consequential or otherwise, as a result there from, except for claims and damages arising from the LESSOR's sole negligence. The foregoing shall in no way affect or alter the primary obligations of the LESSEE as set forth in this Lease, and shall not impose or be construed to impose upon LESSOR any obligations to maintain the Leased Premises, unless specifically stated otherwise herein.

Section 5.04. ALTERATION AND REMODELING. LESSEE shall have the right to make such decorating and non-structural changes as it desires on the interior of any Improvements to the Leased Premises, including changes to walls, floors, or ceilings without the prior written consent of LESSOR, so long as the design of such changes to any Improvements is compatible with the park environment in which the Leased Premises are located. Any exterior or structural changes shall require the prior written consent of LESSOR, which consent shall not be unreasonably withheld. LESSEE may remove, at its own expense, any fixtures or furniture placed in the Leased Premises by LESSEE, but LESSEE agrees that it will, at its own expense, promptly repair any and all damage done by the removal of any fixtures or furniture from the Leased Premises.

Section 5.05. COMPLIANCE WITH GOVERNMENTAL REGULATIONS. LESSEE shall fully comply with all of the ordinances of the City of Plano applicable to the Leased Premises and any Improvements on the Leased Premises, and in connection therewith promptly fulfill all orders and requirements applicable to LESSEE's occupation of and operation upon the Leased Premises as imposed by the Code Enforcement, Health, Police and other departments for the correction, prevention and abatement of nuisances or hazards which may exist by reason of the condition of the premises or improvements on the Leased Premises. LESSEE covenants also that it will comply with all state and federal laws and regulations in its use and occupation of the Leased Premises.

Section 5.06. DISPUTE RESOLUTION. In the event of a dispute under Section 5.02 above, the LESSOR and LESSEE will, within thirty (30) days of written request by either party, appoint a mutually agreeable licensed architect to make a final and binding determination as to the issue in dispute. In the event the LESSOR and LESSEE cannot mutually agree on a licensed architect, each will select a licensed architect who will together agree upon a third licensed architect. This panel of three architects will, by at least a two-thirds (2/3) vote, make a final and binding decision as to the dispute. None of the architects shall be agents, officers or employees of either the LESSOR or

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LESSEE. Any costs or fees incurred under this section shall be shared equally by both parties.

VI.
IMPROVEMENTS

Section 6.01. CONSTRUCTION OF IMPROVEMENTS. LESSEE intends to, and shall have the right to commence construction of the Improvements to Leased Premises, as described on **Exhibit "B"** within the thirty-six (36) months following the Effective Date of this Lease, which shall be constructed and completed within the following parameters within a reasonable period of time thereafter, subject to force majure:

(a) Plans and specifications for the Improvements shall be prepared by state-licensed architects or engineers and shall comply with all applicable federal, state or municipal laws, ordinances, rules, regulations and requirements;

(b) Plans and specifications for the Improvements shall be submitted to the LESSOR's Director of Parks and Recreation (hereinafter referred to as the "Director") or his designee, and no construction shall begin on such Improvements until said plans and specifications are approved by the Director or his designee, which approval shall not be unreasonably withheld or delayed, so long as the design and appearance of such improvements are compatible with the park and surrounding environment in which the Leased Premises are located;

(c) Prior to commencement of construction, LESSEE shall furnish to LESSOR evidence that it has secured commitments from third parties to fund not less than thirty three percent (33%) of the budgeted construction costs for the Improvements. The balance of the funding requirements may be provided by bank financing encumbering LESSEE's leasehold estate and to the extent received, commitments for future funding of contributions by third parties in respect to the funding of the construction costs. Attached hereto as **Exhibit "C"** and made a part hereof for all purposes is a preliminary budget setting forth estimated construction costs for the improvements. The amounts set forth therein are preliminary in nature; however, LESSEE does not anticipate that the amounts allocated on a line item basis for grounds, buildings and equipment will be reduced by more than five percent (5%) of the amount shown.

(d) LESSEE shall construct 550 parking spaces south of Seabrook Drive on Plano Independent School District (PISD) property in accordance with the PISD License Agreement attached hereto as **Exhibit "D."**

(e) LESSEE shall construct 300 parking spaces at the northwest corner of Enfield Park at no cost to LESSOR. Parking, circulation, and related site improvements shall be constructed according to City of Plano standards and be compatible with the existing improvements in Enfield Park.

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(f) LESSEE shall replace or re-route any park structures, equipment, landscaping, or other appurtenances disabled by the building or parking in a like manner on the site according to City of Plano specifications.

(g) The additional 300 parking spaces and replacement of existing park features, re-routing of utilities and irrigation, etc., shall be done prior to the commencement of constructing the Improvements.

(h) LESSOR shall work with LESSEE'S architect / planner to develop a master plan for the re-routing and redevelopment of the park improvements in Enfield Park. At LESSOR'S option, LESSSOR may provide LESSEE with said master plan.

(i) LESSEE shall, at its expense, make arrangements for the installation or connection of whatever utilities it may desire or need in connection with the use of Improvements or additions made by the LESSEE to the Leased Premises. LESSEE acknowledges that LESSOR is not responsible for providing utility service to LESSEE. Any construction performed by LESSEE within any utility easement area must meet utility company and City of Plano criteria for design and construction in such easement area. Any and all connections to water and sewer lines must occur at the existing utility connection points, unless otherwise agreed to in writing by LESSOR. LESSOR will allow new easements as required for the Improvements contemplated by this Lease, subject to any local, state, and federal requirements to grant such easements. All costs incurred with any relocation of existing utility lines or facilities or installation of additional utility lines or facilities shall be entirely at LESSEE's expense whether on or off the Leased Premises. LESSEE shall also provide LESSOR legal descriptions for any required utility easements;

(j) LESSEE shall require its general contractor to furnish a bond by surety companies authorized to do business in the State of Texas, which bond shall be in the amount of the construction contract and shall contain the form as is customarily required by LESSOR in projects constructed on LESSOR's properties on a nature to the Improvements. LESSEE shall secure a payment and performance bond from its general contractor in the full amount of the budgeted costs of construction.

(k) LESSEE shall require the following language in all construction contracts for any improvements:

"CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF PLANO AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND

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PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF PLANO FROM ANY AND ALL SUCH CLAIMS AND DEMANDS, SUCH INDEMNITY SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF PLANO, ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY OF PLANO FROM THE CONSEQUENCES OF THE CITY OF PLANO'S OWN NEGLIGENCE, WHERE THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE. IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY SUBCONTRACTOR UNDER WORKERS' COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS."

(l) LESSEE shall require the Contractors who are to perform the improvements to furnish insurance in such amounts as specified below and include in all construction contracts for the improvements the following language:

(1) Prior to commencement of any activity permitted on City of Plano's property, Contractor shall purchase and maintain during the term of this Lease, at its own expense, hereinafter stipulated minimum insurance satisfactory to the City of Plano's Risk Manager. Contractor shall not allow any subcontractor to commence work until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this Lease shall be written on an "occurrence" basis.

Workers' Compensation, statutory, as required by law, and

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Employer's Liability Insurance of not less than **ONE HUNDRED THOUSAND DOLLARS ($100,000.00)** for each accident, **ONE HUNDRED THOUSAND DOLLARS ($100,000.00)** disease for each employee, **FIVE HUNDRED THOUSAND DOLLARS ($500,000.00)** disease as policy limit.

(2) Commercial General Liability Insurance, including Independent Contractor's Liability, Products/Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Lease, fully insuring Contractor's liability for injury to or death of employees of the City of Plano and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of ONE MILLION DOLLARS ($1,000,000.00) per occurrence.

(3) Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of ONE MILLION DOLLARS ($1,000,000.00).

(4) "Umbrella" Excess Liability Insurance, insuring the Contractor for an amount not less than ONE MILLION DOLLARS ($1,000,000.00) combined single limit bodily injury and property damage liability insurance, including death, in excess of the primary coverage required herein above.

(5) Builder's Risk. The LESSEE shall purchase a completed value builder's risk policy for the duration of this project.

(6) It is agreed by all parties to this Lease that the LESSEE shall require the Contractors who obtain and provide insurance required under this Lease to:

(a) Be written with the City of Plano as an additional insured on all applicable policies. City of Plano is self-insured and this self-insurance program shall not be deemed or considered "other insurance".

(b) Provide for thirty (30) days notice of cancellation to the City of Plano, for nonpayment of premium, material change or any other cause.

(c) Waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of Plano, it being the intention that the required insurance policies shall protect all parties to the Lease and be primary coverage for all losses covered by the policies.

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(d) Provide a Certificate of Insurance evidencing the required coverages to:

Attention: City of Plano
Risk Manager
Post Office Box 860358
Plano, Texas 75086-0358

The Certificate of Insurance required under this provision shall be provided to the City of Plano before commencement of any construction by LESSEE's contractor's and subcontractors and proof of the required insurance under this section shall be a condition of any issuance of building permits by the City of Plano. Any permits erroneously issued without proof of insurance will be immediately revoked.

(m) Any permanent improvement may bear the name and/or logo of Plano Sports Authority, Inc. The advertising of major corporate sponsors on the Leased Premises is prohibited without the prior approval of the LESSOR.

(n) "LESSEE shall require its general contractor to furnish a payment bond and a performance bond by surety companies authorized to do business in the State of Texas, which bonds shall be in the amount of the construction contract. LESSEE shall obtain a rider for each bond so that LESSOR shall be named as an additional oblige as LESSOR's interests may appear pursuant to the Lease Agreement. The purpose of such bonds is to insure that construction of the facility is completed and that all bills for material and labor are paid in full upon completion of construction with no cost to the City. LESSEE shall secure a payment and performance bond from its general contractor in the full amount of the budgeted costs of construction."

Section 6.02 COST OF IMPROVEMENTS. The complete cost of developing all necessary plans and specifications and the cost of the construction and maintenance of any improvements themselves shall be borne solely by LESSEE and shall be at no expense to LESSOR whatsoever.

Section 6.03. OWNERSHIP OF IMPROVEMENTS. It is expressly agreed and understood that all alterations and improvements on the Leased Premises at the commencement of the term, or those that may be erected or installed during the term, shall, at the expiration or sooner termination of this Lease, become part of the Leased Premises and the property of the City of Plano.

Section 6.04. AMORTIZATION OF IMPROVEMENTS. Any improvements constructed on the Leased Premises shall become the property of the LESSOR at the end of the term of this Lease (the Initial Term, as extended). It is the intent of the parties to allow a period of two hundred forth (240) months for the amortization of LESSEE's expenditures on such improvements. Said period, with regard to each permanent improvement made, shall begin on the date of completion of that particular improvement.

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Documentation of the value and the completion date of each improvement shall be provided to the Director of Parks and Recreation or his designee. In the even that such improvements are so made, and in the event that this Lease terminates by its terms, other than as a result of LESSEE's default, before the expiration of the amortization period for a particular improvement, then the LESSOR shall reimburse the LESSEE for a portion of the value of such improvements in an amount equal to 1/240th of the value of such improvement for each full month in the period which begins on the effective date of the termination of this Lease and which ends on the last day of the two hundred forty (240) month amortization period applicable to that particular improvement. Amortization shall include an interest factor based on the current prime rate of interest or its equivalent at the time the Lease is terminated.

Section 6.05 LIENS. LESSEE shall discharge all obligations to contractors, subcontractors, materialmen, workmen and/or other persons for all work performed and for materials furnished for or on account of LESSEE as such obligations mature. LESSEE expressly agrees that it will neither give nor grant, nor purport to give or grant any mechanic's or materialmen's lien upon the LESSOR's property or upon any improvements thereupon in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party should be entitled, as a matter of law, to a mechanic's or materialmen's lien against the LESSOR's property or improvements thereon, and LESSEE will discharge any such lien within thirty (30) days after notice of filing thereof.

Section 6.06. MISCELLANEOUS.

(a) LESSEE agrees that all work to be performed by it or its contractors, including all workmanship and materials, shall be of first-class quality and shall be performed in full compliance and in accordance with all federal, state and local laws, ordinances, codes and regulations, and such work shall be subject to LESSOR inspection during the performance thereof and after it is completed. However, the LESSOR has no duty to inspect.

(b) LESSEE shall repair any damage to any offsite improvements caused by or resulting from any activities or construction by LESSEE, or LESSEE's agents, employees and contractors.

Section 6.07. ADDITIONAL IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS. LESSEE shall have the right to construct additional or replacement improvements on the Leased Premises only with the prior written consent of LESSOR, which consent shall not be unreasonably withheld by LESSOR so long as the additional or replacement improvements are of like kind and nature as the Improvements. LESSEE shall have the right to alter the Improvements in connection with the repair, maintenance or improvement thereof, without the prior written consent of LESSOR, so long as such alterations do not involve structural modifications to the roof, foundation or exterior of the Improvements.

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VII.
INSURANCE AND INDEMNITY

Section 7.01. INDEMNITY.

(a) To the extent that is allowed by law, LESSEE does hereby agree to waive all claims, release, indemnify and hold harmless LESSOR and all of its officers, officials, agents, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property, arising out of or in connection with this Lease, or any and all activity or use pursuant to this Lease, whether on, about or off the Leased Premises, occasioned by error, omission, or negligent act of LESSEE, its officers, agents, employees, contractors, subcontractors, invitees, or other person for whom it is legally liable, with regard to the performance of this Lease.

(b) In addition, LESSEE does hereby agree to waive all claims, release, indemnify, defend and hold harmless LESSOR and all of its officers, officials, agents, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or injury to or death of any LESSEE employee or volunteer or for loss of, damage to, or loss of use of any property of any LESSEE employee of volunteer, arising out of or in connection with the performance of this Lease. This indemnification by LESSEE shall include, but not be limited to liability arising from workers' compensation and general liability claims.

(c) LESSEE expressly agrees to defend LESSOR against any and all claims arising out of this contract. In the event the City is a named party to a suit arising out of the subject matter of this Agreement, the City shall have reasonable input into the selection of defense counsel to be retained by LESSEE in fulfilling its obligation hereunder to defend and indemnify City. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of LESSEE's obligation to defend City or as a waiver of LESSEE's obligation to indemnify City pursuant to this Agreement. LESSEE shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If LESSEE fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and LESSEE shall be liable for all costs incurred by City.

Section 7.02. INSURANCE. Prior to the commencement of any activity permitted on the Leased Premises, LESSEE shall purchase and maintain during the

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term of this Lease and any extensions thereof, at its own expense, the hereinafter stipulated additional minimum insurance satisfactory to the LESSOR's Risk Manager.

(a) Workers' Compensation: Statutory, as required by law, and Employer's Liability Insurance of not less than **ONE HUNDRED THOUSAND DOLLARS ($100,000.00)** for each accident, **ONE HUNDRED THOUSAND DOLLARS ($100,000.00)** disease for each employee **FIVE HUNDRED THOUSAND DOLLARS ($500,000.00)** disease as policy limit.

(b) General Liability: **ONE MILLION DOLLARS ($1,000,000.00)** per occurrence for bodily injury, including death, personal injury and property damage, and fully insuring and covering the indemnification provisions of this Lease. The policy shall have no standard coverages removed by exclusion. The policy shall include coverage for premises operation, independent contractors, products/completed operations, personal and advertising injury, contractual liability, fire legal liability and medical payments expense. A **ONE HUNDRED THOUSAND DOLLAR ($100,000.00)** limit for fire legal liability is required.

(c) Fire and Extended Coverage Insurance covering the improvements presently existing on, or hereafter created on the Leased Premises or off the Leased Premises in accordance with this Lease, against loss or damage by fire, windstorm, hail, tornado, explosion, water, lightning, rain, sleet, snow, sprinkler leakage, riots, civil commotion, vandalism, malicious mischief and aircraft/vehicle damage. This type of insurance shall be carried with a company of companies satisfactory to LESSOR and in an amount of coverage not less than replacement cost of the property dedicated to or necessary to performance of LESSEE's obligations under this Lease, and the policy or policies of insurance shall be issued to the LESSEE and LESSOR, as their interests may appear.

(d) The City of Plano shall be named as an additional insured on applicable policies. The City of Plano is self-insured and this self insurance program shall not be deemed or considered "other insurance". The policy shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.

(e) The insurance policies shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to LESSOR.

(f) The insurance policies shall be written on an "occurrence" basis.

(g) The insurance policies shall waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against LESSOR, it being the intention that the required insurance policies shall protect all parties to the Lease and be primary coverage for all losses covered by the policies.

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(h) Certificates of Insurance and endorsements effecting coverage required by this clause shall be forwarded to:

Attention: City of Plano
Risk Manager
Post Office Box 860358
Plano, Texas 75086-0358

(i) LESSEE shall be responsible for the contents of the Leased Premises and should procure insurance for such as LESSEE desires.

(j) LESSOR reserves the right to review the insurance requirements of this section during the effective period of the Lease, and any extensions thereof, and to adjust insurance coverages and their limits when deemed necessary by LESSOR's Risk Manager based upon changes in statutory law, court decisions or the claims history of the industry as well as of LESSEE. LESSOR agrees that in the event such adjustment is required, LESSEE shall be given sixty (60) days to obtain such coverage.

VIII.
DESTRUCTION OF LEASED PREMISES

Section 8.01. DAMAGE TO BUILDING. In the event of damage to the Improvements LESSEE will immediately notify LESSOR of the nature and extent of such damage. In the event of damage or destruction to the Improvements, LESSOR shall have no obligation or duty to repair, rebuild or reconstruct the Improvements or any fixtures, equipment or other personal property installed by LESSEE.

Section 8.02. INSURANCE PROCEEDS. All proceeds of the insurance contemplated by the provisions of this Lease payable by reason of any loss or damage to the Leased Premises, or any portion thereof shall be paid to LESSEE and utilized for reconstruction or repair, as the case may be, of any damage to or destruction of the Leased Premises or any portion thereof. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Leased Premises shall be paid to LESSEE. If LESSEE elects not to repair and restore, and the Lease is terminated as described in Section 8.03, all such insurance proceeds shall be allocated to and retained by LESSEE.

Section 8.03. RECONSTRUCTION OF THE LEASED PREMISES.

(a) If during the term the Leased Premises is totally or partially destroyed by a risk covered by the insurance described in this Lease (herein called **"An Insured Risk"**) and the Leased Premises thereby is rendered unsuitable in LESSEE's reasonable opinion for its intended use, this Lease shall terminate as of the date of the casualty and neither LESSOR nor LESSEE shall have any further liability hereunder except for any liabilities which have arisen prior to or which survive such termination, and all insurance proceeds shall be allocated to LESSEE. If LESSEE elects to terminate Lease because of partial or total destruction of the

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Leased Premises, LESSEE will clean up and scrape Improvements, including removal of slab if required by LESSOR.

(b) If during the Term the Leased Premises is partially destroyed by An Insured Risk, but the Leased Premises is not thereby rendered unsuitable for LESSEE's use, or is totally destroyed by An Insured Risk, but LESSEE desires to reconstruct the Leased Premises, LESSEE shall, to the extent of available insurance proceeds, restore the Leased Premises to substantially the same condition as existed immediately before the damage or destruction and otherwise in accordance with the terms of the Lease, and this Lease shall not terminate as a result of such damage or destruction. LESSEE shall utilize the available insurance proceeds to pay the reasonable costs of such restoration. Any excess proceeds remaining after such restoration shall be allocated to LESSEE.

(c) If the Leased Premises are to be restored in accordance with the provisions of Section 8.03(b) and if the cost of the repair or restoration exceeds the amount of proceeds received by LESSEE from the insurance required under this Lease, or in the event the Leased Premises is totally or materially damaged or destroyed by a risk not covered by the insurance described in this Lease. LESSEE at its option shall either, (a) at LESSEE's sole cost and expense, restore the Leased Premises to substantially the same condition it was in immediately before such damage or destruction and this Lease shall not terminate as a result of such damage or destruction, or (b) terminate the Lease and neither LESSOR nor LESSEE shall have any further liability hereunder except for any liabilities which have arisen or occurred prior to such termination and those which expressly survive termination of this Lease. LESSEE shall utilize the available insurance proceeds to pay the reasonable costs of such restoration. Any excess proceeds remaining after such restoration or any available proceeds which are not used by LESSEE shall be allocated to LESSEE.

Section 8.04 RELEASE. LESSEE covenants and agrees that it will not hold LESSOR or any of its agents or employees responsible for any loss occasioned by fire, theft, rain, windstorm, hail or any other cause whatsoever, whether said cause be the direct, indirect or merely a contributing factor in producing the loss to any personal property that may be stored on the Leased Premises, whether caused in whole or in part by the negligence of LESSOR or its officials, officers, agents or employees; and LESSEE agrees all personal property is to be stored at LESSEE's risk.

IX.
CONDEMNATION

Section 9.01. TOTAL TAKING. If, after the commencement date, the Leased Premises shall be taken in its entirety by right of eminent domain for any public or quasi-public use, then, when possession shall be taken thereunder by the condemnor, or LESSEE is deprived of its practical use of the Leased Premises and other improvements, whichever date is earlier, this Lease and all rights of LESSOR and LESSEE hereunder shall terminate and any rental and all other payments required of LESSEE shall be immediately paid by LESSEE to LESSOR through the date of taking.

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In no event shall LESSOR exercise its rights of condemnation in order to simply defeat LESSEE's rights hereunder.

Section 9.02. PARTIAL TAKING. In the event of a partial taking of any part of the Leased Premises as a result of which the remaining portion of the Leased Premises cannot be restored to an economically operable facility of a comparable kind and quality to the facility existing prior to the taking, then this Lease, at LESSEE's option, shall terminate as of the time when possession of the Leased Premises shall be taken by the condemnor or LESSEE is deprived of its practical use thereof, whichever date is earlier. If the Leased Premises can be restored to an economically operable facility of comparable kind and quality to the facility existing prior to the taking, then this Lease shall not be affected and LESSEE shall retain the remaining portion thereof; provided, however, that the rent shall be reduced on an equitable basis.

Section 9.03. EMINENT DOMAIN AWARD. If there is a taking by right of eminent domain, the rights and obligations of LESSOR and LESSEE with reference to the award and the distribution thereof shall be allocated between LESSOR and LESSEE on the following basis:

(a) All proceeds, whether attributable to the Leased Premises or LESSEE's Leasehold Estate shall be allocated first to the expenses incurred by LESSOR or LESSEE in connection with defending the proceedings, then to costs of repair, alteration, renovation or improvement to the Leased Premises, with the balance to be allocated pursuant to subparagraph (b) below.

(b) The balance of any award for partial taking and the award for a taking of the Leased Premises in its entirety shall be first allocated to LESSEE in an amount equal to costs incurred in connection with the construction of the improvements contemplated hereby.

(c) The balance of any award shall be paid to and retained by LESSOR.

X.
DEFAULT

Section 10.01. EVENTS OF DEFAULT. The following events shall be deemed to be events of default by LESSEE under this Lease:

(a) LESSEE shall fail to pay any monetary consideration when due, and such failure shall continue for a period of fifteen (15) days after notice of such delinquency is delivered to LESSEE.

(b) LESSEE shall fail to comply with any term, provision, clause, sentence, covenant or any other item of this Lease, other than the payment of consideration as described above, and shall not cure such failure within forty-five (45) days after written notice thereof to LESSEE.

(c) LESSEE shall cease using the Leased Premises for the purposes intended by this Lease for a period of ninety (90) days or more.

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(d) It is recognized that if LESSEE is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate LESSEE'S performance of this Lease. Accordingly, it is agreed that upon the occurrence of any such event, LESSOR shall be entitled to request of LESSEE or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten (10) days of delivery of the request shall entitle LESSOR to terminate this Lease and to the accompanying rights set forth below.

Section 10.02 REMEDIES. Upon the occurrence of any event of default specified above, and in addition to any other remedies LESSOR may be entitled to at law or in equity, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

(a) Terminate this Lease in which event LESSEE shall immediately surrender the Leased Premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE and any other person who may be occupying said Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damages which LESSOR may suffer by reason of such termination, whether through inability to relet the Leased Premises on satisfactory terms or otherwise.

(b) Enter upon and take possession of the Leased Premises and expel or remove LESSEE and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and if LESSOR so elects; relet the Leased Premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such reletting.

(c) Enter upon the Leased Premises without being liable for prosecution or any claim of damages therefore and do whatever LESSEE is obligated to do under the terms of this Lease; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur, thus effecting compliance with LESSEE's obligations under this Lease; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

Section 10.03. ELECTION TO TERMINATE. No reentry or taking possession of the Leased Premises by LESSOR shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention shall be given to LESSEE. Notwithstanding any such re-letting or re-entry or taking passion, LESSOR may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any of the

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foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any payments due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of payments following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following repossession. Should LESSOR at any time terminate this Lease for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the Leased Premises and reasonable attorney's fees expended by reason of default.

XI.
SURRENDER

Section 11.01. SURRENDER. In the event that this Lease is terminated in accordance with its terms, upon such termination, LESSEE shall vacate the property no later than the date of termination and shall leave the property in substantially the same condition it was in on the date this Lease became effective, normal wear and tear excepted.

XII.
TAXES AND IMPOSITIONS

Section 12.01. PAYMENTS OF IMPOSITIONS. The parties recognize that the Leased Premises and Improvements and LESSEE's leasehold estate created pursuant to the provisions of this Lease are tax exempt, as of the date hereof. To the extent the tax exempt status for the Leased Premises, improvements or leasehold estate created hereby are hereafter withdrawn or changed, LESSOR and LESSEE shall be responsible for payment of applicable taxes as follows:

(a) LESSOR will be responsible for all taxes attributable to the Leased Premises exclusive of the LESSEE's Improvements; and

(b) LESSEE will be responsible for taxes attributable to the Improvements and LESSEE's leasehold estate.

Section 12.02. PAYMENT BEFORE DELINQUENCY. Any and all impositions and installments of impositions required to be paid by LESSEE under this Lease shall be paid by LESSEE at least ten (10) days before each such imposition, or installment thereof, becomes delinquent, and the official and original receipt for the payment of such imposition or installment thereof shall immediately be given to LESSOR.

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Section 12.03. INDEMNIFICATION. LESSEE shall indemnify and defend LESSOR and the Leased Premises and any improvements now or hereafter located on the Leased Premises free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorney's fees and costs, resulting from any impositions required by this **Article XII** to be paid by LESSEE, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such imposition. LESSOR shall indemnify and defend LESSEE and the Leased Premises and any improvements now or hereafter located on the Leased Premises free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorney's fees and costs, resulting from any impositions required by this Article XII to be paid by LESSOR, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such imposition.

XIII.
HOLDING OVER

Section 13.01. HOLDING OVER WITH CONSENT. In the event that LESSEE hold over and remains in possession of the Leased Premises with the written consent of the LESSOR, that holding over shall be deemed to be from month to month only, and upon all of the same rents, terms, covenants and conditions as contained in this Lease.

Section 13.02. HOLDING OVER WITHOUT CONSENT. In the event that LESSEE holds over and remains in possession of the Leased Premises without consent of the LESSOR, that holding over shall constitute LESSEE a trespasser.

XIV.
NONDISCRIMINATION

Section 14.01. NONDISCRIMINATION. The LESSOR and LESSEE, for itself and its representatives do hereby agree that no persons on the grounds of race, age, color, religion, sex, disability, ancestry, national origin, or place of birth shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.

XV.
MISCELLANEOUS

Section 15.01 NOTICES. Any notice provided for herein shall be given by written instrument, personally delivered or sent by U.S. mail, postage prepaid, to:

LESSOR: City of Plano
Attention: Director of Parks and Recreation
Post Office Box 860358
Plano, Texas 75086-0358

with copy to: City Attorney
City of Plano
Post Office Box 860358
Plano, Texas 75086-0358

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LESSEE: Plano Sports Authority, Inc.
Attention: Executive Director
1916 Avenue K
Plano, Texas 75074

or such address that LESSOR or LESSEE designates in writing to the other party.

Section 15.02. ENTIRE AGREEMENT. This Lease embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.

Section 15.03. APPLICABLE LAWS. This Lease is entered into subject to the charter and ordinances of LESSOR of Plano as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal, state and local laws. LESSEE also agrees to obtain, from all governmental authorities having jurisdiction, all licenses, certificates and permits necessary for the conduct of its operations and to keep them current.

Section 15.04. SEVERABILITY. If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Lease are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 15.05. SUCCESSORS AND ASSIGNS. LESSOR and LESSEE shall bind themselves, their successors, executors, administrators and assigns to the other party to this Lease. Neither LESSOR nor LESSEE will assign, sublet subcontract or transfer any interest in this Lease without the written consent of the other party. No assignment, delegation of duties or subcontract under this Lease will be effective without the written consent of LESSOR.

Section 15.06. REMEDIES. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy by law of equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Lease may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Lease.

Section 15.07. FINANCING. LESSEE may, at any time and from time to time, encumber LESSEE's leasehold interest, by deed of trust, mortgage or other security instrument without obtaining the consent of LESSOR, but no such encumbrance shall constitute a lien on the fee title of LESSOR in and to the Leased Premises. Any indebtedness secured by any encumbrance covering LESSEE's leasehold estate shall at all times be and remain inferior and subordinate to all the conditions, covenants and obligations of this Lease and to all the rights of LESSOR under this Lease, including LESSOR's rights upon the termination hereof to receive title to the Improvements free and clear of all liens and encumbrances and any such deed of trust or mortgage shall contain such express subordination language. Any encumbrance created by LESSEE on its leasehold estate shall be without cost or expense to LESSOR and to the extent

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LESSOR incurs any cost or expense in respect thereto, LESSEE shall promptly reimburse LESSOR for such costs or expenses. In no event shall the amount of such leasehold financing exceed twenty-five percent (25%) of the budgeted costs of the Improvements.

Section 15.08 INDEPENDENT CONTRACTOR. LESSEE covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of LESSOR and that LESSEE shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between LESSOR and LESSEE, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership between LESSOR and LESSEE.

Section 15.09. NON-WAIVER. It is further agreed that one (1) or more instances of forbearance by LESSOR in the exercise of its rights herein shall in no way constitute a waiver thereof.

Section 15.10. VENUE. The parties to this Lease agree and covenant that this Lease will be enforceable in Plano, Texas; and that if legal action is necessary to enforce this Lease, exclusive venue will lie in Collin County, Texas.

Section 15.11. LESSOR's GOVERNMENTAL POWERS AND IMMUNITIES. It is understood and agreed that LESSOR, through the execution of this Lease, does not waive or surrender any of its governmental powers or immunities.

Section 15.12. HEADINGS. The headings of this Lease are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

Section 15.13. ATTORNEY'S FEES. In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Lease as a consequence of any breach by the other party of its obligations under this Lease, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorney's fees and out-of-pocket expenditures paid by the losing party. All such fees shall be deemed to have accrued upon the commencement of such action.

Section 15.14. AMENDMENTS IN WRITING. This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the party to be charged.

Section 15.15. MUTUAL ASSISTANCE; GOOD FAITH. During the term of this Lease, to the extent practicable, the parties agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this Lease. In this connection, the parties shall, from time to time, meet upon the reasonable request of each other and shall confer in good faith, amicably and in a businesslike manner, with respect to the current and future operation of the Leased Premises and with a view toward resolving any problems which may arise. Except as otherwise provided herein, a party shall not unreasonably withhold its approval of any act or request of the other as to which its approval is necessary or desirable.

Exhibit "A" to Resolution No. _____

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year written above.

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

By _____
Name _____
Title _____

PLANO SPORTS AUTHORITY, INC., a Texas nonprofit corporation

By _____
Name _____
Title _____

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Exhibit "A"
Description of Leased Premises

The Enfield Site contains 4.5 acres (the "City Land") located within Enfield Park, Plano, Texas, at the southeast corner of Enfield Park and which fronts Seabrook Drive as its southern boundary, and Stadium Drive on the eastern boundary.

Durable long life materials will be used on all interior finishes to reduce maintenance. Paint will be used on the concrete load bearing walls, along with relief texture design and windows for human scale.

Description:

- 155,000 square feet. bi-level, multi-sports complex
- 95,000 square feet space containing court surfaces; turf surfaces; fan seating and common areas
- 14 basketball courts and 15 volleyball courts with wood or synthetic floor
- 1 Multi-use turf area
- 27,000 square feet ice hockey rink and fan bleachers sponsored by the Dallas Stars
- 25,000 square feet martial arts training area; meeting rooms; pro shop and museum sponsored by the United States Taekwon-Do Federation.
- Administrative offices; concession stand; dining area; locker rooms; showers

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Exhibit "A" to Resolution No. _____

PSA Enfield Park Facility
Site Plan

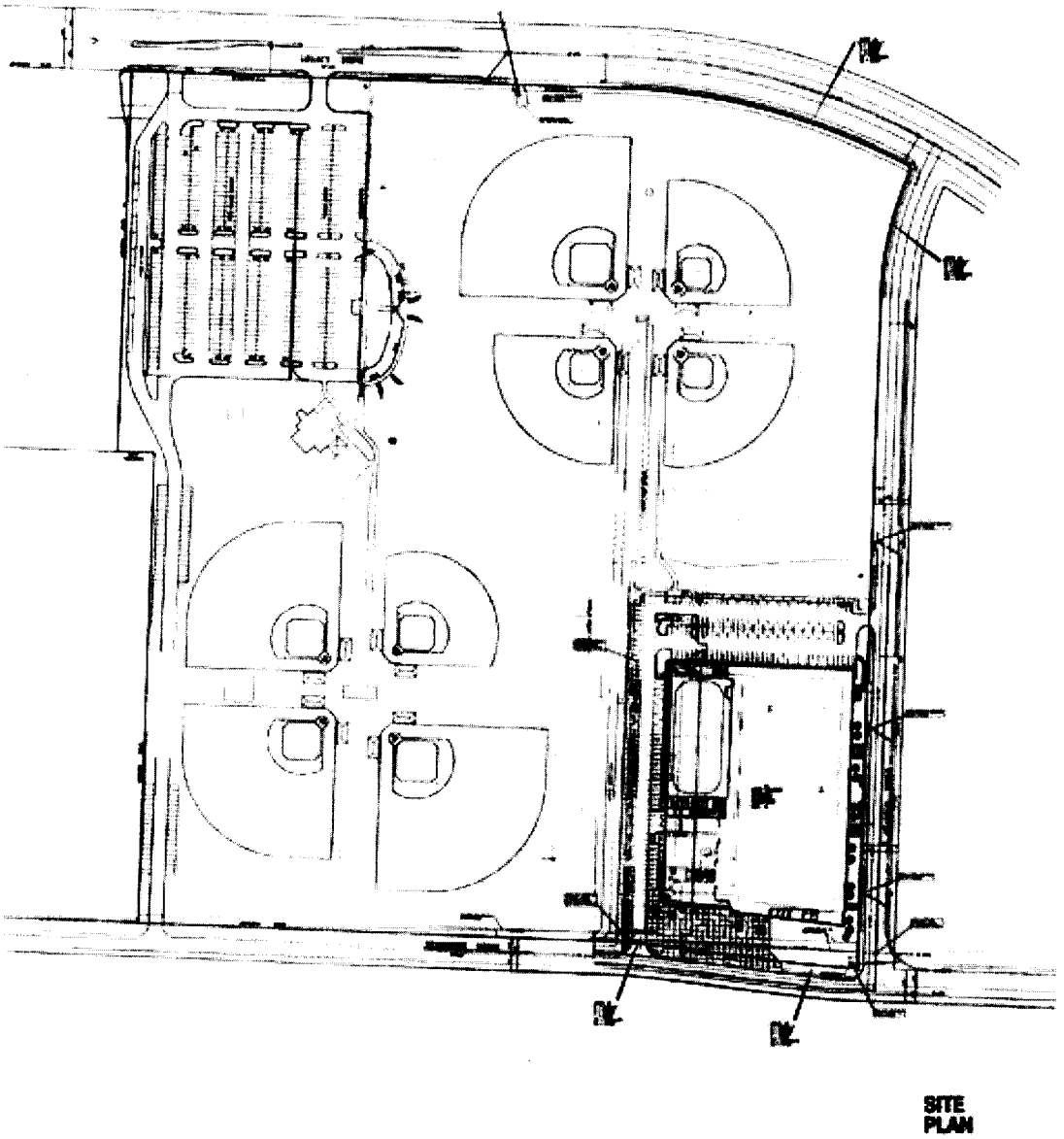

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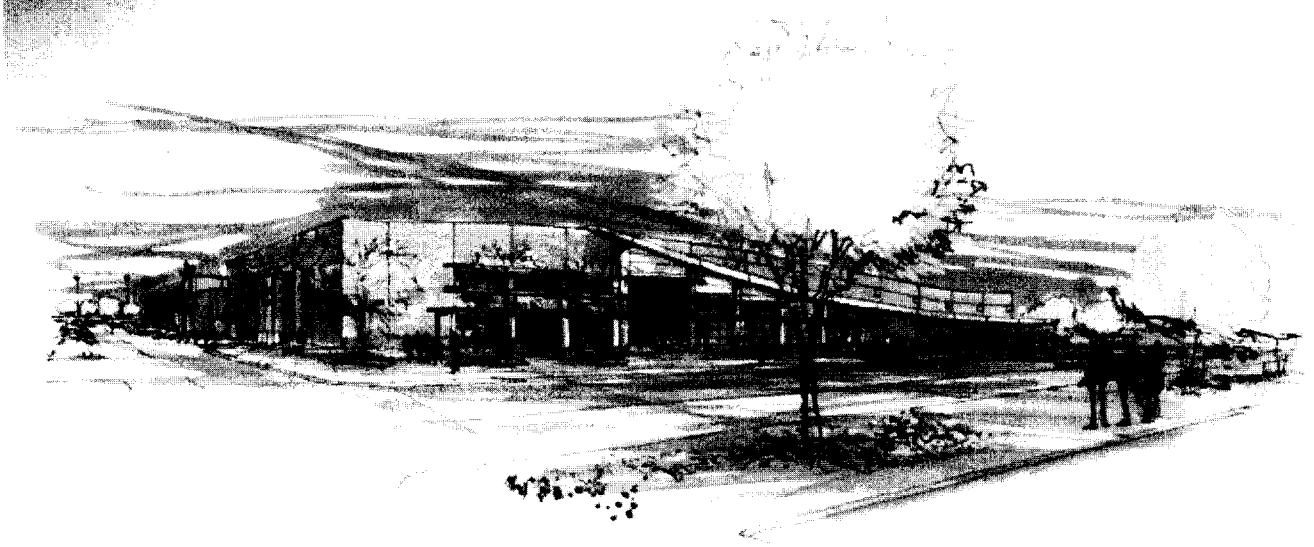
Exhibit "B"
Description of Construction

The proposed multi-purpose indoor athletic facility will be constructed of steel long span joist with acoustical deck and built up roof system. The slop of the roof will be ¼ inch per foot to the exterior walls with leader boxes and downspouts for drainage. Concrete structural load bearing walls will house the entire structure. All entrances and covered areas will be brick. The multi-purpose indoor athletic facility will be air conditioned with roof top direct expansion units. A parapet will screen A/C units to comply with city codes

PSA will construct 312 parking spaces at the northwest corner of Enfield Park at no cost to the City. Parking will be constructed according to City of Plano Park Staff request. This additional parking will be constructed prior to the commencement of the construction of the multi-purpose indoor athletic facility to be used for lay-down space during construction.

exterior perspective



Plano Sports Authority, Inc.

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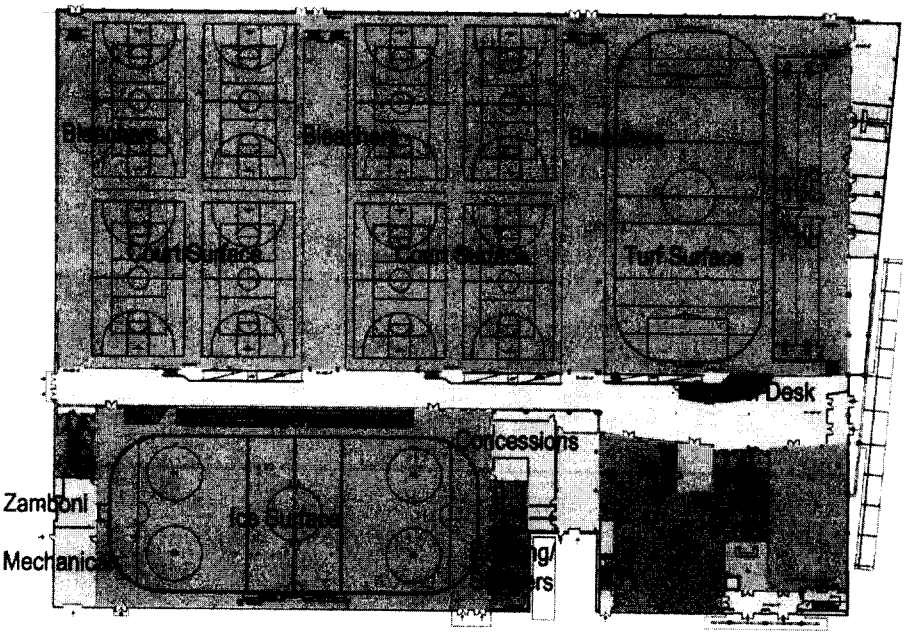
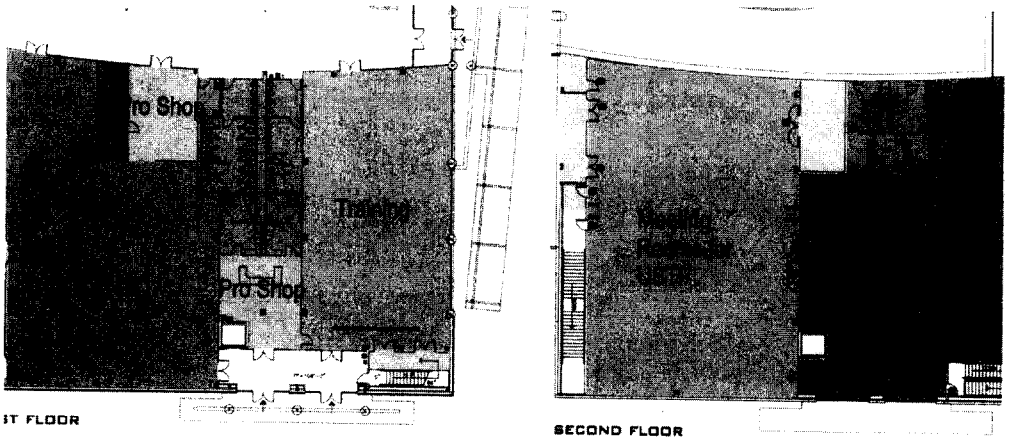
Exhibit "A" to Resolution No. _____



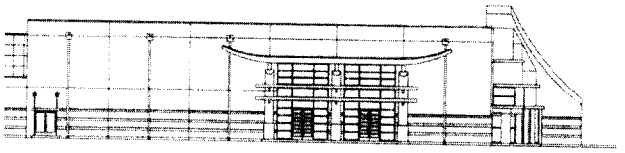
PSA CENTER
PLAND SPORTS AUTHORITY

FLOOR PLAN



IT FLOOR

SECOND FLOOR



WEST ELEVATION

PSA CENTER TAE KWAN DO TRAINING
PLAND SPORTS AUTHORITY

FLOOR PLAN

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Exhibit "A" to Resolution No. _____

Exhibit "C"
Estimated Construction Costs

ESTIMATE SUMMARY			ESTIMATE NO. 1 (10/05)			
DIVISION	NO.	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
		SITEWORK	154,633	SF	5.83	900,935
		BUILDING	154,633	SF	80.52	12,451,075
SUBTOTAL ESTIMATE AMOUNT			154,633	SF	$86.35	**13,352,010**
1		GENERAL CONDITIONS			5.000%	667,601
2		LIABILITY/BUILDER'S RISK INSURANCE			1.030%	144,437
3		PAYMENT & PERFORMANCE BOND			0.800%	113,312
4		CONSTRUCTION MANAGEMENT FEE			3.650%	521,124
5		CONSTRUCTION CONTINGENCY			3.000%	443,955
TOTAL ESTIMATE AMOUNT			154,633	SF	$98.57	**15,242,438**

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Exhibit "D"
PISD License Agreement

LICENSE AGREEMENT
FOR THE CONSTRUCTION AND USE OF A PARKING LOT
AT JOHN CLARK STADIUM

The **PLANO INDEPENDENT SCHOOL DISTRICT**, a political subdivision of the State of Texas, hereinafter called Licensor, and the, **PLANO SPORTS AUTHORITY, Inc. (PSA)**, a 501(C)3 non-profit organization, hereinafter called Licensee, enter into this license agreement for construction and use of a parking lot on a portion of Licensor's property at John Clark Stadium, located in the City of Plano, Collin County, Texas.

WHEREAS, Licensee currently operates a facility commonly known as the PSA StarCenter in Plano, Texas and has a need to expand the facility; and

WHEREAS, said contemplated expansion by Licensee will require parking for the users of the recreational facility which is expected to be a 120,000 square foot building containing eight 50 foot by 84 foot basketball courts and two ice rinks that can convert to be used for indoor soccer, arena football, inline hockey and indoor lacrosse (the "Expanded Facility"); and

WHEREAS, the Expanded Facility is expected to be located on Seabrook Drive facing John Clark Stadium; and

WHEREAS, Licensor currently has overflow parking for users of John Clark Stadium located generally at the Northwest corner of the John Clark Stadium property that is grassed and graveled with poles used as parking space dividers ("Overflow Parking"); and

WHEREAS, Licensee wishes to improve the Overflow Parking in exchange for Licensor allowing Licensee's patrons to use the improved parking area subject to the terms and conditions stated herein.

In consideration of the improvement of the Licensed Property (hereinafter defined) by Licensee, the value of which is hereby acknowledged by Licensor to equal the fair value of the privileges herein granted, Licensor hereby grants, subject to the terms and conditions below, a revocable non-exclusive license to Licensee for use of the property owned by Licensor and described in Exhibit "A", which is attached hereto and incorporated herein for all purposes, hereinafter called the "Licensed Property."

Plano ISD grants this license subject to the terms and conditions set out below:

1. License Term. Licensor grants this License for a term of thirty (30) years, commencing on the date Licensor receives written notification from Licensee of Licensee's receipt of a signed lease agreement with the City of Plano, Texas, covering land at Enfield Park on which Licensee intends to construct the Expanded Facility. Unless terminated as provided under Paragraph 7, this License is renewable under the same terms and conditions for two (2) additional ten (10) year terms with prior written approval by both parties before the start of each term.

2. Permitted Use. Licensee may use the Licensed Property during the term hereof for parking by patrons and users of the Expanded Facility, subject to the following limitations:

a. Licensee and its invitees shall not use, or caused to be used, the Licensed Property after such time as designated by Licensor on any day that Licensor will be holding a varsity football game at John Clark Stadium (the "Stadium"). Such dates shall be determined solely by Licensor and Licensor anticipates, although is not limited to, approximately fifteen (15) such dates per year.
b. Licensee and its invitees shall not use, or caused to be used, the Licensed Property after such time as designated by Licensor on any day that Licensor will be hosting a playoff football game at the Stadium. Such dates shall be determined solely by Licensor.
c. Licensee and its invitees shall not use, or caused to be used, the Licensed Property at times and on such dates that Licensor will be hosting band competitions at the Stadium. Such times and dates shall be determined solely by Licensor and Licensor anticipates, although is not limited to, approximately two (2) such dates per year.
d Licensee and its invitees shall not use, or caused to be used, the Licensed Property at times and on dates to be designated by Licensor in which Licensor will be using the Stadium for special events. Such times and dates shall be determined solely by Licensor.
e. Licensee shall not use, or caused to be used, the Licensed Property for any activity or purpose other than parking.

Licensor agrees to provide Licensee with as much advance notice as is reasonably practicable of the dates and times that the Licensed Property will not be available for Licensee's use.

3. Construction, Operation and Maintenance. Licensee shall, at its sole cost and expense, construct an asphalt parking lot with lights, a landscaping buffer together with a sidewalk along Seabrook Drive (the "Improvements") on the Licensed Property in accordance with the plans approved by Licensor.

Licensee, at its sole cost and expense, is responsible for and shall obtain any and all licenses, permits, or other approvals from any and all governmental agencies, federal, state or local, required in connection with the construction of the Improvements. After construction of the Improvements, Licensee shall, at its sole cost and expense, maintain and keep the Licensed Property and Improvements in a good and safe condition. In addition, Licensee agrees that no construction shall occur between the dates of August 15th and December 25th.

4. Other Conditions. The following conditions shall also apply:

a. Licensee shall not install any sign on the Licensed Property, unless such sign and its location have been previously approved in writing by Licensor, which approval is at Licensor's sole discretion.
b. Licensee shall prevent the use of alcohol and/or tobacco on the Licensed Property, and shall abide by all other regulations of Licensor applicable to the use of school district property.

5. Indemnity. Licensee undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors, subcontractors and invitees, all risk of dangerous conditions, if any, on or about the Licensed Property, and Licensee hereby agrees to release, defend, indemnify and hold harmless Licensor, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon Licensor, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of Licensee's installation, operation, maintenance or use of the Licensed Property or Licensee's failure to comply with any federal, state or local statute, ordinance or regulation, to the extent allowed by law.

6. Acceptance of Plans for Improvements. Licensee shall present detailed plans for the Improvements to Licensor. Licensee acknowledges that Licensor has the right to fully review the plans for construction of the Improvements. Licensee shall not commence construction until Licensor approves such plans, and consents to the construction of the Improvements in accordance with such plans. Licensee shall not make or cause to be made any improvements to the Licensed Property that are not set out in such plans, including but not limited to buildings, light standards, fences, shrubs, trees or signs, without the prior written consent of Licensor. Any additional improvements to which Licensor consents are at the sole cost and expense of Licensee.

7. Methods of Termination. This License may terminate upon any one of the following events:

(a) Upon thirty (30) days' prior written notice from Licensee to Licensor that Licensee has been unable to obtain adequate funds to construct and operate the Expanded Facility;

(b) Automatically upon Licensee's sale or cessation of the use of the Expanded Facilities;

(c) The failure of Licensee to perform its obligations as set forth in this License after notice of such default and a reasonable opportunity to cure;

(d) Expiration of the term; or

(e) Thirty (30) days' prior written notice from Licensor that the Licensed Property will be required for the exclusive use of educational activities.

8. Condition Upon Termination. Upon termination of this License Agreement, Licensee shall surrender the Licensed Property and all improvements thereon, which shall remain Licensor's property at no cost or expense to Licensor.

9. Assignment and Subletting. This License Agreement is personal to Licensee, and may not be sold, transferred, assigned or sublet without the express written consent of Licensor.

10. Notices. All written notices required under this License must be hand delivered or sent by certified mail addressed to the proper party at the following addresses:

Licensor

Plano Independent School District
Attention: Richard K. Matkin
2700 W. 15th Street
Plano, Texas 75075

Licensee

Plano Sports Authority, Inc. (PSA)
6500 Preston Meadow Drive
Plano, Texas 75024
Attention: Mary Margaret Taylor

Each party may change the address for receipt of notices by giving the other party notice, within ten (10) days, of the new address in the manner provided by this paragraph.

11. Prior Agreements. This License Agreement constitutes the sole and only agreement of the parties to the License and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this License Agreement.

12. Capacity. Both Licensor and Licensee represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this License Agreement.

13. Texas Law. This License Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and exclusive venue for any action concerning this License Agreement shall be in Collin County, Texas.

14. Amendment. No amendment, modification, or alteration of the terms of this License Agreement is binding unless it is in writing, dated subsequent to this License Agreement, and duly executed by the parties to this License Agreement.

15. Parties Bound. This License Agreement is binding upon and shall inure to the benefit of the executing parties and their successors and assigns.

16. Governmental Immunity. Licensee acknowledges that Licensor has not waived its governmental immunity by entering into this License Agreement.

EXECUTED as of the 2 day of JUNE, 2004.

LICENSOR

PLANO INDEPENDENT SCHOOL DISTRICT

By: _____ 6/9/04
Name: Richard Mathis
Title: Associate Superintendent

LICENSEE

PLANO SPORTS AUTHORITY, Inc (PSA)

By: _____
Name: Mary Margaret Taylor
Title: Executive Director

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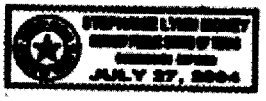
ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2004 by **MARY MARGARET TAYLOR**, Executive Director of the Plano Sports Authority, a _____



_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2004 by _____ of **PLANO INDEPENDENT SCHOOL DISTRICT**, a political subdivision of the State of Texas, on behalf of said political subdivision.

_____
Notary Public, State of Texas

EXHIBIT "A"

Licensed Property

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EXHIBIT A

BEING a tract of land situated in the Daniel Rowlett Survey, Abstract No. 738, City of Plano, Collin County, Texas, and being situated in Lot 1, Block A, R.C. Clark Addition, Phase Two, an addition to the City of Plano, Texas, as recorded in Cabinet L, Page 697, Plat Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING at a monument found in the south line of Seabrook Drive (a 60' R.O.W), said point being the northwest corner of the aforementioned Lot 1, Block A, R.C. Clark Addition, Phase Two, said point being the beginning of a non-tangent curve to the right having a central angle of 02°45'51", a radius of 1312.68 feet, a tangent length of 31.67 feet, and a chord bearing S88°43'21"E, 63.32 feet;

THENCE in an easterly direction along said curve to the right, and with the south line of Seabrook Drive, an arc distance of 63.33 feet to the POINT OF BEGINNING, said point being the beginning of a non-tangent curve to the right having a central angle of 02°21'11, a radius of 1312.68 feet, a tangent length of 26.96 feet, and a chord bearing S86°09'50"E, 53.91 feet;

THENCE in an easterly direction along said curve to the right, and with the south line of Seabrook Drive, an arc distance of 53.91 feet to a point for corner and the end of said curve;

THENCE S84°59'14"E, with the south line of Seabrook Drive, a distance of 216.34 feet to the beginning of a curve to the left having a central angle of 05°07'02", a radius of 1372.68 feet, a tangent length of 61.34 feet, and a chord bearing S87°32'45"E, 122.56 feet;

THENCE in an easterly direction along said curve to the left, and with the south line of Seabrook Drive, an arc distance of 122.60 feet to a point for corner and the end of said curve;

THENCE N89°53'44"E, with the south line of Seabrook Drive, a distance of 64.45 feet to a point for corner;

THENCE N00°06'57"W, a distance of 8.71 feet to a point for corner;

THENCE S89°58'30"E, with the south line of Seabrook Drive, a distance of 338.50 feet to a point for corner, said point being the beginning of a non-tangent curve to the left having a central angle of 25°01'24", a radius of 74.00 feet, a tangent length of 16.42 feet, and a chord bearing S08°05'47"E, 32.06 feet;

THENCE in a southerly direction along said curve to the left, leaving Seabrook Drive, an arc distance of 32.32 feet to a point for corner and the end of said curve;

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THENCE S20°36'30"E, a distance of 20.25 feet to the beginning of a curve to the right having a central angle of 88°05'17", a radius of 20.00 feet, a tangent length of 19.34 feet, and a chord bearing S23°26'09"W, 27.81 feet;

THENCE in a southwesterly direction along said curve to the right, an arc distance of 30.75 feet to the beginning of a reverse curve to the left having a central angle of 40°07'38", a radius of 339.00 feet, a tangent length of 123.81 feet, and a chord bearing S47°24'58"W, 232.60 feet;

THENCE in a southwesterly direction along said curve to the left, an arc distance of 237.42 feet to a point for corner and the end of said curve;

THENCE N89°54'01"W, a distance of 623.56 feet to a point for corner;

THENCE N00°05'59"W, a distance of 253.48 feet to the POINT OF BEGINNING and CONTAINING 170,449 square feet, or 3.913 acres of land.

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Legal		Initials	Date
Department Head	Diane Wetherbee	Executive Director		11-8-05
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):	**Paige Mims # 5235**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE ASSIGNMENT OF THE CABLE FRANCHISE AGREEMENT FROM COMCAST CABLE OF PLANO, INC. TO C-NATIVE EXCHANGE III, L.P.; PROVIDING FOR THE TRANSFER OF CONTROL OVER C-NATIVE EXCHANGE III, L.P. FROM COMCAST CABLE OF PLANO, INC. TO TIME WARNER CABLE INC.; PROVIDING FOR AMENDMENT TO THE CABLE FRANCHISE AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

By law, a city must review a cable operators' transfer request for legal, technical, financial and managerial ability of the new operator to assume the obligations and operation of the cable system. This Resolution approves the assignment of the Cable Franchise Agreement from Comcast Cable of Plano, Inc. to C-Native Exchange III, L.P. and transfers control over C-Native Exchange III, L.P. from Comcast Cable of Plano, Inc. to Time Warner Cable, Inc.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
n/a	n/a

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE ASSIGNMENT OF THE CABLE FRANCHISE AGREEMENT FROM COMCAST CABLE OF PLANO, INC. TO C-NATIVE EXCHANGE III, L.P.; PROVIDING FOR THE TRANSFER OF CONTROL OVER C-NATIVE EXCHANGE III, L.P. FROM COMCAST CABLE OF PLANO, INC. TO TIME WARNER CABLE INC.; PROVIDING FOR AMENDMENT TO THE CABLE FRANCHISE AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Comcast Cable of Plano, Inc. ("Franchisee" or "Comcast of Plano"), a wholly-owned subsidiary of Comcast Corporation ("Comcast"), is the current holder of a franchise for the ownership, operation, and maintenance of a cable system and for the provision of cable and related services to subscribers (the "Franchise") in the City of Plano, Texas ("City");

WHEREAS, for purposes of this Resolution, the term "Franchise" includes: (i) Ordinance 83-7-8; (ii) Ordinance 92-9-18 and accompanying Letter Agreement dated September 15, 1992, providing for the franchisee's monthly payment of a local government access programming fee of $0.38 per subscriber (the "Access Fee"); (iii) Resolution 95-1-1(R) consenting to a change of control over Tele-Communications, Inc. and accompanying Acceptance Agreement, dated January, 1995; (iv) Resolution 99-1-5 consenting to a change of control over AT&T Corp. and accompanying Acceptance Agreement, dated January 11, 1999; (v) Ordinance 2000-1-5 extending the Franchise term; (vi) written agreements and side letters accompanying one or more of the preceding items; (vii) Resolution 2000-11-11-1(R) approving a Final Settlement, dated November 15, 2000, a Partial Settlement, dated July 12, 1999, and Release Agreements relating to Cause No. 296-254-99 in the 296th Judicial District Court, Collin County, Texas; (viii) Ordinance 2003-7-15 adopting the maximum permitted rates and operator selected rates to be charged by Comcast of Plano for basic cable services, certain equipment, and equipment installation for the period June 1, 2003, to May 31, 2004; (ix) Ordinance 2004-1-24 extending the term of the Franchise held by Comcast of Plano from February 5, 2006, to December 31, 2010, and modifying the Franchise to revert to Comcast of Plano use of 12 unused or underutilized access channels for new services; (x) Resolution 2004-1-25(R) approving an agreement between the City and Comcast of Plano to allow Comcast of Plano to recapture the use of 12 unused or underutilized local access channels in consideration for extending the term of the Franchise to December 31, 2010, and for agreeing to continue annually contributing $150,000 through December 31, 2010, to the City's Community Access Fund (the "Fund Contribution"); and (xi) Ordinance 2004-7-13 adopting the maximum permitted rates and operator selected rates to be charged by Comcast of Plano for basic cable services, certain equipment, and equipment installation for the period June 1, 2004, to May 31, 2005;

WHEREAS, pursuant to an Exchange Agreement dated as of April 20, 2005, by and among Time Warner Cable Inc. ("Time Warner"), Comcast, and other related entities (the "Exchange Agreement"), subject to certain regulatory and bankruptcy court approvals, upon the closing thereof, there shall be a conveyance of all right, title and interest in the assets and properties used to operate the cable system in the City, including the Franchise, from Franchisee

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to C-Native Exchange III, L.P. ("New Franchisee"), and simultaneously there shall be a change in control over New Franchisee from Comcast to Time Warner, whereby New Franchisee will become an indirect subsidiary of Time Warner (collectively, such conveyance and change in control shall be the "Transaction") (each of Comcast, Comcast of Plano, Time Warner, and C-Native Exchange III also shall be referred to herein as a "Party" and collectively as the "Parties");

WHEREAS, the City, in City *of Plano, Texas, v. Comcast Cable of Plano, Inc.*, Cause No. 366-346-03 (366th Judicial Dist., Collin County, TX) ("*Plano v. Comcast*"), brought an action against Franchisee for breach of the Franchise and other matters resulting from Franchisee's refusal to pay franchise fees on gross revenues earned from its cable modem service; the defendant in this proceeding will, upon the closing of the Transaction, be merged into Comcast of Indiana/Michigan/Texas, L.P. ("Comcast - Indiana"); and, in a letter dated October 3, 2005, Comcast's counsel represented that Comcast – Indiana, upon closing of the Transaction, will be substituted as the defendant in *Plano v. Comcast*, and will be responsible, financially and otherwise, for any and all remedies that a court may grant the City with respect thereto (the "Litigation Guarantee");

WHEREAS, Franchisee and Time Warner have requested the City's consent to the closing of the Transaction, and in support of such request, have filed a FCC Form 394, various agreements, and other materials including, but not limited to, the Exchange Agreement and the chapter 11 plan ("Reorganization Plan") filed by Adelphia Communications Corporation and certain of its affiliates with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (collectively, the Application Documents");

WHEREAS, the City has requested that, since New Franchisee is a newly-formed entity, Time Warner guarantee New Franchisee's performance under the Franchise pursuant to a Guarantee substantially in the form of the Guarantee Agreement attached hereto and incorporated herein as Exhibit "A" or, in the City's sole discretion, a guarantee consistent with the most favorable guarantee agreed to by Time Warner in the State of Texas guaranteeing the performance of New Franchisee under the Franchise (the "Guarantee");

WHEREAS, the City requires that Comcast of Plano, Comcast - Indiana, Comcast, New Franchisee, and Time Warner accept the terms and conditions set forth in this Resolution and in the Franchise by executing an Acceptance Agreement substantially in the form of Acceptance Agreement attached hereto and incorporated herein as Exhibit "B" (the "Acceptance Agreement") (collectively, the Application Documents, Litigation Guarantee, Guarantee, and Acceptance Agreement shall be referred to herein as the "Transaction Documents");

WHEREAS, the City is relying upon the Transaction Documents in acting upon the application for its consent to the closing of the Transaction;

WHEREAS, New Franchisee agrees that, upon adoption of this Resolution, the satisfaction of all conditions set forth herein, and the closing of the Transaction, it is, and shall legally be, considered the holder of the Franchise pursuant to state, local, and federal law; and

WHEREAS, the City intends to consent to the proposed Transaction pursuant to the conditions set forth herein.

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

Section I. All matters stated in the preamble are found to be true and correct and are incorporated herein as if copied in their entirety.

Section II. Any capitalized terms not otherwise defined herein shall have the meaning given them in the Franchise.

Section III. The Transaction cannot be closed until all the following conditions are satisfied to the City's sole and absolute satisfaction: (i) the Guarantee has been executed; (ii) the Acceptance Letter has been executed.

Section IV. In the event that the closing of Transaction has not occurred by October 1, 2006, the terms of this Resolution shall be null and void. Until the closing of the Transaction has occurred, Franchisee will continue to be responsible for the performance of all Franchise terms. At least 10 business days prior to closing, New Franchisee shall provide the City written documentation that all Closing Conditions have been satisfied and, unless the City notifies New Franchisee within five (5) business days thereafter that such documentation is unacceptable for any reason, the closing can take place as scheduled. Further, New Franchisee shall provide the City written notice that the closing of the Transaction has occurred no later than 10 business days thereafter.

Section V. Upon closing of the Transaction, New Franchisee will, at all times, fully comply with all terms of the Franchise and all other City ordinances, and with any subsequent amendments thereto, including, but not limited to, the payment of all required franchise fees, full cooperation with, and submission of all requisite documentation for, any performance or franchise fee audit conducted by the City, and timely and full payment of the Access Fee and the annual Fund Contribution. The first payment of Franchise fees after the closing of the Transaction will be accompanied by a statement itemizing the revenue categories by account on which Franchise fees are being paid with a statement as to any differences between the calculations by New Franchisee and Comcast of Plano.

Section VI. By adopting this Resolution, the City does not waive, and specifically retains all its rights to regulate, as applicable, Franchisee's or New Franchisee's operation of the Cable Communications System. Further, by adopting this Resolution, the City does not waive, and specifically retains all its rights to receive compensation to which it is entitled based upon Gross Revenues received, as applicable, by Franchisee or by New Franchisee.

Section VII. Upon the closing of the Transaction, New Franchisee shall be the successor entity to Franchisee, the incumbent cable service provider in the City. Pursuant to Texas law, including, but not limited to, Chapter 66, Texas Utilities Code Sections 66.004(a) and (c), as adopted by S.B. 5, 79th Texas Legislature, 2nd Called Session, upon such closing, New

Franchisee will be operating under the Franchise, and New Franchisee will be the incumbent cable provider in the City under applicable law as if it were the incumbent cable provider in the City under the Franchise as of September 1, 2005, and had, at all times been the incumbent cable provider in the City thereunder since that date regardless of the actual date when the Transaction was closed.

Section VIII. In the event that the Transaction does not close by October 1, 2006, Time Warner Cable will reimburse the City for all out-of-pocket costs incurred.

Section IX. If any word, sentence, paragraph, subdivision, clause, phrase or section of this Resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Resolution which shall remain in full force and effect.

Section X. Subject to each Party's compliance with the provisions contained herein and to the full satisfaction of all conditions set forth in Section III herein, the City grants its consent to the closing of the Transaction, provided that such grant does not preclude further investigation by the City of any potential franchise violation, including those occurring prior to the closing of the Transaction.

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

DULY PASSED AND APPROVED this the _____ day of November, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT, dated and effective as of _____ (the "Guarantee"), is made by TIME WARNER CABLE INC., a Delaware corporation ("Guarantor"), in favor of the CITY OF PLANO, TEXAS ("Beneficiary").

WHEREAS, Comcast Cable of Plano, Inc. ("Comcast of Plano"), a wholly-owned subsidiary of Comcast Corporation ("Comcast"), is the current holder of a franchise for the ownership, operation, and maintenance of a cable system and for the provision of cable and related services to subscribers in the City of Plano, Texas;

WHEREAS, in and for purposes of this Guarantee, the term "Franchise" shall have the same meaning as it does in Resolution No. ___, adopted on November ___, 2005, by the City Council of Beneficiary (the "Resolution"), a copy of which is attached to as a part of this Guarantee;

WHEREAS, pursuant to an Exchange Agreement dated as of April 20, 2005, by and among Guarantor, Comcast, and other related entities (the "Exchange Agreement"), subject to certain regulatory and bankruptcy court approvals, upon the closing thereof, there shall be a conveyance of all right and title to, and interest in, the assets and properties used to own, operate and maintain the cable system, and provide cable and related services to subscribers, in the City of Plano, Texas, including the Franchise, from Comcast of Plano to C-Native Exchange III, L.P. ("New Franchisee"), and simultaneously there shall be a change in control over New Franchisee from Comcast to Guarantor, whereby New Franchisee will become an indirect subsidiary of Guarantor (such conveyance and change in control being referred to herein collectively as the "Transaction");

WHEREAS, Comcast of Plano and Guarantor have requested Beneficiary's consent to the Transaction, and in support of such request, have filed a FCC Form 394, various agreements, and other materials, including the Exchange Agreement (collectively, the "Transaction Documents");

WHEREAS, Beneficiary is relying upon the Transaction Documents in acting upon the request for its consent to the Transaction;

WHEREAS, one of the conditions precedent to the closing of the Transaction is the execution of this Guarantee and its delivery to Beneficiary;

WHEREAS, New Franchisee agrees that, with the previous adoption of the Resolution, upon the satisfaction of all conditions set forth in the Resolution and the closing of the Transaction, it shall legally be the holder of the Franchise pursuant to state, local, and federal law; and

WHEREAS, Beneficiary has consented to the proposed Transaction, subject to satisfaction of all the conditions set forth in the Resolution.

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For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Interpretive Provisions.

(a) The foregoing preamble (or set of WHEREAS clauses) is a part of the parties' agreement in this Guarantee; the words "hereof," "herein," and "hereunder" and words of similar import, when used in this Guarantee, shall refer to this Guarantee as a whole and not to any particular provision of this Guarantee; and Section references are to sections of this Guarantee unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Unless otherwise defined herein, all capitalized terms herein shall have the same meanings given to them in the Resolution.

(d) When used in this Guarantee, (i) "include" and "including" do not signify any limitation, and will be deemed followed by "without limitation," and (ii) "person" shall mean any individual or natural person, any entity of any kind, and any government or governmental authority of any kind.

2. Guarantee.

(a) Subject to applicable law, Guarantor absolutely, unconditionally and irrevocably guarantees to Beneficiary the timely and complete performance of all New Franchisee's obligations under the Franchise, which shall include any and all amendments, modifications and supplements thereto from time to time (collectively, the "Guaranteed Obligations"). This Guarantee is an irrevocable, absolute, continuing guarantee of payment and performance, and not a guarantee of collection. Without limiting the foregoing, if New Franchisee fails to pay any or all of its monetary Guaranteed Obligations, including payment of all franchise fees, payment of a monthly local government access programming fee of $0.38 per subscriber, and payment of a $150,000 annual contribution to Beneficiary's Community Access Fund, in full when due in accordance with the terms of the Franchise, Guarantor promptly will pay the same to Beneficiary or cause or procure payment of the same to Beneficiary. Without limiting the foregoing, if New Franchisee fails to perform any or all of its non-monetary Guaranteed Obligations when due in accordance with the terms of the Franchise, Guarantor promptly will perform the same for Beneficiary or cause or procure the performance of the same for Beneficiary. Nevertheless, Guarantor shall be entitled to assert, as a defense hereunder, any defense that is or would be available to New Franchisee under the Franchise or otherwise.

(b) This Guarantee shall remain in full force and effect until the earlier to occur of: (i) performance in full of all Guaranteed Obligations at a time when no additional Guaranteed Obligations remain outstanding or may become payable or performable by or on behalf of New Franchisee under the Franchise or (ii) direct or

indirect assignment of the Franchise from New Franchisee to, or direct or indirect acquisition of New Franchisee or any successor thereto by (whether pursuant to a sale of assets or stock or other equity interests, merger or otherwise), any other person, a majority of whose equity and voting interests are not beneficially owned and controlled, directly or indirectly, by Guarantor or the business and affairs of which are not otherwise directly or indirectly controlled by Guarantor. Upon termination of this Guarantee in accordance with this Section 2(b), all liability of Guarantor in respect hereof shall cease, and Guarantor shall remain liable solely for Guaranteed Obligations accrued prior to the date of such termination. Nevertheless, this Guarantee shall continue in effect or be reinstated (as the case may be) if, at any time, any payment or performance or any of the Guaranteed Obligations must be restored by Beneficiary because of any event or circumstance described in Section 5(c) below.

(c) This Guarantee shall apply to the Franchise, any extension or renewal of the term thereof, and to any holdover term following the expiration of the Franchise or any extension or renewal of the term thereof.

3. Waiver.

(a) Guarantor waives any and all notice of the creation, renewal, extension or accrual of any or all of the Guaranteed Obligations and notice of or proof of reliance by Beneficiary upon this Guarantee or acceptance of this Guarantee. Guarantor waives diligence, presentment, protest, notice of protest, and demand for payment to New Franchisee or Guarantor with respect to any or all the Guaranteed Obligations; provided, however, that Guarantor shall be furnished with a copy of any notice of, or relating to, default under the Franchise to which New Franchisee is entitled or which is given by Beneficiary to New Franchisee at or promptly after the time such notice is sent or given to New Franchisee. Guarantor waives all rights of a guarantor or surety under Chapter 34 of the Texas Business and Commerce Code.

(b) Guarantor agrees that Beneficiary may, without notice to or consent by Guarantor, and without in any way releasing or impairing or otherwise affecting any liability or obligation of Guarantor hereunder: (i) modify, amend, supplement, add, or otherwise change any provision of the Franchise to the extent permitted under the terms of the Franchise; (ii) grant extensions or renewals of the term of the Franchise, or effect any release, compromise or settlement in connection therewith; (iii) consent to the assignment or other transfer or conveyance by New Franchisee of any or all of its rights and interest under the Franchise; and (iv) deal in all respects with New Franchisee and the Guaranteed Obligations as if this Guarantee were not in effect.

4. Representations and Warranties. Guarantor represents and warrants that: (i) it is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (ii) the execution, delivery and performance by it of this Guarantee is within its corporate powers, have been duly authorized by all necessary corporate action, and do not contravene any law, order, decree or other governmental restriction, or any agreement or instrument, binding on it or affecting it adversely in any material respect; (iii) New Franchisee is a direct or indirect

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~~wholly owned~~ subsidiary of Guarantor, and the Transaction, including this Guarantee, will result in a direct or indirect benefit to Guarantor; (iv) there is no action, suit or proceeding at law or in equity, no arbitration or other administrative proceeding, and (to the best of its knowledge) no investigation by any governmental authority or regulatory body pending or (to the best of its knowledge) threatened against it that relates or would relate to this Guarantee or its performance; and (v) no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by it of this Guarantee, except as already may have been obtained or made, other than any lack of authorization, approval, notice, filing or other action that would not, individually or in the aggregate, impair or delay in any material respect its ability to perform its obligations hereunder.

5. Binding Effect; Other Matters.

(a) This Guarantee has been executed and delivered by Guarantor and constitutes a valid and legally binding obligation of Guarantor, enforceable against it in accordance with its terms, and shall inure to the benefit of Beneficiary, and its successors and assigns, except as such enforcement may be limited by applicable bankruptcy, insolvency or other similar laws applicable to creditors' rights generally and by equitable principles (whether enforcement is sought in equity or at law).

(b) Beneficiary shall not be required, before or when enforcing or invoking the benefits of this Guarantee, to institute any suit or proceeding against or pursue or exhaust any of its remedies with respect to New Franchisee or any other person liable for the Guaranteed Obligations or to enforce its rights with respect to any security which shall ever have been given to secure the payment and performance of the Guaranteed Obligations. The obligations of Guarantor hereunder shall not be released or impaired in any way by any neglect, delay, omission, failure or refusal of Beneficiary to take or prosecute any action or proceeding for the collection or enforcement of the Guaranteed Obligations, or by any failure of Beneficiary to give Guarantor any notice of any kind under any circumstances whatsoever with respect to, or in connection with, the Guaranteed Obligations. Any suit or proceeding may be brought and maintained against Guarantor without the joinder of New Franchisee or any other person, and if there is more than one guarantor of the Guaranteed Obligations, Beneficiary may (i) bring any suit or proceeding against all guarantors jointly and severally or against any one or more of them, (ii) compound or settle with any one or more of such guarantors for such consideration as Beneficiary may deem proper, and (iii) release one or more of the guarantors from liability without impairing the liability of the guarantors not so released; and no action or proceeding brought by Beneficiary against any one guarantor of the Guaranteed Obligations shall impair the right of Beneficiary to bring any suit or proceeding against any remaining guarantor or guarantors.

(c) In addition to, and without limiting the foregoing or any other provision of this Guarantee, Guarantor's liability under this Guarantee shall in no way be affected by: (i) the release or discharge of any obligation of New Franchisee in or resulting from (A) any process initiated by or on behalf of New Franchisee which assigns New Franchisee's assets to the benefit of its creditors, (B) any receivership, bankruptcy or

other similar proceedings, or (C) any insolvency, bankruptcy, reorganization or other similar proceeding affecting New Franchisee or its assets; (ii) the impairment, limitation or modification of the liability of New Franchisee or the estate of New Franchisee in bankruptcy, or of any remedy for the enforcement of New Franchisee's liability under the Franchise, resulting from the operation of any present or future provision of the United States Bankruptcy Code or other statute or from the decision in any court, whether state or federal; (iii) the rejection or disaffirmance of the Franchise in any proceedings described in clauses (i) or (ii) above in this Section 5(c); (iv) the assignment or transfer or other conveyance of the Franchise by New Franchisee, except as otherwise permitted in Section 10 below; (v) any disability of New Franchisee; (vi) the existence of any claim, setoff or other rights which Guarantor may have at any time against New Franchisee, whether in connection herewith or any unrelated transactions; or (vii) any change in the existence, structure or ownership of New Franchisee.

(d) Guarantor shall remain liable for the Guaranteed Obligations, even though the Guaranteed Obligations shall be unenforceable against New Franchisee because of lack of power or authority on the part of New Franchisee.

6. Notices. All notices, requests, demands, approvals, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given and made if delivered in person or by courier or delivery service to the party for whom it is intended, if sent and delivered by registered or certified mail, return receipt requested, or if sent by telecopier, provided that the telecopy is promptly confirmed by telephone confirmation thereof, sent in any case to the party at the address set forth below or at such other address as may be designated in writing hereafter, in the same manner, by such party:

To Guarantor and New Franchisee:

Time Warner Cable Inc.
290 Harbor Drive
Stamford, CT 06902-6732
Telephone: (203) 328-0631
Telecopy: (203) 328-4094
Attention: General Counsel

To Beneficiary:

City of Plano, Texas
1520 Avenue K
Plano, Texas 75074-6232
Telephone: (972) 941-7000
Telecopy: (972) 424-0099
Attention: City Attorney

7. Integration. This Guarantee constitutes the agreement of Guarantor with respect to the subject matter hereof, and there are no promises or representations by Guarantor or Beneficiary related to the subject matter hereof other than those expressly set forth herein.

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8. Amendments in Writing. None of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Guarantor and Beneficiary, provided that any right, power or privilege of Beneficiary arising under this Guarantee may be waived by Beneficiary in a letter or agreement executed by Beneficiary.

9. Section Headings. The section headings used in this Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

10. No Assignment or Benefit to Third Parties. This Guarantee shall be binding upon and inure to the benefit of the parties hereto and their respective legal successors and permitted assigns. Nothing in this Guarantee, express or implied, is intended to confer upon any person, other than Guarantor and Beneficiary and their respective legal successors and permitted assigns, any rights or remedies under or by reason of this Guarantee. Neither party hereto may assign or delegate its rights or obligations to any other person or persons without the other party's prior written consent; and any purported assignment or delegation without such consent shall be void and of no effect.

11. Expenses. All costs and expenses incurred in connection with this Guarantee and the transactions contemplated hereby shall be borne by Guarantor pursuant to Section VIII of the Resolution.

12. Counterparts. This Guarantee may be executed by Guarantor and Beneficiary on separate counterparts (including by facsimile transmission), and all the counterparts taken together shall constitute one, and the same, instrument.

13. **GOVERNING LAW. THIS GUARANTEE SHALL BE GOVERNED BY, ENFORCED UNDER AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD APPLY THE LAWS OF ANY OTHER STATE. THE OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE PERFORMABLE IN COLLIN, COUNTY, TEXAS, AND IF LEGAL ACTION IS NECESSARY TO ENFORCE SAME, EXCLUSIVE VENUE SHALL LIE IN A STATE OR FEDERAL COURT HAVING JURISDICTION FOR COLLIN COUNTY, TEXAS.**

14. **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE AND FOR ANY COUNTERCLAIM THEREIN.**

IN WITNESS WHEREOF, each party hereto has caused this Guarantee to be duly executed and delivered by its duly authorized officer as of the day and year first above written.

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Exhibit "A"

TIME WARNER CABLE INC.

By: _____
Name:
Title:

CITY OF PLANO, TEXAS

By: _____
Name:
Title:

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DALLAS 1590310v1

EXHIBIT "B"

ACCEPTANCE AGREEMENT

This Acceptance Agreement, dated effective as of _____, is by and among the City of Plano, Texas ("City"), 1520 Avenue K, Plano, TX 75074-6232; Comcast Cable of Plano, Inc. ("Comcast of Plano"), [address]; Comcast Corporation ("Comcast"), [address]; Comcast of Indiana/Michigan/Texas, L.P. ("Comcast – Indiana"), [address]; C-Native Exchange III, L.P. ("C-Native"), [address]; and Time Warner Cable, Inc., 290 Harbor Drive, Stamford, CT 06902-6732 ("Time Warner") (each individually a "Party" and collectively the "Parties").

WHEREAS, Comcast of Plano, a wholly-owned subsidiary of Comcast, is the current holder of a franchise for the ownership, operation, and maintenance of a cable system and for the provision of cable and related services to subscribers in the City;

WHEREAS, in and for purposes of this Acceptance Agreement, the term "Franchise" shall have the same meaning as it does in Resolution No. __, adopted on November ___, 2005, by the City Council of the City (the "Resolution"), a copy of which is attached to, as a part of, this Acceptance Agreement;

WHEREAS, pursuant to an Exchange Agreement dated as of April 20, 2005, by and among Time Warner, Comcast, and other related entities (the "Exchange Agreement"), subject to certain regulatory and bankruptcy court approvals, upon the closing thereof, there shall be a conveyance of all right and title to, and interest in, the assets and properties used to own, operate and maintain the cable system, and provide cable and related services to subscribers, in the City, including the Franchise, from Comcast of Plano to C-Native ("New Franchisee"), and simultaneously there shall be a change in control over New Franchisee from Comcast to Time Warner, whereby New Franchisee will become an indirect subsidiary of Time Warner, (such conveyance and change in control being referred to herein collectively as the "Transaction");

WHEREAS, Comcast of Plano and Time Warner have requested the City's consent to the Transaction, and in support of such request, have filed a FCC Form 394, various agreements, and other materials, including the Exchange Agreement (collectively, the "Transaction Documents");

WHEREAS, the City is relying upon the Transaction Documents in acting upon the request or application for its consent to the Transaction;

WHEREAS, one of the conditions precedent to the closing of the Transaction is the execution of this Acceptance Agreement and its delivery to the City;

WHEREAS, New Franchisee agrees that, with the previous adoption of the Resolution, upon the satisfaction of all conditions set forth in the Resolution and the closing of the Transaction, it shall legally be the holder of the Franchise pursuant to state, local, and federal law; and

WHEREAS, the City has consented to the proposed Transaction subject to satisfaction of all the conditions set forth in the Resolution.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. All capitalized terms not expressly defined herein shall have the meanings given to them in Resolution __.

2. The promises, covenants, and conditions contained herein inure to the benefit of the City and are binding to the extent specified in this Acceptance Agreement respectively on Comcast of Plano, Comcast – Indiana, Comcast, C-Native, and Time Warner (collectively, the "Accepting Parties").

3. The Accepting Parties acknowledge that the transactions described in the Application Documents are expressly subordinate to, and will not affect the binding nature of, the Franchise, and the obligations provided for therein, and that the consent of the City to the Transaction does not constitute a waiver or release of any rights of the City.

4. The Accepting Parties acknowledge that the City has consented to the closing of the Transaction, under the terms and conditions set forth in the Franchise, in reliance upon the representations, documents and information provided by them.

5. The Accepting Parties agree that they will not contend directly or indirectly that any defaults or failures to comply with the Franchise or applicable law (collectively "Defaults") by Comcast of Plano occurring prior to the closing of the Transaction are waived as a result of the closing of the Transaction or the City's consent thereto, including, but not limited, to the ability of the City to enforce, in the future, any Franchise terms which may not have been enforced in the past.

6. Comcast, Comcast of Plano, and Comcast - Indiana agree that, upon the closing of the Transaction, Comcast - Indiana shall be substituted for Comcast of Plano as the defendant in *Plano v. Comcast*, and that Comcast - Indiana shall be responsible, financially and otherwise, for satisfaction of any and all remedies that a court may grant the City with respect thereto.

7. Until such time as the Transaction has been closed, Comcast and Comcast - Indiana shall be fully responsible for complete compliance with all terms and conditions in the Franchise.

8. After the Transaction has been closed, New Franchisee shall be subject to, and will abide by all the terms and conditions of, the Franchise, including, but not limited to, payment of the monthly Access Fee and the annual Fund Contribution. Further, Time Warner agrees that the Guarantee, substantially in the form of Exhibit A to the Resolution, shall be in effect as of the closing of the Transaction and shall remain in effect subject to the terms therein.

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9. It is the intent of New Franchisee, Time Warner and the City that the Transaction, the consent process, the City's Resolution granting consent, and this Acceptance Agreement, do not provide any basis for increasing the amounts paid by subscribers through cost pass-throughs as so-called "external costs" or as new requirements, and the consent process, the City's Resolution granting consent, and this Acceptance Agreement do not provide any basis for increasing the amounts paid by subscribers in any other manner.

10. Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any Party at any time to require performance by any other Party of any provision of this Acceptance Agreement shall not affect such Party's right thereafter to enforce the same; (ii) no waiver by a Party of any default by the other shall be taken or held to be a waiver by such Party of any other preceding or subsequent default; and (iii) no extension of time granted by a Party for the performance of any obligation or act by another Party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

11. Other Matters.

11.1 Each of the Accepting Parties represents and warrants to each other and to the City that all corporate and other proceedings required to be taken by or on the part of such Accepting Party to authorize the execution, delivery and carrying out of this Acceptance Agreement have been or will be, prior to closing of the Transaction, duly and properly taken.

11.2 In the event of any conflict between the terms of this Acceptance Agreement and the Franchise or between this Acceptance Agreement and any City ordinance, this Acceptance Agreement shall prevail.

11.3 If the Transaction is not closed on or before October 1, 2006, then, at the City's option, prior to such closing, this Acceptance Agreement and the City's consent to the Transaction shall become null and void. Such option shall be exercised prior to closing of the Transaction by the City giving written notice to New Franchisee and Time Warner at the addresses designated in the Form 394.

11.4 This Acceptance Agreement is the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior agreements. Any notice or communication must be in writing and given by depositing the same in the U.S. mail, addressed to the Party to be notified at the address first listed above, postage prepaid and registered or certified with return receipt requested or mailing the same via overnight delivery, or by delivering the same in person. The Acceptance Agreement may not be assigned to any third party or amended, and no provisions herein may be waived, without the prior written consent of the City. This Acceptance Agreement may be executed in counterpart originals, in which case the effect shall be the same as if all Parties had executed the same document. No Party shall be liable to any other Party for any failure to

perform hereunder due to a force majeure event. All Parties shall comply with all applicable laws. If any provision of this Acceptance Agreement is determined invalid or illegal, such provision shall be fully severable, and the remainder of the Acceptance Agreement shall remain in full force and effect. The Parties agree that they shall not bind each other to any contract with third parties which might create liability in any Party for damages arising out of the transactions contemplated herein. This Acceptance Agreement does not constitute, and shall not be construed as constituting, an agency, a partnership or joint venture between or among the Parties, and no Party shall have the right to obligate or bind any other Party in any manner whatsoever, and nothing herein contained shall give or is intended to give any rights of any kind to any third persons. Nothing herein authorizes, or is intended to authorize, any Party to execute any document for or on behalf of any other Party. The rights and obligations under this Acceptance Agreement shall survive any merger or sale of a Party and shall be binding upon the successors and permitted assigns of such Party.

IN WITNESS WHEREOF, the Parties have executed this Acceptance Agreement as of the date set forth above.

CITY OF PLANO, TEXAS

By: _____
Thomas H. Muehlenbeck
City Manager

COMCAST CABLE OF PLANO, INC,

By: _____
Name: _____
Title: _____

COMCAST CORPORATION

By: _____
Name: _____
Title: _____

Q-16

C-NATIVE EXCHANGE III, L.P.

By: _____
Name: _____
Title: _____

COMCAST OF INDIANA/MICHIGAN/TEXAS, L.P.

By: _____
Name: _____
Title: _____

TIME WARNER CABLE, INC.

By: _____
Name: _____
Title: _____

Q-17

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, _____ of Comcast Cable of Plano, Inc., a _____ corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, _____ of Comcast Corporation, a _____ corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, _____ of C-Native Exchange III, L.P., a _____ limited partnership, on behalf of said limited partnership.

_____
Notary Public in and for the
State of Texas

Q-18

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, _____ of Comcast of Indiana/Michigan/Texas, L.P., a _____ limited partnership, on behalf of said limited partnership.

_____
Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 2005, by _____, _____ of Time Warner Cable, Inc., a _____ corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2005, by THOMAS M. MUEHLENBECK, City Manager of the CITY OF PLANO, TEXAS, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/05**	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Development Business Center		Initials	Date
Department Head	Frank Turner	Executive Director		11/8/05
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):	**Lynne Jones - 7109**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING A FUNDING AGREEMENT AMONG THE CITIES OF ALLEN, FRISCO, AND PLANO FOR ADDITIONAL FUNDING IN THE AMOUNT OF $705,698 EACH FOR DESIGN SERVICES FOR A PROPOSED PROJECT PERTAINING TO THE ARTS OF COLLIN COUNTY COMMISSION, INC.; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: **2005-2006**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	414,869	4,695,131	14,192,000	**19,302,000**
Encumbered/Expended Amount	-414,869	-121,164	0	**-536,033**
This Item	0	-705,698		**-705,698**
BALANCE	0	3,868,269	14,192,000	**18,060,269**

FUND(S): CREATIVE & PERFORMING ARTS

COMMENTS: Funds are included in the 2005-06 Creative & Performing Arts Fund. This item, in the amount of $705,698, will leave a current year balance of $3,868,269 in the Collin County Cultural Arts Fund.

STRATEGIC PLAN GOAL: Design development relates to the City's Goal of "Premier City for Families."

SUMMARY OF ITEM

This Resolution authorizes the payment of $705,698.00 to the Arts of Collin County, Inc. for design development services necessary for the ACC to recommend an Approved Project to be considered by the Cities.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
n/a	n/a

P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099
http://www.ci.plano.tx.us

MEMORANDUM

DATE: November 9, 2005

TO: Thomas H. Muehlenbeck, City Manager

FROM: Frank F. Turner, Executive Director

SUBJECT: ACC Funding request

The Arts of Collin County is requesting $2,117,095 for continuation of the design of Phase I of the Arts of Collin County facilities (a 2100 seat multipurpose theater, a 200 seat flexible community room and support space). Allen, Frisco and Plano (the Member Cities) are asked each to fund one third of the cost, $705,698. The proposed next stage of the design process is referred to as design development. During this stage of design, refined plans, sections and elevations are prepared and materials and systems are specified. Construction cost estimates developed at the end of this process are more precise and the construction budget contingency is reduced. The design development phase of the process is to be completed by June 2006.

The remaining design phase is the preparation of construction documents. This is the most time and labor intensive phase of design. The phase involves producing all the detailed drawings and specifications required to construct the project. Preparing the construction documents is estimated to cost approximately $3,470,000., of which Plano's responsibility would be $1,157,000. There will be additional charges related to bidding and pre-design services provided by the contractor at risk totaling less than $500,000, with Plano responsible for a third of the expense. A request from the ACC to the member cities for funding the preparation of construction documents is anticipated during the late spring or early summer of 2006. The final phase of design would be completed by the middle of 2007. All of the design work described above may be paid from the $19,000,000 bond authorization.

recycled paper

ARTS OF
COLLIN
COUNTY

November 7, 2005

Thomas H. Muehlenbeck, City Manager
City of Plano
P.O. Box 860358
Plano, TX 75086-0358

Dear Mr. Muehlenbeck,

The Arts of Collin County Commission will meet on Wednesday of this week and I anticipate approval to move forward with design development in Phase 1, to include a 2,100 seat multipurpose performance hall, a 200 seat flexible community room, a small visual arts gallery, a meadow for community events and related site development.

We have now concluded the schematic design process for Phase 1. Our project is a great success story: the design team is on schedule, there are no budget increases and the desired program components are intact. The anticipated quality levels for this project remain first-rate. The momentum remains strong.

Meetings with the design team, Arts of Collin County Commission and owner city representatives were conducted in November of 2004. Goals established for the program components, project quality expectations and total project budget were established at that time. To the credit of our outstanding design team, the project remains at $73 million—an excellent value compared to cultural projects of similar scope.

The design development phase, if authorized by each of the three owner cities, will begin in January and conclude in June of 2006. The subsequent contract documents phase will then take a year before commencing final document review and pricing. Hence design should be complete in mid-2007. The project will not start construction until all necessary financial commitments are in place.

The Arts of Collin County Foundation is conducting the BRAVO campaign, a conventional capital fund campaign, to insure success. A necessary research and planning process utilizing the services of an outside fundraising consulting firm concluded last summer. Now a silent phase for attracting major donors is underway and will continue in 2006. The public phase of fundraising will commence prior to ground breaking and use that celebration to promote the project's financial success and future development efforts. Approximately $5 million has been committed in the past year, including $3million from Collin County.

It is worthy to note that the financial commitment for the design development process is only 1% of the total cost of the project from each owner city (at $705,698 per city). The cost breakdown for design development by team member as follows:

boora Architects and subs	$1,608,355.00
Reimbursables budget	140,000.00
Open Space grant work	103,120.00
Theatre Projects Consultants	150,620.00
TPC reimbursables	15,000.00
Hunt projected costs	100,000.00

Total	$2,117,095.00

It is important to know that our design team and contractor-at-risk have calculated a $250,000 escalation figure for each month starting this January, should we not move forward with design development at that time. That delay by itself could add $1.5 million to the total cost if there is a 6 month break. Leadership of the Arts of Collin County Foundation has stated that continued success with the BRAVO capital campaign is contingent on the continued progress to a projected groundbreaking date.

Enclosed please find an impressive list of accomplishments by the Arts of Collin County Commission, led by President Robbie Robinson, and the Arts of Collin County Foundation, led by President Kathy Seei. This progress justifies moving forward with authorization of design development at this time. I will be happy to address any questions you or your elected officials and staff may have.

Sincerely,

James Baudoin
Executive Director

Attachments: Pre-Construction Cost Estimates

Milestones of ACC Commission and Foundation

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Significant Milestones of the Arts of Collin County Commission and Foundation as of November 2005:

1. The Arts of Collin County Foundation (ACCF) is incorporated- June 2002
2. Formed the Arts of Collin County Commission - May 2004
3. Selected a nationally-recognized design team led by boora architects-June 2004
4. Hired The Kellogg Organization (TKO) as fundraising consultant for the ACCF. TKO recommends the BRAVO fundraising campaign begin with the silent phase (major gifts) and remain in that phase until 2006. The BRAVO campaign Honorary Advisory Committee, chaired by Craig Hall, and the BRAVO Campaign Cabinet, chaired by James Craft, are formed – June 2004
5. Selected a qualified contractor-at-risk, Hunt Construction Group – October 2004
6. Hired an experienced Executive Director, James Baudoin – December 2004
7. Kathy Seei, former Mayor of Frisco, becomes President of the ACCF – January 2005
8. Developed a long term master plan for the site-May 2005
9. Completed conceptual design - June 2005
10. Received donation and took possession of 124 acres of land where the four major cities meet and near the future population center of Collin County-September 2005
11. Based on the recommendation of TKO, the ACCF hired an experienced Development Director, Pam Wendland – September 2005
12. The Town of Fairview joined as a Member- October 2005
13. Collin County approved a grant to preserve and improve ACC's large tract of open space – October 2005
14. Completed schematic design in November 2005
15. The $73 million project budget did not increase during the first year of design.
16. Program meets all design expectations for a high-quality 2,100 seat hall in a beautiful park setting.

The Arts of Collin County is a Unique Success Story:

- Cooperation of Allen, Frisco and Plano (and now Collin County and Fairview) to create an exceptional project no single government entity could do on its own. For this concept, the ACC has already received two design awards.
- 85% of the funding is available, well ahead of similar projects around the country
- Strong citizen support (67% in the May 2005 election in Plano)
- Only major theater in the world in a rural setting, offering creeks and mature tree stands with an exceptional open space plan
- Strong emphasis on family, seniors, education and supporting local arts
- 124 acres of land on SH 121 is largest donation in County history ($22 million)
- Project development remains on schedule and on budget

ARTS OF COLLIN COUNTY
Revised Design Fee
November 2005

	SD	DD	CD	Bid	CA	Totals
Basic Services						
Architectural/Structural/MEP	**$ 511,000.00**	**$ 1,033,255.00**	**$ 2,287,090.00**	**$ 59,610.00**	**$ 1,405,210.00**	**$ 5,296,165.00**
Special Consultants						
Acoustical	$ 128,600.00	$ 162,200.00	$ 185,630.00	$ 12,390.00	$ 129,930.00	$ 618,750.00
Landscape	$ 72,500.00	$ 73,325.00	$ 146,650.00	$ 18,330.00	$ 54,995.00	$ 365,800.00
Civil	$ 5,500.00	$ 69,410.00	$ 57,750.00	$ 4,400.00	$ 15,840.00	$ 152,900.00
Architectural Lighting	$ 8,700.00	$ 49,740.00	$ 29,300.00	$ 3,770.00	$ 26,265.00	$ 117,775.00
Graphics	$ 7,100.00	$ 25,350.00	$ 20,100.00	$ 3,000.00	$ 13,750.00	$ 69,300.00
Traffic	$ 4,070.00	$ 6,600.00	$ -	$ -	$ -	$ 10,670.00
Traffic Impact Analysis	$ -	$ 7,480.00	$ -	$ -	$ -	$ 7,480.00
Code	$ -	$ 35,050.00	$ 8,870.00	$ -	$ 3,200.00	$ 47,120.00
TAS - Code	$ -	$ 650.00	$ 2,215.00	$ -	$ 2,100.00	$ 4,965.00
TAS - Advisory Committee	$ -	$ 2,075.00	$ 1,435.00	$ -	$ 2,870.00	$ 6,380.00
Elevator	$ -	$ 7,920.00	$ 5,500.00	$ 1,650.00	$ 6,600.00	$ 21,670.00
Cost Estimating	$ 48,400.00	$ 67,650.00	$ -	$ -	$ -	$ 116,050.00
Subtotal Special Consultants	**$ 274,870.00**	**$ 507,450.00**	**$ 457,450.00**	**$ 43,540.00**	**$ 255,550.00**	**$ 1,538,860.00**
Open Space Grant Package						
Architectural	$ 10,000.00	$ 10,000.00	$ 5,000.00	$ -	$ 2,500.00	$ 27,500.00
Landscape	$ 73,500.00	$ 72,000.00	$ 145,000.00	$ 18,000.00	$ 54,000.00	$ 362,500.00
Civil	$ 4,950.00	$ 15,620.00	$ 10,230.00	$ -	$ 1,760.00	$ 32,560.00
Structural	$ -	$ 5,500.00	$ 8,250.00	$ -	$ 2,750.00	$ 16,500.00
Subtotal Open Space	**$ 88,450.00**	**$ 103,120.00**	**$ 168,480.00**	**$ 18,000.00**	**$ 61,010.00**	**$ 439,060.00**
Total	**$ 874,320.00**	**$ 1,643,825.00**	**$ 2,913,020.00**	**$ 121,150.00**	**$ 1,721,770.00**	**$ 7,274,085.00**
Add Service						
Civil - Off-site Storm Water		$ 2,750.00	$ 3,520.00			$ 6,270.00
Civil - Off-site Sanitary Sewer			$ 8,800.00			$ 8,800.00
Civil - Zoning Exhibits & Descriptions		$ 4,400.00	$ -			$ 4,400.00
Civil - Boundary Check		$ 3,300.00	$ -			$ 3,300.00
Subtotal Add Service - Civil		**$ 10,450.00**	**$ 12,320.00**			**$ 22,770.00**
Code - Smoke Control Modeling		$ 57,200.00				$ 57,200.00
Subtotal Add Service - Code		**$ 57,200.00**				**$ 57,200.00**
Total Add Services		**$ 67,650.00**	**$ 12,320.00**			**$ 79,970.00**
Grand Total	**$ 874,320.00**	**$ 1,711,475.00**	**$ 2,925,340.00**	**$ 121,150.00**	**$ 1,721,770.00**	**$ 7,354,055.00**
Estimated Reimbursable Expense	**$ 98,000.00**	**$ 140,000.00**	**$ 255,000.00**	**$ 11,800.00**	**$ 200,000.00**	**$ 704,800.00**
Theatre Projects Consultants	$ 176,978.00	$ 150,620.00	$ 263,585.00	$ 11,296.00	$ 150,620.00	$ 753,099.00
Estmated Reimbursable Exp.	$ 17,000.00	$ 15,000.00	$ 26,000.00	$ 1,100.00	$ 15,000.00	$ 74,100.00
Hunt Construction(estimates) Estimated Reimbursable Exp.	contract still in negotiation, estimated totals from original proposal					$346,200.00
Total all consultants						**$ 9,232,254.00**

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C:\Documents and Settings\sherryn\Local Settings\Temporary Internet Files\OLKF9\Estimated Design Costs All Consultants11.7.05(1).xls

MEMORANDUM

DATE: November 8, 2005

TO: Frank Turner, Executive Director

FROM: Diane C. Wetherbee, City Attorney DW/lj

SUBJECT: Funding Agreement - ACC

Attached is the Agenda Item and Resolution approving the Funding Agreement pertaining to the funding of project costs relating to the ACC. Also attached are three (3) copies of the Agreement for execution on behalf of the cities.

We made a few minor changes to the original agreement submitted by Mary Grube, and if you would like a redlined copy of that agreement, please let me know.

DW/lj
Attachment

N:\ATTORNEYS\WETHERBEE\m-capital funding-acc.doc

R-7

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING A FUNDING AGREEMENT AMONG THE CITIES OF ALLEN, FRISCO, AND PLANO FOR ADDITIONAL FUNDING IN THE AMOUNT OF $705,698 EACH FOR DESIGN SERVICES FOR A PROPOSED PROJECT PERTAINING TO THE ARTS OF COLLIN COUNTY COMMISSION, INC.; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the cities of Allen, Frisco and Plano, collectively referred to as "Cities," previously entered into an Interlocal Cooperation Agreement for funding services related to the Arts of Collin County Commission, Inc. passed by the City of Plano on June 13, 2005 (the "Prior Agreement"); and,

WHEREAS, the Cities desire to enter into a new interlocal cooperation agreement for additional funding for design services costs related to the Arts of Collin County Commission, Inc.

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

Section I. The terms and conditions of the Funding Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, 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 in his absence an Executive Director, is hereby authorized to execute the Funding Agreement on behalf of the City of Plano substantially according to the terms and conditions set forth in the Agreement and this Resolution.

Section III. Any non-substantive changes in the Agreement may be approved by the City Manager without the passage of a new resolution.

Section IV. The City Secretary shall forward a certified copy of this Resolution to the City Secretaries of the City of Allen and City of Frisco and the Arts of Collin County.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee
Diane C. Wetherbee, CITY ATTORNEY

12-9

AGREEMENT BETWEEN THE CITIES OF ALLEN, FRISCO, AND PLANO FOR FUNDING PROJECT COSTS RELATED TO THE ARTS OF COLLIN COUNTY COMMISSION, INC.

THE STATE OF TEXAS §
§
COUNTY OF COLLIN §

WHEREAS, the cities of Allen, Frisco, and Plano, collectively referred to as "Cities" wish to enter into this Agreement to set forth the terms and conditions for providing initial funding for project costs related to the Arts of Collin County Commission, Inc. "ACC"; and

WHEREAS, the Cities have previously entered into an Interlocal Agreement to form the ACC, and are deemed Owners as that term is used in the Interlocal, and as joint Owners of the ACC, the Cities have participated in the cost sharing for the various services and expenses necessary for the ACC's project development; and

WHEREAS, the Cities find that it is in the public interest that additional design development services be performed before an Approved Project can be considered, and such services will require additional funding from the Cities; and

WHEREAS, each City agrees under the terms and conditions set forth in this Agreement to provide its share of initial funding up to an additional **SEVEN HUNDRED FIVE THOUSAND SIX HUNDRED NINETY-EIGHT AND 00/100 DOLLARS ($705,698.00)** for the additional design development services necessary in order for the ACC to recommend an Approved Project to be considered by the Cities.

NOW, THEREFORE, in consideration of the recitals set forth above, the Cities agree to the terms and conditions set forth below:

I. SCOPE OF THE AGREEMENT

The Cities, as joint Owners of the ACC, have agreed to share equally in the capital costs for an Approved Project as that term and corresponding obligations are set forth in the Interlocal. In order to submit a Project to the Owners for approval, it is necessary to complete the design development process, and this work requires funds not currently allocated to the ACC.

R-10

II. OBLIGATIONS

a. The Cities agree to provide funding for their proportionate share, up to **SEVEN HUNDRED FIVE THOUSAND SIX HUNDRED NINETY-EIGHT AND 00/100 DOLLARS ($705,698.00)**each under the terms and conditions set forth in this Agreement for the purpose of retaining design development services, including but not limited to architectural, landscape architecture, engineering, acoustical, cost estimation, etc. The Cities' offer to provide funds and the crediting under the terms of this Agreement shall not be construed as the Cities' approval of an Approved Project; such approval shall be by separate action.

b. The City of Allen "Allen" will administer the funding provided herein and services that are approved by the ACC Board of Directors for the design development services described in II.a. The City of Plano "Plano" and the City of Frisco "Frisco" shall provide funding for their share of services described in this Agreement upon receipt of a copy of the vendor's invoice from Allen. The forwarding of the invoice copy to Plano and Frisco represents that, to the best of Allen's knowledge, the services and/or goods, and expenses that are described in the invoice are valid and have been reviewed by the ACC Treasurer, President, or Executive Director. Plano and Frisco shall make payment to Allen within fifteen (15) days of receipt of invoice and Allen shall pay the invoice within fifteen (15) days of receipt of funds from each City.

c. Allen agrees to make all accounting records, transactions and reports, including audit reports, related to the design development services available for inspection and copying by either Frisco or Plano during normal business hours.

III. CREDIT TO CITIES

In consideration of Plano, Frisco, and Allen each providing up to an additional **SEVEN HUNDRED FIVE THOUSAND SIX HUNDRED NINETY-EIGHT AND 00/100 DOLLARS ($705,698.00)**of their bond funds for this Agreement, the parties agree that upon all Cities entering into a Contribution Agreement for an Approved Project as set forth in Article II, section 2 of the Interlocal, and this event occurs not later than October 1, 2007, Plano, Frisco and Allen shall each receive a credit for its capital contribution for the Approved Project in the amount it has furnished under this Agreement.

R-11

IV. TERMINATION

Any party may terminate this Agreement by providing thirty (30) days written notice to the other parties at the addresses shown in the Notice Provision; the right to inspect and copy records shall survive the termination of this Agreement.

V. IMMUNITY

In the execution of this Agreement, neither party waives nor intends to waive any immunity or defense otherwise available against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

VI. NOTICES

Unless otherwise instructed in writing, each party will send via certified mail all contractual notices or communications to the other party at the following respective address:

CITY OF PLANO, TEXAS
P.O. Box 860358
Plano, Texas 75086-0358
Attn: Thomas H. Muehlenbeck, City Manager

CITY OF FRISCO, TEXAS
6891 Main Street
Frisco, Texas 75034
Attn: George Purefoy, City Manager

CITY OF ALLEN, TEXAS
305 Century Parkway
Allen, Texas 75013
Attn: Peter Vargas, City Manager

VII. ENTIRE AGREEMENT OF PARTIES

The parties agree that this Agreement and its attachments constitute the entire understanding of the parties. Further, the parties may only amend, supplement, modify, or cancel this Agreement through an executed written instrument.

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VIII. SEVERABILITY OF PROVISIONS

In the event a term, condition, or provision of this Agreement is determined as void, unenforceable, or unlawful by a court of competent jurisdiction, the parties agree that such term, condition or provision is severable, and that the remainder of the Agreement shall remain in full force and effect.

IX. GOVERNING LAW / VENUE

The laws of the State of Texas govern the validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties. The parties agree that exclusive venue shall lie in Collin County, Texas.

X. WAIVER

Neither party may waive any covenant or condition of this Agreement without the express written consent of the other party. Failure by either party to enforce a breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of such provision.

XI. EFFECTIVE DATE

The effective date of this Agreement shall be the latest date of any signatory.

SIGNED AND EXECUTED on the dates indicated below

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

12-13

CITY OF FRISCO, TEXAS

Date: _____

BY: _____
George Purefoy
CITY MANAGER

APPROVED AS TO FORM:

_____
Richard Abernathy, CITY ATTORNEY

CITY OF ALLEN, TEXAS

Date: _____

BY: _____
Peter Vargas
CITY MANAGER

APPROVED AS TO FORM:

_____
Peter G. Smith, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2005 by **THOMAS H. MUEHLENBECK,** City Manager of the **CITY OF PLANO, TEXAS,** a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

12-14

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2005 by **GEORGE PUREFOY,** City Manager of the **CITY OF FRISCO, TEXAS,** a _____ corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the _____ day of _____, 2005 by **PETER VARGAS,** City Manager of the **CITY OF ALLEN, TEXAS,** a _____ corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

2-15

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		11/8/05
Dept Signature:	Alan L Upchurch	City Manager		11/8/05
Agenda Coordinator (include phone #):	Irene Pegues (7198)			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A Resolution of the City Council of the City of Plano, Texas, supporting the corridors and continued evaluation of financing alternatives to fund a Regional Rail Authority; authorizing its support by the Mayor, and providing an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

The attached resolution is intended to provide Plano level of support for the creation of a Regional Rail Authority (RRA). Senator Shapiro's letter requesting Plano's position is attached. The local governments have been working together for about two years to develop recommendations for a Regional Transit Initiative (RTI), including specific rail corridors and the creation of the RTA. The RTA would require additional funds through taxes and/or fees to implement the recommendations. Senator Shapiro indicated in her letter that it is unlikely that the sales tax would be a likely source of those revenues. Council is requested to provide its level of support for the resolution.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Senator Shapiro's Letter	N/A

LS\AGENDA:1128RegionalRailAuthority

A-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, SUPPORTING THE CORRIDORS AND CONTINUED EVALUATION OF FINANCING ALTERNATIVES TO FUND A REGIONAL RAIL AUTHORITY; AUTHORIZING ITS SUPPORT BY THE MAYOR, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 79th Texas Legislature passed House Bill 2072 which contained a provision to establish a Regional Transit System Review Committee; and

WHEREAS, the local governments have worked to develop recommendations for a Regional Transit Initiative including the creation of a Regional Rail Authority; and

WHEREAS, the Regional Rail Authority would require the approval of additional taxes and/or fees to implement the Regional Transit Initiatives recommendations; and

WHEREAS, the Regional Transit System Review Committee has requested Plano's level of support for the corridors and additional taxes and/or fees to fund a Regional Rail Authority.

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 supports the corridors and continued evaluation of financing alternatives necessary to fund a Regional Rail Authority.

Section II. The Mayor is hereby authorized to represent Plano in the Regional Transit System review meetings.

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

DULY PASSED AND APPROVED the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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LS\AGENDA:1114RES-RegionalRailAuthority

October 24, 2005

The Honorable Pat Evans
Mayor, Place 6
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358

Dear Mayor Evans:

As you may be aware, one portion of House Bill 2702 as passed by the 79th Texas Legislature (extract attached) established a 'Regional Transit System Review Committee' for a multi county area in North Texas. This Committee includes Senators and Representatives from these counties along with local elected officials and transportation provider representatives.

We have established Tuesday, December 6th from 10:00am to 12:00pm in the Dupree Theater at the Irving Arts Center as the first meeting of the full Regional Transit System Review Committee as provided in HB 2702. You are encouraged to attend the meeting to review the RRA issue and discuss aspects of the RTI recommendations. The Center is located at 3333 North McArthur Blvd., in Irving. Parking will be available on the South side of the building. Please call (972) 252-7558 if you have any questions about directions.

Prior to the meeting, we are requesting your local governing body (city, commission, or commissioners court) review the attached RTI recommendations, including the proposed commuter rail corridors. In order to evaluate the level of support for the corridors AND ADDITIONAL TAXES/FEES TO FUND AN RRA, a Resolution from your governing body is requested by Tuesday, November 22nd. Please forward a copy of the Resolution, or any other desired response, to Senator Shapiro's Capitol office, attention Sarah Bagwell.

Members of the Legislative Delegation have reviewed work from the 'Regional Transit Initiative (RTI)' conducted within the region in the last two years, along with recommendations submitted regarding creation of a Regional Rail Authority (RRA). It is noted that a key recommendation is additional revenue capability to fund an RRA with a preference to allow local option elections for additional sales tax capability above the current 'cap' of 8.25%. This source of revenue seems to be highly unlikely within the near future due to other needs for sales tax revenue at the State level.

Your interest and involvement is appreciated!

Florence Shapiro

Senator Florence Shapiro

Fred Hill

Representative Fred Hill

S-3

Senator Kip Averitt

Senator Kim Brimer

Senator John Carona

Senator Bob Deuell

Senator Craig Estes

Senator Chris Harris

Senator Jane Nelson

Representative Ray Allen

Representative Mary Denny

Representative Charlie Geren

Representative Linda Harper-Brown

Representative Jim Jackson

Representative Bill Keffer

Representative Jodie Laubenburg

Representative Jerry Madden

Representative Brian McCall

Representative Ken Paxton

Representative Elvira Reyna

Representative Vicki Truitt

Representative Bill Zedler

S-4

Attachments: Extract from HB 2702
RTI Brochure

ARTICLE 5. REGIONAL TRANSIT SYSTEM REVIEW COMMITTEE

SECTION 5.01. (a) In this section, "region" means the region formed by two contiguous counties each containing a municipality having a population of at least 530,000 and the counties adjacent to one or both of those counties.

(b) The Regional Transit System Review Committee is created to conduct public hearings regarding, and study the implications of, implementing regional transit service in the region.

(c) The committee consists of:

(1) each member of the legislature who represents a district that contains territory in the region;

(2) each mayor of a municipality in the region;

(3) each county judge and commissioner in the region; and

(4) the executive director of each transportation authority in the region.

(d) In conducting hearings and studies the committee shall:

(1) examine whether a seamless system of transit systems should be offered throughout the region;

(2) examine whether there should be a mechanism for additional counties to participate in the regional transit system; and

(3) perform a review of funding and financing options.

(e) The initial meeting of the committee shall take place before September 30, 2005. At the initial meeting the committee shall adopt rules governing the committee and establish a work plan and schedule for future meetings.

(f) The committee may accept gifts, grants, technical support, or any other resources from any source to carry out the functions of the committee.

(g) Not later than September 1, 2006, the committee shall issue a report summarizing:

(1) hearings conducted by the committee;

(2) studies conducted by the committee;

(3) any legislation proposed by the committee; and

(4) any other findings or recommendations of the committee.

(h) This section expires September 1, 2007.

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CITY OF PLANO
COUNCIL AGENDA ITEM

-CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		11/8/05
Dept Signature:	Alan L Upchurch	City Manager		11/8/05
Agenda Coordinator (include phone #):	Irene Pegues (7198)			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the dedication of a 0.360 acre tract of land and a 1.126 acre tract of land, each owned by the City of Plano, Texas, for dedication as public right of way for Chaparral Road, said parcels situated in the Jeremiah Muncy Survey, Abstract No. 621, in the City of Plano, Collin County, Texas, and providing an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget				
Encumbered/Expended Amount				
This Item				
BALANCE				

FUND(S):

COMMENTS:

SUMMARY OF ITEM

TXU Electric Delivery has a need to place a distribution line in the right of way of Chaparral Road between K Avenue (State Highway 5) and Jupiter Road in order to reduce overloading. Presently only the north half of Chaparral is built between K Avenue and Emerald Coast Drive. These two tracts are needed to build the other half of the road. By dedicating the right of way now and placing the electric line in its ultimate location, it will save time, coordination, and money when this road is scheduled to be widened in 2007.

There is no cost to the City of Plano for this project.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map	N/A

LS\AGENDA:1114Chaparral

t-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE DEDICATION OF A 0.360 ACRE TRACT OF LAND AND A 1.126 ACRE TRACT OF LAND, EACH OWNED BY THE CITY OF PLANO, TEXAS, FOR DEDICATION AS PUBLIC RIGHT OF WAY FOR CHAPARRAL ROAD, SAID PARCELS SITUATED IN THE JEREMIAH MUNCY SURVEY, ABSTRACT NO. 621, IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, additional public right of way is needed for Chaparral Road from State Highway 5 (K Avenue) to Emerald Coast Drive in accordance with the City of Plano Thoroughfare Plan; and

WHEREAS, said additional right of way is described in the field notes and shown on the drawings attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, upon full review and consideration of this Resolution, and all matters attendant and related thereto, the City Council is of the opinion that the 0.360 acre tract of land and the 1.126 acre tract of land should be dedicated as public right of way for Chaparral Road; and the City Manager, or in his absence his designee, shall be authorized to record this Resolution in the Land Records of Collin County, Texas, to evidence this dedication.

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

Section I. The City Council hereby authorizes the dedication of the additional public right of way for Chaparral Road from State Highway 5 (K Avenue) to Emerald Coast Drive and determines that the dedication is acceptable and is hereby in all things approved.

Section II. The City Manager, or in his absence his designee, is hereby authorized to record this Resolution in the Land Records of Collin County, Texas, to evidence this dedication.

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

DULY PASSED AND APPROVED this _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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LS\AGENDA:1114RES-Chaparral

EXHIBIT "A"
CHAPARRAL ROAD
RIGHT-OF-WAY
TRACT A
OWNER
City of Plano, Texas

BEING a tract of land situated in the Jeremiah Muncy Survey, Abstract No. 621, City of Plano, Collin County, Texas, and being a part of that same tract of land as described in deed to The City of Plano, Texas, recorded in Volume 1629, Page 87 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found at the northwest corner of Upper Rowlett Creek Lift Station Addition, an addition to the City of Plano, Texas, according to the plat thereof recorded in Volume G, Page 365 in the Map Records of Collin County, Texas (MRCCT), and lying in the south line of Chaparral Road (variable width right-of-way);

THENCE N 87°25'48" W, along the south line of said Chaparral Road, 301.56 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys" in the easterly line of State Highway No. 5 (variable width right-of-way);

THENCE N 32°56'03" E, along the easterly line of said State Highway No. 5, 63.74 feet to the intersection of the easterly line of said State Highway No. 5 with the south line of said Chaparral Road;

THENCE S 87°25'48" E, along the south line of said Chaparral Road, 269.36 feet;

THENCE S 02°35'24" W, departing the south line of said Chaparral Road, 55.00 feet to the POINT of BEGINNING and containing 15,700 square feet or, 0.360 acre of land.

STATE OF TEXAS
REGISTERED
BRAD SPARR
3701
PROFESSIONAL
LAND SURVEYOR

Brad Sparr
Registered Professional
Land Surveyor No. 3701

Sparr Surveys
2553 County Road 722
McKinney, TX 75069
(214) 544-2297

EXHIBIT "A"
CHAPARRAL ROAD
RIGHT-OF-WAY
TRACT B
OWNER
City of Plano, Texas

BEING a tract of land situated in the Jeremiah Muncy Survey, Abstract No. 621, City of Plano, Collin County, Texas, and being a part of that same tract of land as described in deed to The City of Plano, Texas, recorded in Volume 1629, Page 87 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found at the northeast corner of Upper Rowlett Creek Lift Station Addition, an addition to the City of Plano, Texas, according to the plat thereof recorded in Volume G, Page 365 in the Map Records of Collin County, Texas (MRCCT), and lying in the south line of Chaparral Road (variable width right-of-way);

THENCE N 02°34'12" E, 55.00 feet to a point in the south line of said Chaparral Road;

THENCE S 87°25'48" E, along the south line of said Chaparral Road, 891.51 feet to the intersection of the south line of said Chaparral Road with the west line of Emerald Coast Drive (92 foot right-of-way);

THENCE S 02°48'25" W, departing the south line of said Chaparral Road, along the west line of said Emerald Coast Drive, 55.00 feet to a 5/8-inch iron rod set with plastic cap stamped "Sparr Surveys";

THENCE N 87°25'48" W, departing the west line of said Emerald Coast Drive, 891.28 feet to the POINT of BEGINNING and containing 49,027 square feet or, 1.126 acres of land.

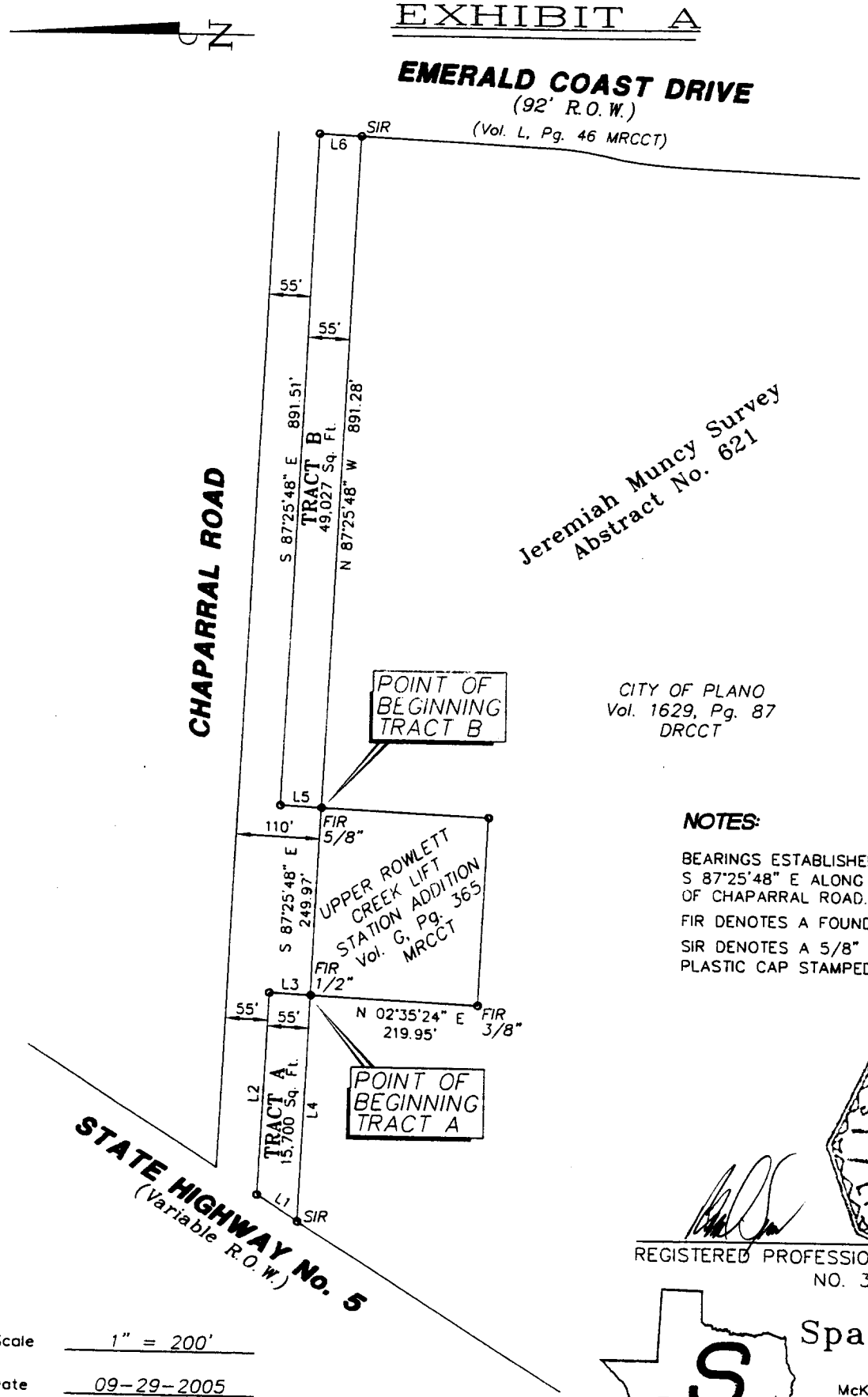
Brad Sparr
Registered Professional
Land Surveyor No. 3701

STATE OF TEXAS
REGISTERED
BRAD SPARR
3701
PROFESSIONAL
LAND SURVEYOR

Sparr Surveys
2553 County Road 722
McKinney, TX 75069
(214) 544-2297

t-4

EXHIBIT A



LINE TABLES

No.	BEARING	DIST.
L1	N 32°56'03" E	63.74'
L2	S 87°25'48" E	269.36'
L3	S 02°35'24" W	55.00'
L4	N 87°25'48" W	301.56'
L5	N 02°34'12" E	55.00'
L6	S 02°48'25" W	55.00'

NOTES:

BEARINGS ESTABLISHED BY ASSUMING S 87°25'48" E ALONG THE SOUTH LINE OF CHAPARRAL ROAD.

FIR DENOTES A FOUND IRON ROD.

SIR DENOTES A 5/8" IRON ROD SET WITH PLASTIC CAP STAMPED "SPARR SURVEYS".

STATE OF TEXAS REGISTERED BRAD SPARR 3701 PROFESSIONAL LAND SURVEYOR

REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 3701

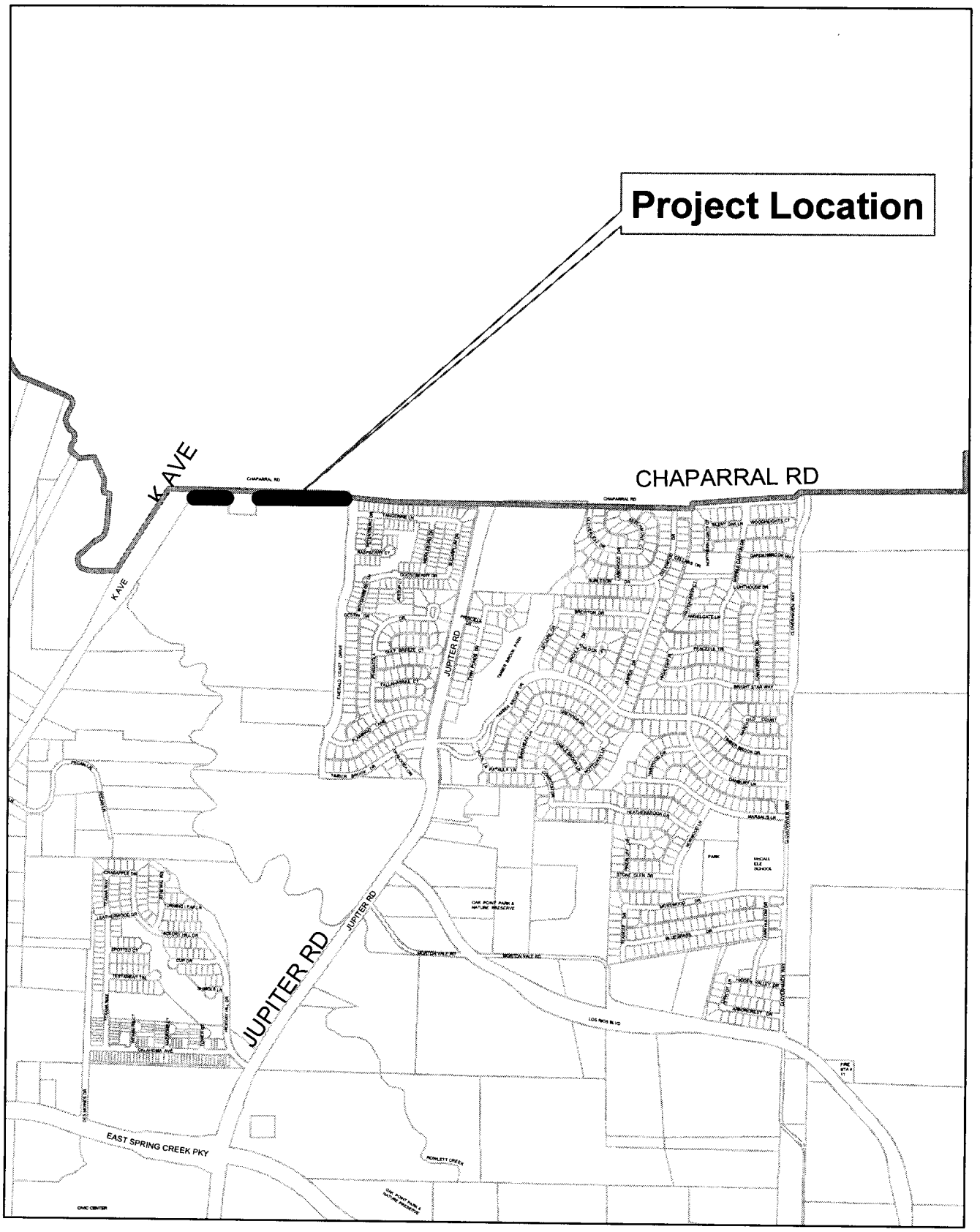
Sparr Surveys
2553 C.R. 722
McKinney, Texas 75069
(214) 544-2297

Scale 1" = 200'

Date 09-29-2005

JOB No.: 2177839

E-5



Chaparral Road
Right-of-Way Dedication
Location Map

t-6

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	**11/14/2005**	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Police Department		Initials	Date
Department Head	Gregory W. Rushin	Executive Director	PB	11-08-05
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):	**Pam Haines, ext 2526**			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS, THE CITY OF MCKINNEY, TEXAS, AND THE COUNTY OF COLLIN, TEXAS FOR THE DISBURSEMENT OF THE 2005 BYRNE JUSTICE ASSISTANCE GRANT FUNDS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: **2005-06, 2006-07, 2007-08, 2008-09**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	40,493	0	**40,493**
BALANCE	0	40,493	0	**40,493**

FUND(S): **GRANT FUND**

COMMENTS: The grant contract, if approved, provides total funding in the amount of $103,828 and approves an interlocal agreement cooperation agreement between the City of Plano, the City of McKinney, and the County of Collin, Texas for the purpose of purchasing equipment resources for the police and sheriff departments. The resolution and grant agreement establishes the City of Plano as fiscal agent for the disbursement of funds to the City of McKinney, $26,995; and the Collin County Sheriff Department, $36,340; and the City of Plano, $40,493. The effective grant period will be for four years from the grant's effective date.

STRATEGIC PLAN GOAL: Acceptance and administration of Federal Grant Funds relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

The United States Department of Justice, pursuant to the amendments made by Section 201 of H.R. 3036 of the 108th Congress, as passed by the House of Representatives on March 30, 2004, has offered the City of

CITY OF PLANO
COUNCIL AGENDA ITEM

Plano, City of McKinney and Collin County Sheriff's Office a grant totaling $103,828 for the purpose of purchasing equipment resources for their respective departments. The City of Plano being the fiscal agent will disburse to the City of McKinney $26,995 and to Collin County Sheriff's Office $36,340 from the total amount awarded, leaving the City of Plano Police Department $40,493 of the awarded funds. The effective grant period will be for four years from the grant's effective date.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Resolution, Copy of Interlocal Agreement and MOU, Agenda Item and Memo from 04/25/2005 Mtg	

U -2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS, THE CITY OF MCKINNEY, TEXAS, AND THE COUNTY OF COLLIN, TEXAS FOR THE DISBURSEMENT OF THE 2005 BYRNE JUSTICE ASSISTANCE GRANT FUNDS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City of Plano, City of McKinney and Collin County have previously agreed that Plano Police Department would serve as Fiscal Agent for the JAG Grant: and

WHEREAS, the funds are ready to be disbursed.

WHEREAS, this Agreement is made under the authority of Public Law 108-447; 118 Stat 2862 (Consolidated Appropriations Act. FY 2005): and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, **the City of Plano, the City of McKinney,** and **Collin County** believe it to be in their best interests to reallocate the JAG funds.

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.

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

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

Section II. The City Manager, or in his absence, an Executive Director, 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 _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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GMS APPLICATION NUMBER 2005-F2293-TX-DJ

THE STATE OF TEXAS

KNOW ALL BY THESE PRESENT

COUNTY OF COLLIN

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF PLANO TEXAS, CITY OF MCKINNEY TEXAS, AND THE COUNTY OF COLLIN TEXAS

2005 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this 25th day of October, 2005, by and between The City of Plano, acting by and through its governing body, the City Council, hereinafter referred to as City of Plano, the City of McKinney, acting by and through its governing body, the City Council, hereinafter referred to as City of McKinney, both of Collin County, State of Texas, and The COUNTY of Collin Texas, acting by and through its governing body, the Commissioners Court, hereinafter referred to as COUNTY, and witnesseth:

WHEREAS, the City of Plano, City of McKinney and Collin County have previously agreed that Plano Police Department would serve as Fiscal Agent for the JAG Grant: and

WHEREAS, the funds are ready to be disbursed.

WHEREAS, this Agreement is made under the authority of Public Law 108-447; 118 Stat 2862 (Consolidated Appropriations Act. FY 2005): and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, **the City of Plano, the City of McKinney,** and **Collin County** believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the City of Plano, the City of McKinney, and the County agree as follows:

Section 1.

City of Plano agrees to pay COUNTY a total of **$36,340** of JAG funds.

Section 2.

COUNTY agrees to use **$36,340** for the equipment upgrades for their patrol officers until 09/30/2008.

Section 3.

City of Plano agrees to pay **the City of McKinney** a total of **$26,995** of JAG funds.

Section 4.

City of McKinney agrees to use **$26,995** for the upgrades to their SWAT team equipment until 09/30/2008

Section 5.

City of Plano agrees to receive the remaining total of $40,493 JAG funds.

Section 6.

City of Plano agrees to use **$40,493** for the Platescan – Automatic License Plate Recognition System and to purchase a Digital Video Recording System for the Jail.

Section 7.

Nothing in the performance of this Agreement shall impose any liability for claims against **City of Plano** other than claims for which liability may be imposed by the Texas Tort Claims Act.

Section 8.

Nothing in the performance of this Agreement shall impose any liability for claims against **City of McKinney** other than claims for which liability may be imposed by the Texas Tort Claims Act.

Section 9.

Nothing in the performance of this Agreement shall impose any liability for claims against **Collin County** other than claims for which liability may be imposed by the Texas Tort Claims Act.

Section 10.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 11.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 12.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

CITY OF **Plano**, **Texas,** CITY OF **McKinney, Texas,** COUNTY OF **Collin, Texas**

Thomas H. Muehlenbeck
Plano City Manager

Ron Harris
Collin County County Judge

ATTEST: APPROVED AS TO FORM:
FORM:

ATTEST: APPROVED AS TO

Diane C. Wetherbee
City Attorney

Sheriff Terry G. Box

Larry Robinson
McKinney City Manager

Mark S. Hauser
City Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contracts or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own respective attorney(s).

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GMS APPLICATION NO. 2005-F2293-TX-DJ

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF COLLIN, TEXAS, THE CITY OF MCKINNEY, TEXAS AND THE CITY OF PLANO, TEXAS REGARDING THE 2005 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM

This Memorandum of Understanding sets forth the agreement by and between the County of Collin, Texas, the City of McKinney, Texas and the City of Plano, Texas regarding the application process of the 2005 Byrne Justice Assistance Grant (JAG) Program Award.

The City of Plano agrees to be the applicant/fiscal agent of the 2005 Byrne Justice Assistance Grant (JAG) Program.

This Memorandum of Understanding does not constitute the entire agreement with regards to the administration of the grant and the distribution of funds.

The County of Collin, Texas, the City of McKinney, Texas and the City of Plano, Texas agree to enter into an agreement setting forth the terms and conditions regarding the administration of the 2005 Byrne Justice Assistance Grand (JAG) Program Award.

COUNTY OF COLLIN

By: _____
Ron Harris
County Judge

APPROVED AS TO FORM:

Name: _____
Sheriff Terry G. Box

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CITY OF McKINNEY, TEXAS

By: _____
Larry Robinson
City Manager

APPROVED AS TO FORM:

_____
Name: Mark S. Horsor
City Attorney

CITY OF PLANO, TEXAS

By: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM

_____
Diane C. Wetherbee
City Attorney

U-10

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	04/25/2005	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Police Department		Initial	Date
Department Head	Gregory W. Rushin	Executive Director		04.19.05
Dept Signature:		City Manager		4/19/05
Agenda Coordinator (include phone #):	Pam Haines, x2526			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER PUBLIC HEARING

CAPTION

Public hearing and approval of disbursement of grant funds in the total amount of $103,828 awarded through the Byrne Justice Assistance Grant Project for the purpose of purchasing equipment resources, pursuant to the amendments made by Section 201 of H.R. 3036 of the 108th Congress, as passed by the House of Representatives on March 30, 2004. Under this Grant, the City of Plano will be the fiscal agent and will disburse funds to the City of McKinney and the Collin County Sheriff's Office as agreed upon in the Memorandum of Understanding signed by the three entities.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

The United States Department of Justice, pursuant to the amendments made by Section 201 of H.R. 3036 of the 108th Congress, as passed by the House of Representatives on March 30, 2004, has offered the City of Plano, City of McKinney and Collin County Sheriff's Office a grant totaling $103,828 for the purpose of purchasing equipment resources for their respective departments. Plano Police Department's share of these funds is $40,493. The effective grant period will be for four years from the grant's effective date. A Public Hearing regarding the disbursement of funds of this grant is requested per provisions of the grant.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Copy of Memorandum regarding provisions of Grant, Copy of Budget Narrative from Application	

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P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099
http://www.ci.plano.tx.us

MEMORANDUM

DATE: March 10, 2005

TO: Gregory W. Rushin, Chief of Police

FROM: Stephen T. Nagy, Assistant Chief of Police

SUBJECT: Edward Byrne Memorial Justice Assistance Grant Program

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HOW THE GRANT WORKS

For the past several years the Plano Police Department has received Federal funding through the Edward Byrne Grant and the Local Law Enforcement Block Grant (LLEBG) Programs. These monies had been utilized by the Department to purchase various needed items, such as tactical equipment, EOD bomb robot, etc. Due to Homeland Security initiatives the Federal budget has reduced funding of these grant programs. Due to these funding cuts the Plano Police Department has been receiving reduced funding from these programs. In FY 2001-'02 PPD received $108,730, FY 2002-'03- $160,066, FY 2003-'04- $84, 040, and in FY 2004-'05 $34,204. These financial figures do not include the City's match funds. In FY 2005-'06 the Federal budget eliminated the Edward Byrne and LLEBG Programs.

In Federal FY 2005-'06 the Bureau of Justice Assistance, (BJA), has been charged by Congress with administering the Edward Byrne Memorial Justice Assistance Grant (JAG) Program in place of the eliminated grant programs. JAG lends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) programs to provide agencies with the flexibility to prioritize and place justice funds where they are most needed. The JAG Program allows local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. JAG funds can be spent in only 7 program purpose areas:

1. Law enforcement programs, or
2. Prosecution and court programs, or
3. Prevention and education programs, or
4. Corrections and community corrections programs, or
5. Drug treatment programs, or
6. Planning, evaluation, and technology improvement programs, or
7. Any law enforcement or justice initiative previously eligible for funding under Byrne or LLEBG.

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BJA sets aside funds under the JAG Program to units of government within the State. The amounts are proportionate to the State's average annual number of Part I violent crimes (murder, rape, robbery, and aggravated assault) compared with the State average for the three most recent available calendar years of FBI data.

DISPARATE CERTIFICATION

JAG disparities are certified by the director of BJA, based in part on input from the State's Attorney General. A disparate allocation occurs when a constituent unity of local government is scheduled to receive one and one-half times more (four times more for multiple units of local government) than another constituent unit, while the other unit of local government bares more than 50% of the cost of prosecution or incarceration that arise from Part I violent crimes reported by the geographically constituent units. The fiscal year 2005 JAG Program allocated $103,828 to be disbursed amongst the Plano Police Department, McKinney Police Department, and Collin County Sheriff's Office. These funds could either be disbursed between the units of government or consolidated into one agreed-upon law enforcement project.

2005 JAG FUNDS – ALLOCATION

The Plano Police Department received notification of the 2005 JAG Program funds on February 9, 2005. The application for JAG funds is due to the BJA by March 31, 2005. Due to the short turn-around the Plano Police Department, McKinney Police Department, and Collin County Sheriff's Office did not have time to sit down and research, nor agree upon, a single project for fund allocation. On February 23, 2005, Assistant Chief Nagy met with Collin County Sheriff's Office Major Chuck Ruckell and McKinney Police Department Assistant Chief Rex Redden. At this time then involved entities agreed upon the following allocation of funds:

Plano Police Department = $40,493
Collin County Sheriff's Office = $36,340
McKinney Police Department = $26,995

The allocation agreement was based on the fact that the Collin County Sheriff's Office had historically received 35% of the City of Plano's and McKinney's LLEBG funding for the past several years. After the 35% was taken out of the allocated $103,828, Plano and McKinney agreed upon disbursal of the remaining funds based on population. The City of McKinney represents approximately forty percent of the City of Plano's population thus the Plano Police Department is allocated sixty percent of the remaining funding ($40,493) while the McKinney Police Department is allocated forty percent ($26,995).

In an effort to work in a more effective and efficient manner, it was decided that all three departments would meet periodically throughout 2005 and discuss law enforcement initiatives and programs that we would target for the 2006 JAG Program funding. 4-13

 1-3

Gregory W. Rushin, Chief of Police
March 8, 2005

STN/sp

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~~1-4~~

Budget Narratives

McKinney Police Department

Equipment to be purchased:

(4) Thermal-Eye 4000B Camera Kit, 5.6" diagonal flat panel monitor, Roof-mount and riser bar kit ($5834.38 each) $23, 337.52

(2) TacView Cameras with 42" telescoping poles, extension cables, batteries, self contained fiber optic viewing devices, carrying cases and slings. ($1880.00 each) $3,760.00

Total Project Costs:	$27,097.52
Grant Funding Available:	$26,995.00
Department Funds:	$ 102.52

Collin County Sheriff's Office

Equipment to be purchased:

(1) Palm IR 400D high resolution (320 x 240) color thermal imaging system based on the new exclusive Digital BST detector Technology. **$12,371.00**

(10) STINGER Less-lethal weapon system **$ 6,500.00**

(16) Patrol Rifles **$12,800.00**

Ammunition **$ 5,000.00**

Total Project Cost	**$36,371.00**
Grant Funding Available:	**$36,340.00**
Agency Contribution	**$ 331.00**

Plano Police Department

Equipment to be purchased:

(7) Stalker Radar Unit- **$24,150.00**
(7) Installation Kits **$ 1,400.00**

1) Jail Digital Video Recording **$18,000.00**

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~~15~~

(1) Mounting Apparatus for Equipment Storage	**$ 650.00**

Total Project Cost	**$44,200.00**
Grant Funding Available:	**$40,493.00**
Department Funds	**$ 3,707.00**

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~~+6~~

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		10/28/05
Dept Signature:		City Manager		10/27/05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

ACTION REQUESTED: ☒ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DENYING THE REQUEST OF ATMOS ENERGY CORP., MID-TEX DIVISION, FOR AN ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE IN THIS MUNICIPALITY, AS A PART OF THE COMPANY'S STATEWIDE GAS UTILITY DISTRIBUTION SYSTEM; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE ATMOS ENERGY CORP., MID-TEX DIVISION DISTRIBUTION SYSTEM AS PART OF THE ATMOS CITIES STEERING COMMITTEE (ACSC); AUTHORIZING ACSC TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; AUTHORIZING INTERVENTION AS PART OF ACSC IN ANY APPEAL OF THE CITY'S ACTION TO THE RAILROAD COMMISSION; PROVIDING A REQUIREMENT FOR A PROMPT REIMBURSEMENT OF COSTS INCURRED BY THE CITY; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORP., MID-TEX DIVISION; AND PROVIDING AN EFFECTIVE DATE

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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): **GENERAL FUND**

COMMENTS: This item has no financial impact

SUMMARY OF ITEM

This Resolution denies Atmos request for a GRIP adjustment to its gas rates.

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

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REV 08/98

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DENYING THE REQUEST OF ATMOS ENERGY CORP., MID-TEX DIVISION, FOR AN ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE IN THIS MUNICIPALITY, AS A PART OF THE COMPANY'S STATEWIDE GAS UTILITY DISTRIBUTION SYSTEM; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE ATMOS ENERGY CORP., MID-TEX DIVISION DISTRIBUTION SYSTEM AS PART OF THE ATMOS CITIES STEERING COMMITTEE (ACSC); AUTHORIZING ACSC TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; AUTHORIZING INTERVENTION AS PART OF ACSC IN ANY APPEAL OF THE CITY'S ACTION TO THE RAILROAD COMMISSION; PROVIDING A REQUIREMENT FOR A PROMPT REIMBURSEMENT OF COSTS INCURRED BY THE CITY; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORP., MID-TEX DIVISION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about September 17, 2005, Atmos Energy Corp., Mid-Tex Division, (the "Company") filed with the City of Plano, Texas ("City"), a request for an annual gas reliability infrastructure program (GRIP) rate increase for customers on the Company's statewide gas utility system to be effective November 19, 2005; and

WHEREAS, the City has exclusive original jurisdiction to evaluate the Company's request as it pertains to the distribution facilities located within the City, pursuant to Texas Utilities Code §§ 102.001(b) and 103.001; and

WHEREAS, it is reasonable for the City of Plano to cooperate with other cities in a coalition of cities in opposition to the Company's filing at the Railroad Commission ("Commission"), said coalition being known as Atmos Cities Steering Committee ("ACSC"), in any appeal of the cities' actions to the Commission; and

WHEREAS, the Gas Utility Regulatory Act grants local regulatory authorities the right to intervene in rate proceedings filed at the Railroad Commission; and

WHEREAS, the Texas Utilities Code § 103.022 provides that costs incurred by the City in ratemaking activities are to be reimbursed by the regulated utility; and

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WHEREAS, counsel for ACSC, upon review of the Company's filing and upon consultation with various consultants, recommends finding that the Company's proposal is unjustified and unreasonable; and

WHEREAS, the Company has publicly stated that it will receive substantial profit in 2005 and that its expenses are substantially below those on which the GUD No. 9400 rates it is charging were based; and

WHEREAS, the Company's GRIP request fails to account for growth in numbers of customers, thereby undercounting the revenues it will receive from its proposed GRIP rate increase; and

WHEREAS, the Company's GRIP request fails to recognize that GUD No. 9400 rates included profit based on TXU Corporation's capital structure rather than Atmos Energy Corp.'s current capital structure, which justifies a lower rate of return.

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

Section I. The Company's GRIP rate increase request is found to be unreasonable and is therefore denied in all respects.

Section II. The City is authorized to cooperate with other Cities within the Company's Distribution System that have formed ACSC to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City regarding reasonable rates and to direct any necessary litigation associated with an appeal of a rate ordinance and the rate case filed at the Commission.

Section III. The costs incurred by the City in reviewing the Company's GRIP request shall be promptly reimbursed by the Company.

Section IV. The City is authorized to intervene in any appeal of the City's action filed at the Commission, and to participate in any such appeal as a member of ACSC.

Section V. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

Section VI. A copy of this ordinance, constituting final action on the Company's application, be forwarded to the appropriate designated representative of the Company within 10 days as follows: Richard T. Reis, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to the coalition of cities, at Lloyd Gosselink, P.O. Box 1725, Austin, Texas 78767-1725.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

V-4

MEMORANDUM

TO: **City Council**

THROUGH: **Tom Muehlenbeck, City Manger**

FROM: **Mark D. Israelson, Assistant to the City Manager**

DATE: **October 26, 2005**

SUBJECT: **STAFF REPORT ON ATMOS MID-TEX GRIP DENIAL ORDINANCE**

Purpose of the Ordinance:

The law requires that a Gas Reliability Infrastructure Program (GRIP) surcharge request cannot become effective until sixty (60) days following a filing. The Company can set the "effective date" for any date after the 60th day. The effective date may be suspended by a city for 45 days. The ordinance denies the surcharge request on the grounds that it does not comply with the law and is not reasonable.

What is GRIP:

Atmos persuaded the legislature in 2003 to make an exception traditional ratemaking to encourage increased investment in distribution pipe by allowing adjustment to rates, without a full blown rate case, which would allow prompt recovery for the company despite the possibility that increased revenues and declining costs could offset increased investment.

Observations on the Filing from our consultants:

First, once the GRIP surcharge is in place, it is updated annually until the next general rate case; however, that next case can be delayed by the Company for more than five years. Second, while predicated as a surcharge to promptly recover investment in new and replacement ***infrastructure*** designed to improve system safety and reliability, a substantial portion of this GRIP request is based upon new office furniture, computers and other cost efficiency measures more likely to benefit shareholders than ratepayers.

The first GRIP filing that the Company actually decreased per-customer investment in infrastructure during calendar year 2003 (and 2004) and the Company has publicly stated that it will receive substantial profit in 2005 over that approved by the Commission in GUD No. 9400. The Company's GRIP request fails to account for growth in numbers of customers, thereby undercounting the revenues it will receive from its proposed GRIP rate increase and the Company's GRIP request fails to recognize that GUD No. 9400 rates included profit based on

V-5

TXU Corporation's capital structure rather than Atmos Energy Corp.'s current capital structure, which justifies a lower rate of return.

Counsel for ACSC, upon review of the Company's filing and upon consultation with various consultants, recommends finding that the Company's proposal is unjustified, unreasonable and is not in compliance with the GRIP statute (Texas Utilities Code § 104.301) either in fact or in law.

Texas Utilities Code § 103.022 provides that costs incurred by the City in ratemaking activities are to be reimbursed by the regulated utility and ACSC's rate case expenses incurred in this proceeding are reasonable and should be reimbursed by the Company.

Explanation of "Be It Resolved" Paragraphs:

1. This paragraph simply sets out the finding that the Company's request is unreasonable.

2. This paragraph authorizes participation in a Steering Committee and coordinated control over legal counsel and consultants.

3. This paragraph notifies the Company that the City expects reimbursement of its expenses associated with its review of the filing.

4. This paragraph authorizes the City to intervene in the Company's appeal of the ordinance to the Railroad Commission.

5. This paragraph provides for an immediate effective date.

6. This paragraph cites conformance with the open meetings act..

7. This paragraph directs that a copy of the signed ordinance be sent to a representative of the Company and a representative of the coalition of cities.

V-6

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Planning		Initials	Date
Department Head	Phyllis M. Jarrell	Executive Director		11/08/05
Dept Signature:	P. Jarrell	City Manager		11/08/05
Agenda Coordinator (include phone #):	Lynn Woodall, ext. 7156			

ACTION REQUESTED: ☒ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, VACATING ORDINANCE NO. 2005-10-43 AND ADOPTING THIS ORDINANCE TO CORRECT A CLERICAL ERROR, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, SO AS TO REZONE 7.0± ACRES OUT OF THE JOSEPH KLEPPER SURVEY, ABSTRACT NO. 213, LOCATED AT THE SOUTHWEST CORNER OF 18TH STREET AND G AVENUE IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM CORRIDOR COMMERCIAL WITH HERITAGE RESOURCE DESIGNATION NO. 20 TO PLANNED DEVELOPMENT-179-DOWNTOWN BUSINESS/GOVERNMENT WITH HERITAGE RESOURCE DESIGNATION NO. 20; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

This ordinance is to correct a clerical error. The planned development zoning approved for this property required that a concept plan be adopted as part of the ordinance. The adopting ordinance failed to include the concept plan. The concept plan is included in this revised ordinance.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Ordinance	Planning & Zoning Commission

W-1

ORDINANCE NO. _____
(Zoning Case 2005-31)

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, VACATING ORDINANCE NO. 2005-10-43 AND ADOPTING THIS ORDINANCE TO CORRECT A CLERICAL ERROR; AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, SO AS TO REZONE 7.0± ACRES OUT OF THE JOSEPH KLEPPER SURVEY, ABSTRACT NO. 213, LOCATED AT THE SOUTHWEST CORNER OF 18TH STREET AND G AVENUE IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM CORRIDOR COMMERCIAL WITH HERITAGE RESOURCE DESIGNATION NO. 20 TO PLANNED DEVELOPMENT-179-DOWNTOWN BUSINESS/GOVERNMENT WITH HERITAGE RESOURCE DESIGNATION NO. 20; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, held on the 24th day of October, 2005, for the purpose of considering rezoning 7.0± acres out of the Joseph Klepper Survey, Abstract No. 213, located at the Southwest corner of 18th Street and G Avenue in the City of Plano, Collin County, Texas, from Corridor Commercial with Heritage Resource Designation No. 20 to Planned Development-179-Downtown Business/Government with Heritage Resource Designation No. 20; and;

WHEREAS, the City Council of Plano, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 24th day of October, 2005;

WHEREAS, on October 24, 2005, Ordinance No. 2005-10-43 was duly passed and approved by the City Council of the City of Plano, which ordinance, due to a clerical error, omitted a copy of the concept plan as an attachment; and

WHEREAS, the City Council is of the opinion and finds that the clerical error may be corrected by vacating Ordinance No. 2005-10-43 and adopting this ordinance which includes the previously omitted concept plan, which action will not be detrimental to the public health, safety, or general welfare, and will allow and promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, as well as the owners and occupants thereof and the City generally.

W-2

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

Section I. To correct a clerical error, Ordinance No. 2005-10-43, duly passed and approved by the City Council of the City of Plano, Texas, on October 24, 2005, is hereby vacated.

Section II. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to rezone 7.0± acres out of the Joseph Klepper Survey, Abstract No. 213, located at the Southwest corner of 18th Street and G Avenue in the City of Plano, Collin County, Texas, from Corridor Commercial with Heritage Resource Designation No. 20 to Planned Development-179-Downtown Business/Government with Heritage Resource Designation No. 20, said property being described in the legal description on Exhibit "A" attached hereto.

Section III. The zoning granted in Section II is granted subject to the following stipulations:

1. Only single-family residence attached dwelling units as shown in the attached concept plan and home occupations operated in accordance with Subsection 3.110 of the Zoning Ordinance are permitted on the area defined by the concept plan, Rice Field Redevelopment; however, the existing office property at the northwest corner of G Avenue and 16th Street (Bridgeman's Office Addition, Block 1, Lot 1) may be used and developed in accordance with the BG zoning district.

2. The total number of residential units shall be not less than 90 or more than 110.

3. Public access to the common open space serving residential development shall be allowed and shall not be restricted by gates, barriers, or signage.

4. Maintenance of all open space, landscaping, and common amenities shall be the responsibility of a homeowners association. Homeowners association documents must be approved by the City Attorney.

5. The concept plan shall be adopted as part of the ordinance. Minor amendments in accordance with Section 5.500 of the Zoning Ordinance shall be permitted.

6. Single-family residence attached development shall conform to the requirements of the BG district with the following exceptions:

a. 60% of single-family residence attached lots may abut a mews street or alley as the only point of street frontage and access.

b. The building setbacks shall be as follows:

(1) From minor streets with on-street parking: 16th Street and other minor streets within the Haggard Park Heritage Resource District - The building setbacks shall conform to the guidelines for the Haggard Park Heritage Resource District.

(2) From mews streets: Garages - Maximum ten feet as measured from the right-of-way line of the mews street. The minimum setback from the property line shall be zero feet.

c. Stoops, balconies, bay windows, box windows, and awnings shall not extend into the right-of-way of mews streets.

d. The Heritage Commission shall approve the building configuration, street tree, and sidewalk design for the portion of the property within the Haggard Park Heritage Resource District.

Section IV. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

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

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

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

W-4

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

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

PASSED AND APPROVED THIS THE 14TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

W-5

EXHIBIT "A"
LEGAL DESCRIPTION

SITUATED in the State of Texas, County of Collin and City of Plano, being part of the Joseph Klepper Survey, Abstract No. 213, being all of Lot 8, Block 24 and part of Lot 3 and Lot 7, Block 24 of Old Donation to the City of Plano and being all of Lot 1, Block 1 of Bridgeman's Office Addition as recorded in Cabinet F, Page 514, Plat Records of Collin County Texas (PRCCT) on January 9, 1986 and also being part of a 4.212 acre tract conveyed to Plano Independent School District (PISD) as recorded in Volume 250, Page 393 of the Deed Records of Collin County, Texas, and also being part of a tract conveyed to PISD as recoded in Volume 399, Page 111, of the Deed Records of Collin County Texas (DRCCT), with the herein described premises being more particularly described by metes and bounds as follows:

BEGINNING at an "X" found cut in concrete in the north right-of-way line at 16th Street marking the southwest corner of Bridgeman's Office Addition, an addition to the City of Plano recorded in Cabinet F, Page 514 of the Collin County Map Records (CCMP) and also being in the south line of said Lot 3.

THENCE with the north right-of-way line of 16th Street and the south line of Lot 3, North 89° 41' 08" West, 197.10 feet to a 1/2-inch iron rod found marking the southwest corner of said premises and the southeast corner of an Information and Referral Lot recorded under County Clerk No. 96-110135 of the Collin County Deed Records (CCDR);

THENCE with a west line of said premises and the east line of said Information and Referral Lot, North 00° 43' 52" West, 198.40 feet to a 1/2-inch iron rod set marking the northeast corner of said Information and Referral Lot and the most westerly northwest corner of said premises;

THENCE with a north line of said premises, North 89° 55' 08" East, 11.97 feet to a 1/2-inch iron rod found marking the southeast corner of the Revised Final Plat of North Central Addition, an addition to the City of Plano recorded in Volume 6, Page 38 of the CCMR and the southwest corner of the aforementioned Lot 8;

THENCE with the most westerly west line of said premises, an east line of North Central Addition, and the west line of Lot 8, North 00° 07' 53" East, 236.38 feet to a chain link fence corner post found marking the northwest corner of said premises, Lot 8, and the southwest corner of a PISD tract recorded in Volume 250, Page 593 of the CCDR;

THENCE North 00° 23' 11" East following the east line of said Lot 1 a distance of 467.84 feet to the south right-of-way line of 18th Street (60' right-of-way);

THENCE South 89° 15' 09" East following the south right-of-way line of said 18th Street a distance of 261.19 feet to the beginning of a curve to the right with a chord bearing of South 79° 34' 39" East and a chord distance of 75.57 feet;

THENCE along said curve to the right following the south right-of-way line of said 18th Street through a central angle of 19° 21' 00" radius distance of 224.83 feet and an arc distance of 75.93 feet to a point of reverse curve with a chord bearing of South 71° 33' 21" East a chord distance of 16.08 feet;

W
-6

THENCE along said curve to the left following the south right-of-way line of said 18th Street through a central angle of 3° 15' 11" a radius distance of 95.77 feet and an arc distance of 16.08 feet to the intersection of the south right-of-way line of 18th Street and the west right-of-way line of said G Avenue;

THENCE South 0° 44' 51" West following the west right-of-way line of said G Avenue a distance of 20.00 feet to the beginning of a curve to the right with a chord bearing of South 3° 29' 44" West a chord distance of 160.72 feet;

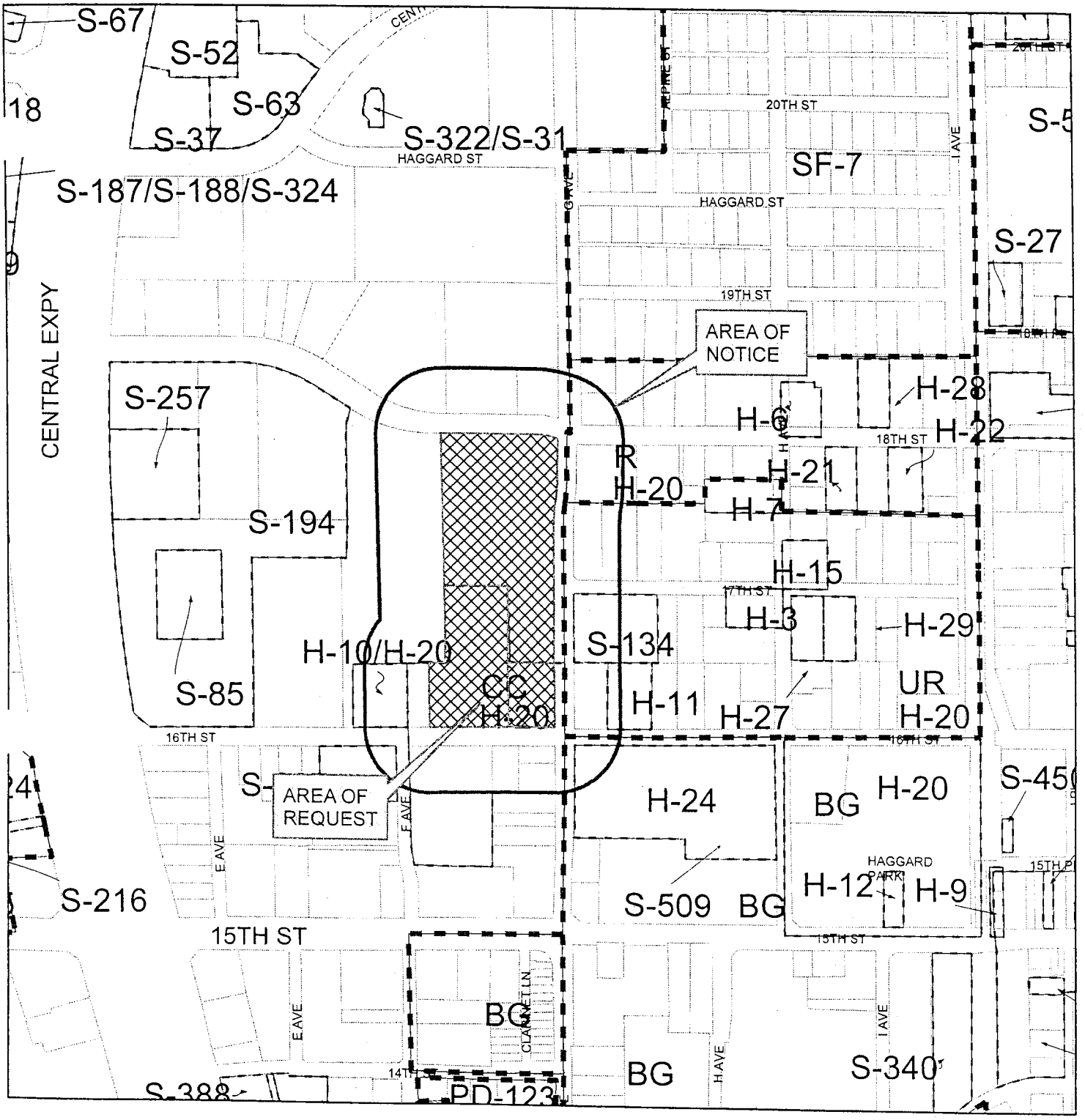
THENCE along said curve to the left following the west right-of-way line of said G Avenue through a central angle of 5° 29' 46" a radius distance of 1,676.08 feet and an arc distance of 160.78 feet to a point of reverse curve with a chord bearing of South 3° 29' 44" West a chord distance of 165.51 feet;

THENCE along said curve to the left following the west right-of-way line of said G Avenue through a central angle of 5° 29' 46" a radius distance of 1,726.08 feet and an arc distance of 165.57 feet;

THENCE South 0° 44' 50" West following the west right-of-way line of said G Avenue a distance of 336.90 feet to a 5/8-inch iron rod found for corner at the northeast corner of Lot 1, Block 1, Bridgeman's Office Addition, said iron rod being at the southwest corner of a tract conveyed to the City of Plano, Texas, as recorded in Volume 888, Page 100, DRCCT, said iron rod being in the west right-of-way line of G Avenue (variable width right-of-way);

THENCE South 0° 35' 08" East following the west right-of-way line of Said G Avenue a distance of 196.06 feet to the intersection of the west right-of-way line of G Avenue and the north right-of-way line of 16th Street;

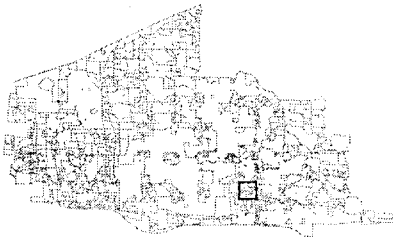
THENCE South 89° 41' 08" West following the north right-of-way line of 16th Street a distance of 144.24 feet to the POINT OF BEGINNING and CONTAINING 303,798 square feet or 6.9742 acres of land.



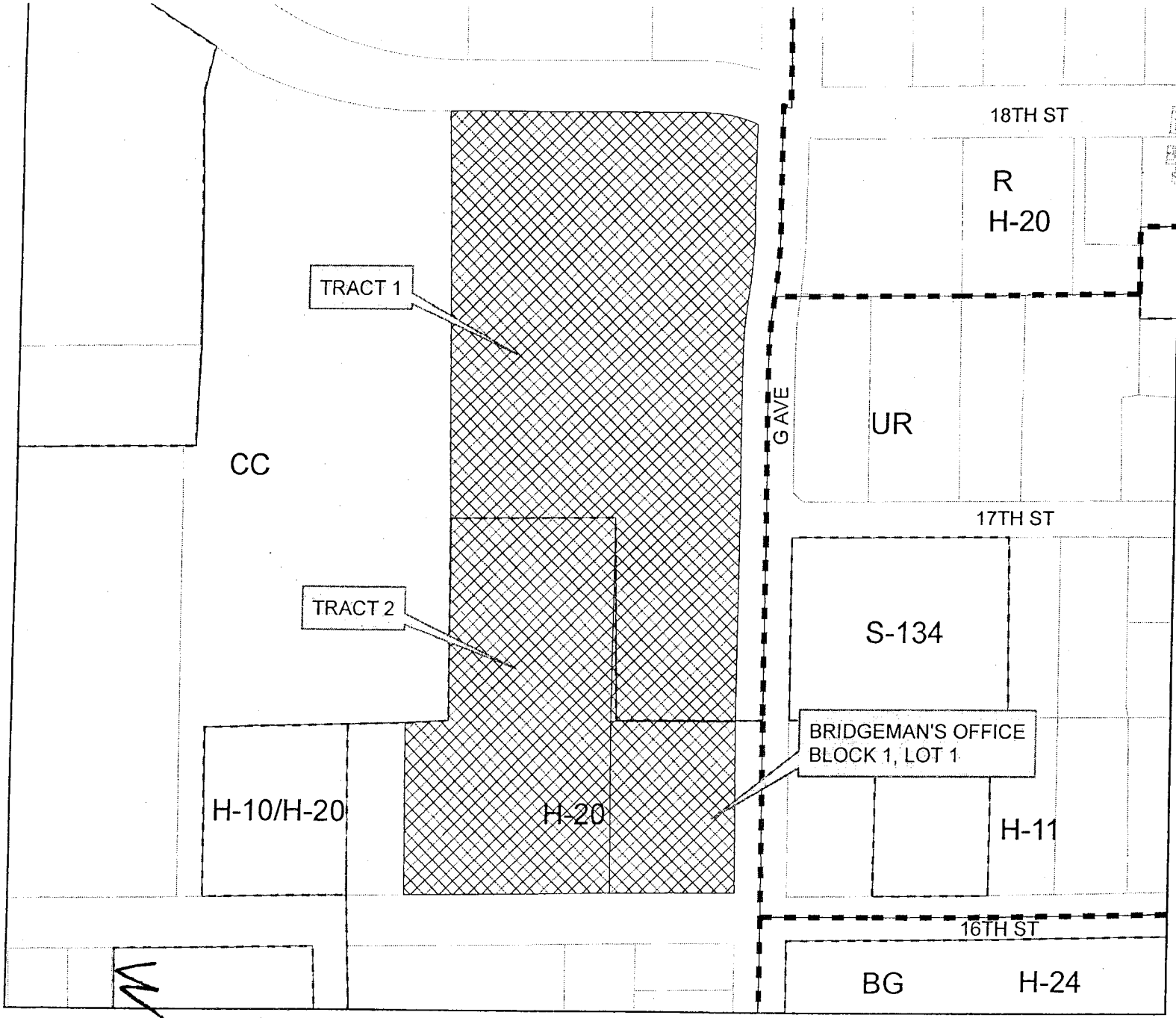
Zoning Case #: 2005-31

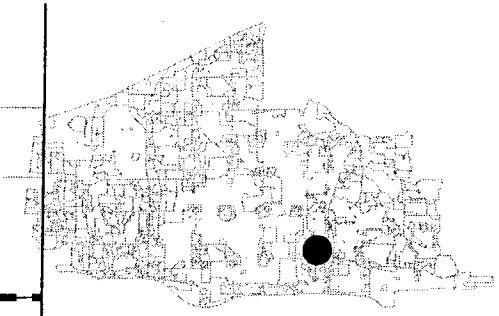
Existing Zoning: CORRIDOR COMMERCIAL

W-8



200' Notification Buffer





ZONING EXHIBIT

ZONING CASE# 2005-31

Applicant:
City of Plano

Owner: Tract 1 & 2
City of Plano

Owner: Bridgeman's Office, Block 1, Lot 1
H. E. Bridgeman
1221 W. Bowman Ave.
Woodland Park, CO 80863

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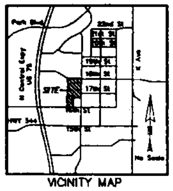


LEGEND
FIR Found Iron Rod
SIR Set Iron Rod

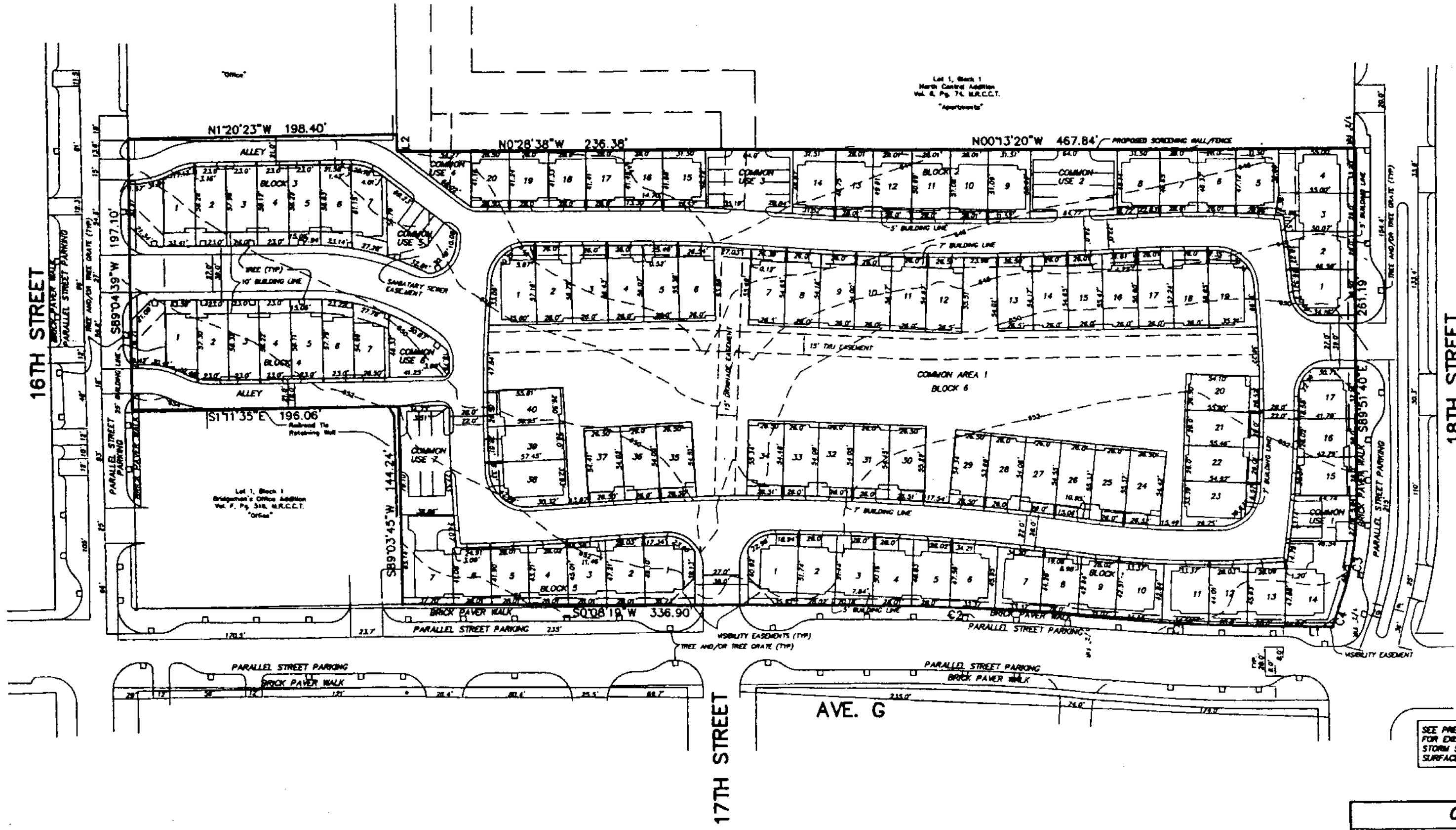
SCALE: 1"=40'

NUM	BEARING	DISTANCE
L1	S00°08'20"W	20.00'
L2	S89°18'37"E	11.97'

NUM	DELTA	ARC	RADIUS	BEARING	DISTANCE
C1	3°28'45"	100.78'	1676.00'	S00°53'13"W	100.72'
C2	3°28'46"	105.37'	1736.00'	S02°53'15"W	105.31'
C3	19°20'58"	75.83'	224.83'	S80°11'10"E	75.57'
C4	3°18'25"	16.08'	278.66'	S72°08'31"E	16.08'

SITE DATA TABLE

ZONING:	PLANNED DEVELOPMENT
PROPOSED USE:	RESIDENTIAL
PROPERTY AREA:	6.3250 AC./275,519 SF
NUMBER OF LOTS/HOUSES:	98 LOTS
HOUSE SIZES:	1400 SF MIN. TO 3000 SF MAX.
HOUSE HEIGHT:	TWO & THREE STORY
PARKING REQUIRED:	0 REGULAR SPACES
PARKING PROVIDED:	25 REGULAR SPACES



SEE PRELIMINARY UTILITY AND DRAINAGE PLAN FOR EXISTING AND PROPOSED UTILITIES AND STORM SEWER, EXISTING TREES AND OTHER SURFACE FEATURES.

CONCEPT PLAN

RICE FIELD REDEVELOPMENT
JOSEPH KLEPPER SURVEY ABSTRACT NO. 213
PLANO, COLLIN COUNTY, TEXAS

DESIGN	DRAWN	DATE	SCALE	NOTES	PROJECT	NO.
K&A	K&A	OCT.2005	1"=40'			JOB #05011

W-10

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan Upchurch	Executive Director		11/8/05
Dept Signature:		City Manager		11/8/05
Agenda Coordinator (include phone #):	I. Pegues 7198			

ACTION REQUESTED: ☒ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

An Ordinance of the City of Plano, Texas, amending Chapter 12, Motor Vehicles and Traffic, Article IV, Speed, Section 12-74(b), Maximum limits on specific streets, of the City of Plano Code of Ordinances to establish the prima facie speed limit for motor vehicles operating along the portion of Parkwood Boulevard between Spring Creek Parkway and State Highway 121 within the corporate limits of the City of Plano; authorizing and directing the traffic engineer to cause placement of traffic control devices indicating the speed limit; providing a fine for criminal penalties not to exceed $200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a penalty clause, and an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

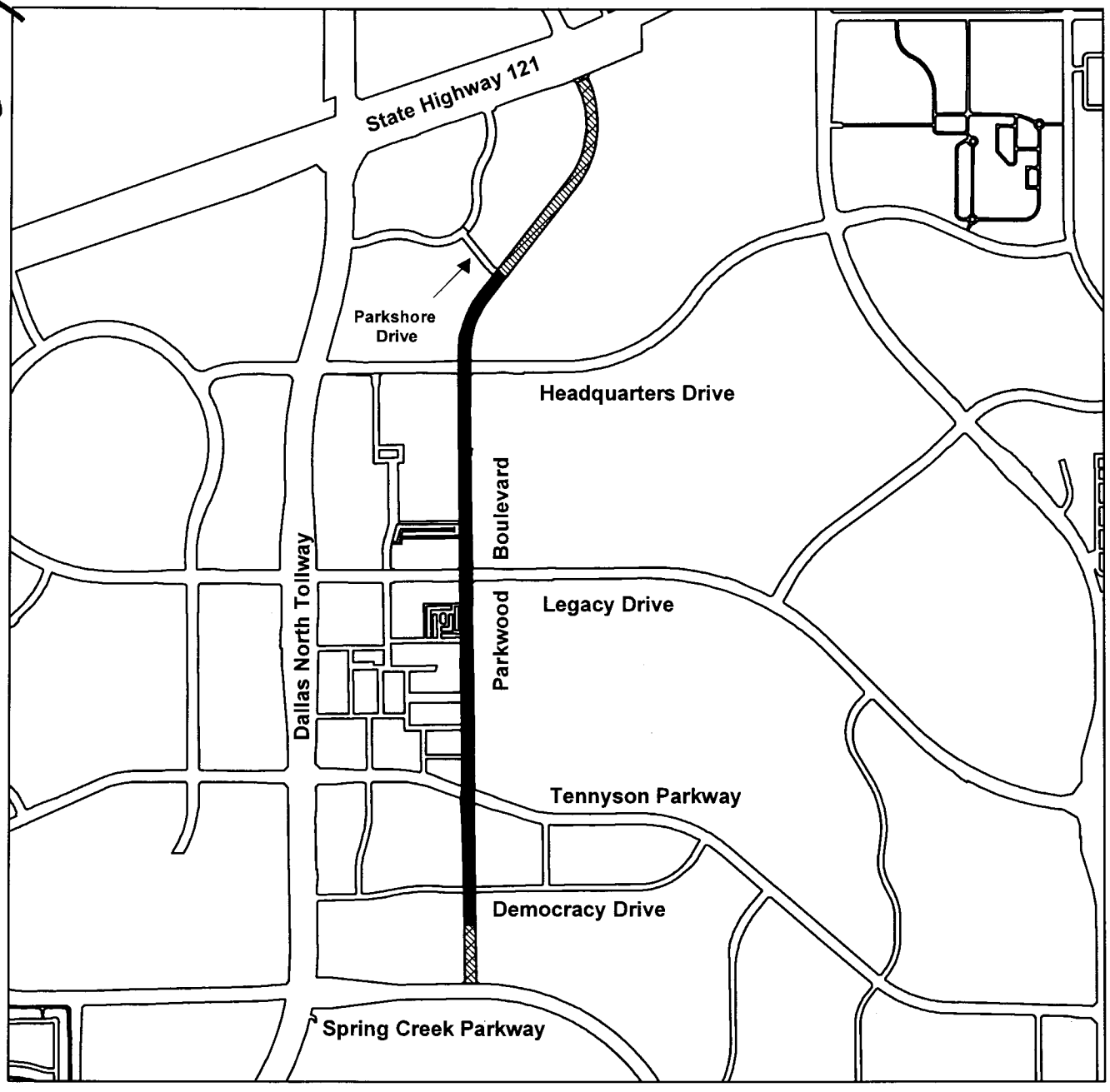
New portions of Parkwood Boulevard between Spring Creek Parkway and Democracy Drive and between Parkshore Drive and State Highway 121 are being constructed. Upon completion, Parkwood Boulevard will be continuous between Spring Creek Parkway and State Highway 121. This roadway is constructed as a Type C roadway (six lane divided) as designated on the City of Plano Thoroughfare Plan. In accordance with the City's Thoroughfare Standards Rules and Regulations, Type C roadways are designed to operate at 40 miles per hour and, based on a study of existing travel speeds on the portion of Parkwood Boulevard currently open to traffic between Headquarters Drive and Tennyson Parkway, 40 miles per hour has been determined to be a reasonable and safe speed. The Transportation Engineering Division recommends approval of an Ordinance establishing a forty (40) mile per hour speed limit.

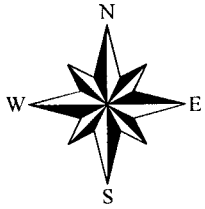
List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Map	

X-1

X-2

Speed Limit - Parkwood Boulevard, Spring Creek Parkway to State Highway 121





Proposed
40 miles per hour
Speed Limit

November 2005

Legend

Existing roadway

New roadway

plano

TRANSPORTATION
ENGINEERING
DIVISION

11/01/05

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING CHAPTER 12, MOTOR VEHICLES AND TRAFFIC, ARTICLE IV, SPEED, SECTION 12-74(B), MAXIMUM LIMITS ON SPECIFIC STREETS, OF THE CITY OF PLANO CODE OF ORDINANCES TO ESTABLISH THE PRIMA FACIE SPEED LIMIT FOR MOTOR VEHICLES OPERATING ALONG THE PORTION OF PARKWOOD BOULEVARD BETWEEN SPRING CREEK PARKWAY AND STATE HIGHWAY 121 WITHIN THE CORPORATE LIMITS OF THE CITY OF PLANO; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO CAUSE PLACEMENT OF TRAFFIC CONTROL DEVICES INDICATING THE SPEED LIMIT; PROVIDING A FINE FOR CRIMINAL PENALTIES NOT TO EXCEED $200.00 FOR EACH OFFENSE; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, Section 545.356 of the Texas Transportation Code, as amended, grants a municipality the authority to alter by ordinance *prima facie* speed limits from the results of an engineering and traffic investigation on streets or highways located in the municipality's corporate limits; and

WHEREAS, sections of Parkwood Boulevard between Spring Creek Parkway and Democracy Drive and between Parkshore Drive and State Highway 121 are being constructed; and

WHEREAS, upon completion of this construction, Parkwood Boulevard will be continuous from Spring Creek Parkway to State Highway 121; and

WHEREAS, the portion of Parkwood Boulevard between Spring Creek Parkway and State Highway 121 is constructed as a six (6) lane divided roadway designated as a Type C roadway on the City of Plano Thoroughfare Plan; and

WHEREAS, in accordance with the City's Thoroughfare Standards Rules and Regulations, Type C roadways are designed to operate at 40 miles per hour; and

WHEREAS, 40 miles per hour has been determined to be a reasonable and safe speed based on a study of existing travel speeds on the portion of Parkwood Boulevard currently open to traffic between Headquarters Drive and Tennyson Parkway.

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

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Section I. The following prima facie maximum speed limits hereafter indicated for motor vehicles are hereby determined and declared to be reasonable and safe, and such maximum speed limits are hereby fixed at the rate of speed indicated for motor vehicles traveling upon the named streets or highways or parts thereof. No motor vehicle shall be operated along or upon said portions of said named streets or highways within the corporate limits of the City of Plano in excess of the speeds now set forth.

Section II. Section 12-74(b) of Chapter 12 (Motor Vehicles and Traffic) of the City of Plano Code of Ordinances is hereby amended by the addition of the following to the Parkwood Boulevard subsection to read verbatim as follows:

"(2) Forty (40) miles per hour along and upon Parkwood Boulevard between Spring Creek Parkway and State Highway 121."

Section III. The Traffic Engineer of Plano is hereby authorized to cause to be erected appropriate signs indicating such speed zones.

Section IV. All provisions of the Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, except that an ordinance of the city establishing a school zone and speed limit therefore within the zones changed herein, shall not be repealed but shall prevail over this Ordinance. All other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and full effect.

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

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

Section VII. Any person, firm, or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction in the Municipal Court, shall be subject to a fine not to exceed TWO HUNDRED AND NO/100 DOLLARS ($200.00) for each offense. Each and every violation shall be deemed to constitute a separate offense.

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Section VIII. This Ordinance becomes effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Human Resources		Initials	Date
Department Head	LaShon Ross	Executive Director		
Dept Signature:	LaShon Ross	City Manager		11/10/05
Agenda Coordinator (include phone #):	**Rachal Hudson, ext 5155**			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☑ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER A

CAPTION

To approve an Administrative Services Agreement with ICMA Retirement Corporation ("ICMA-RC") in the amount of $36,000 for the initial year and $24,000 for the remaining term of the agreement. This agreement covers ICMA-RC's management services of the City's OBRA Plan for retirement accounts of Part-Time, Seasonal and Temporary Employees. The term of this Agreement shall be for a period of five (5) years with the option to renew by five (5) additional one-year terms by the City.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	3,533,243	0	**3,533,243**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-36,000	0	**-36,000**
BALANCE	0	3,497,243	0	**3,497,243**

FUND(S): GENERAL FUND

COMMENTS: Funding for this item is available in the approved 2005-06 Budget. This item will not exceed $36,000 in the initial year. Remaining balance will be used for other personnel-related items.

STRATEGIC PLAN GOAL: Funding for personnel-related items relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Under this agreement, ICMA-RC will administer the City's OBRA plan for part-time, seasonal and temporary employees. ICMA-RC's scope of services include a one-time clean up of the de minimus accounts at the rate of $8,000 for all applicable accounts, $3,750 for service credit purchases to TMRS as well as the on-going maintenance fees of approximately $24,000 annually. Total expenses for the initial term of the agreement will not exceed $36,000. After the initial clean-up, ICMA-RC's function will be to manage funds for OBRA Plan participants.

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

CITY OF PLANO
COUNCIL AGENDA ITEM

Memorandum to City Manager Administrative Services Agreement	

REV 08/98

P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099
http://www.ci.plano.tx.us

MEMORANDUM

DATE: November 10, 2005

TO: Thomas H. Muehlenbeck, City Manager

FROM: Sydney Covey, Compensation and Benefits Manager SC

SUBJECT: Administrative Services Agreement for Part-Time OBRA Retirement Plan

As a result of the transfer of the Full-Time employee 457 Deferred Compensation Plan from Nationwide Retirement Solutions to ICMA-RC, Nationwide is no longer willing to administer the Part-Time employee OBRA retirement plan. The OBRA plan will, therefore, move to ICMA-RC on November 15th along with the regular 457 plan.

There will be an annual account maintenance fee assessment of $25.00 per participant per year. These fees will be paid by the City beginning on January 1, 2006 and then on January 1 of each year in which the account is maintained in the plan. It is estimated that these fees will result in an annually cost of $24,000.

Included in this contract for clean up is a maintenance fee of $25.00 per de minimus payment processed on these accounts that are identified as a result of the plan transition to IMCA-RC. The estimated expense for the clean up is $8,300. Additionally, there will be a $25.00 account maintenance fee for each purchase of service credits to TMRS processed. Service credit purchases are estimated to be $3,750.

Total cost for the first year is estimated to be $36,000. Ongoing costs are expected to be about $24,000 annually.

We are asking for approval of this Administrative Services Agreement to ICMA-RC and clean up of accounts fees resulting from this transition.

Please let me know if you have any questions.

recycled paper

ADMINISTRATIVE SERVICES AGREEMENT

Type: 457 PTS

Account Number: 305934
City of Plano PTS/OBRA)

ADMINISTRATIVE SERVICES AGREEMENT

This Agreement, made as of the day of , 2005, (herein referred to as the "Inception Date"), between The International City Management Association Retirement Corporation ("ICMA-RC"), a nonprofit corporation organized and existing under the laws of the State of Delaware; and the City of Plano ("Employer") a City organized and existing under the laws of the State of Texas with an office at 1520 Avenue K, Plano, Texas 75074.

Recitals

Employer acts as a public plan sponsor for a retirement plan ("Plan") with responsibility to obtain investment alternatives and services for part-time, seasonal and temporary employees participating in that Plan;

The VantageTrust (the "Trust") is a common law trust governed by an elected Board of Trustees for the commingled investment of retirement funds held by state and local governmental units for their employees;

ICMA-RC acts as investment adviser to the Trust; ICMA-RC has designed, and the Trust offers, a series of separate funds (the "Funds") for the investment of plan assets as referenced in the Trust's principal disclosure document, "Making Sound Investment Decisions: A Retirement Investment Guide." The Funds are available only to public employers and only through the Trust and ICMA-RC. However, investment in the PLUS Fund is the only option available to participants in this plan.

In addition to serving as investment adviser to the Trust, ICMA-RC provides a complete offering of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account record-keeping, investment and tax reporting, form processing, benefit disbursement and asset management.

Agreements

1. <u>Appointment of ICMA-RC</u>

Employer hereby designates ICMA-RC as Administrator of the Plan to perform all non-discretionary functions necessary for the administration of the Plan with respect to assets in the Plan deposited with the Trust. The functions to be performed by ICMA-RC include:

(a) maintenance of individual accounts for participants reflecting on a daily basis amounts deferred, income, gain, or loss credited, and amounts disbursed as benefits;

(b) provision of periodic reports to the Employer and participants, through mailing to home addresses supplied by the Employer or participants, of the status of Plan

investments and individual accounts;

(c) communication to participants of information regarding their rights and elections under the Plan;

(d) disbursement of benefits as payor in accordance with terms of the Plan, and satisfaction of federal income tax withholding obligations as payor;

(e) access to ICMA-RC's website for participant and Employer inquiries and withdrawal and distribution requests; internet based web access will be available a minimum of twelve (12) hours per day, Monday through Saturday;

(f) access to ICMA-RC's voice response system 24 hours a day, 7 days per week, with live service representatives available during business hours;

(g) maintenance of Plan documents;

(h) tracking of age 70 ½ distribution requirements with participant notification and initiation of benefit payments

(i) preparation of participant tax forms (1099R); and

(j) making payments based on the Employer's determination of the qualified status of proposed or final domestic relations orders.

2. Employer Agreements

Employer agrees to the following with respect to the plan:

(a) there is no necessity for individual employee signatures upon enrollment and/or disbursement;

(b) if the employee's address is not provided upon enrollment by the Employer, then the Employer's address will be used as the contact address; and

(c) Employer will provide employees with communications on employee right to file a W-4 form along with the Employer's request for disbursement.

3. Adoption of Trust

Employer has adopted the Declaration of Trust of the VantageTrust and agrees to the commingled investment of assets of the Plan within the Trust. Employer agrees that operation of the Plan and investment, management and disbursement of amounts deposited in the Trust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the Retirement Investment Guide or Employer Bulletins) as those

terms and conditions may be adjusted from time to time. It is understood that the term "Employer Trust" as it is used in the Declaration of Trust shall mean this Administrative Services Agreement.

4. Exclusivity Agreement

Employer agrees that for the initial or succeeding term of this Agreement specified in Section 11, so long as ICMA-RC continues to perform in all material respects the services to be performed by it under this Agreement, Employer shall not obtain plan administration and investment advisory services with respect to this Plan from anyone other than ICMA-RC. Employer acknowledges that ICMA-RC has agreed to the compensation to be paid to ICMA-RC under this Agreement in the expectation that ICMA-RC will be able to offset costs allocable to performing this Agreement with revenues arising from Employer's exclusive use of ICMA-RC at the rates provided herein throughout the initial or succeeding term.

5. Employer Duty to Furnish Information

Employer agrees to furnish to ICMA-RC on a timely basis such information as is necessary for ICMA-RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in the Trust, and information as to the employment status of participants, and participant ages, addresses and other identifying information (including tax identification numbers). ICMA-RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and ICMA-RC shall not be responsible for any error arising from its reliance on such information.

6. Certain Representations, Warranties, and Covenants

ICMA-RC represents and warrants to Employer that:

(a) ICMA-RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of ICMA-RC to serve as investment adviser to the Trust is dependent upon the continued willingness of the Trust for ICMA-RC to serve in that capacity.

(b) ICMA-RC is an investment adviser registered as such with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended and shall remain so throughout the term of this Agreement. ICMA-RC Services, Inc. (a wholly owned subsidiary of ICMA-RC) is registered as a broker-dealer with the Securities and Exchange Commission (SEC) and is a member in good standing of the National Association of Securities Dealers, Inc and shall remain so throughout the term of this Agreement.

ICMA-RC covenants with employer that:

(c) ICMA-RC shall maintain and administer the Plan in compliance with the

requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code; provided, however, ICMA-RC shall not be responsible for the eligible status of the Plan in the event that the Employer directs ICMA-RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 457 or otherwise causes the Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of ICMA-RC 's standardized plan document, ICMA-RC shall not be responsible for the eligible status of the Plan to the extent affected by the differing terms in the Employer's plan document.

(d) ICMA-RC shall maintain availability of access to alternative computer processing facilities and duplicate copies of such files, records, systems, etc., which are necessary to provide the services hereunder. Such alternative computer processing facilities shall be maintained in a secure location that is separate from the location where the original systems, records and facilities are maintained.

(e) ICMA-RC shall maintain insurance during the term of this Agreement for professional liability (including errors and omission coverage) in the amount of at least $1 million per occurrence and $5 million in the aggregate, comprehensive general liability insurance in the amount of at least $2 million per occurrence, and $5 million in the aggregate, and fidelity bond coverage in the amount of at least $5 million per occurrence, and shall submit certificates to the Employer evidencing such. ICMA-RC covenants and agrees that the insurance coverages, which it maintains shall list its subsidiaries ICMA-RC Services, LLC and VantageTrust Company, as named insured as appropriate.

(f) ICMA-RC shall maintain records in connection with each service performed and shall retain such records relating to distributions and loans to participants for seven (7) years and all other records for four (4) years after the respective record was produced. Employer or its designated representative, at Employer's expense, may, during the term of this Agreement and up to forty-eight (48) months after the month in which the last services were performed, audit and examine all relevant records of ICMA-RC in connection with the services provided pursuant to this Agreement.

(g) ICMA-RC shall maintain in the strictest confidentiality all employee data, including but not limited to the participant names, addresses, Social Security numbers and other personal information.

Employer represents and warrants to ICMA-RC that:

(h) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.

7. Participation in Certain Proceedings

The Employer hereby authorizes ICMA-RC to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Employer Plan. Unless Employer notifies ICMA-RC otherwise, the Employer consents to the disbursement by ICMA-RC of benefits that have been garnished or transferred to a former spouse, spouse or child pursuant to a domestic relations order that has been determined to be a "qualified domestic relations order" as defined by Section 414 of the Code.

8. Compensation and Payment

(a) Plan Administration Fee. The amount to be paid for plan administration services under this Agreement shall be 0.55% per annum of the amount of Plan assets invested in the Trust. Such fee shall be computed and paid monthly on plan assets in the Trust at the end of each month. There will be no additional charges for postage, telephone, out of pocket expenses, preparation of withdrawal and distribution checks and tax reporting.

(1) Account Maintenance Fee. There shall be an annual account maintenance fee of $25.00 for ongoing participants. The account maintenance fee is payable in full on January 1 of each year on each account in existence on that date. For accounts established after January 1, the fee is payable on the first day of the calendar quarter following establishment and is prorated by reference to the number of calendar quarters remaining on the day of payment. Fees described in this Section 8(a)(1) shall be payable in full on January 1 of each year by the City of Plano.

(2) Further, there shall be an account maintenance fee of $25.00 per de minimus payment processed on de minimus accounts identified as a result of the plan transition to ICMA-RC . Additionally, there will be a $25.00 account maintenance fee for each purchase of service credit to TMRS. Fees described in this Section 8(a)(2) shall be payable in full by the City of Plano.

(b) Compensation for Advisory Services to the Trust. Employer acknowledges that in addition to amounts payable under this Agreement, ICMA-RC receives fees from the Trust for investment advisory services furnished to the Trust.

(c) Payment Procedures. Except for payments under Section 8(a)(1) and 8(a)(2), payments to ICMA-RC pursuant to this Section 8 shall be paid out of the Plan Assets held by the Trust and shall be paid by the Trust. The amount of Plan Assets held in the Trust shall be adjusted by the Trust as required to reflect such payments.

(d) The compensation and payment set forth in this section 8 is further contingent upon the transfer of all assets of the Plan(s) from the prior record keeper for the Plan to ICMA-RC 's administration.

9. Custody

Employer understands that amounts invested in the Trust are to be remitted directly to the Trust in accordance with instructions provided to Employer by ICMA-RC and are not to be remitted to ICMA-RC . In the event that any check or wire transfer is incorrectly labeled or transferred to ICMA-RC , ICMA-RC is authorized, acting on behalf of the transferor, to transfer such check or wire transfer to the Trust.

10. Responsibility

ICMA-RC shall not be responsible for any acts or omissions of any person other than ICMA-RC its affiliates and each of their agents and employees in connection with the administration or operation of the Plan.

(a) If, as a direct result of an error made by ICMA-RC, a loss is incurred by a Plan participant (or a gain was not received), ICMA-RC will adjust the participant's account retroactively according to the following policy:

(1) For transactions that are confirmed in writing, if ICMA-RC is notified within 30 days following the confirmation date, ICMA-RC will correct the transaction and the participant's account will be made whole at ICMA-RC's expense;

(2) For transactions that are reflected on quarterly statements only, if ICMA-RC is notified within 90 days following the receipt of the quarterly statement, ICMA-RC will correct the transaction and the participants' account will be made whole at ICMA-RC's expense.

11. Term

This Agreement shall be in effect for an initial term beginning on the Inception Date and ending 5 years after the Inception Date; however, this Agreement may be terminated by Employer with or without cause in the event that Employer makes a good faith determination that this Agreement or its obligations hereunder are no longer feasible or reasonable in light of circumstances then existing. The Agreement may be renewed for five (5) additional one-year terms by the Employer notifying ICMA-RC in writing at least sixty (60) days prior to the end of each term.

Either party may terminate this Agreement in the event the other party becomes insolvent, becomes subject to any proceeding under any bankruptcy or insolvency law or is liquidated, voluntary or otherwise.

12. Amendments and Adjustments

(a) This Agreement may not be amended except by written instrument signed by the parties.

(b) The parties agree that compensation for services under this Agreement and administrative and operational arrangements may be adjusted as follows:

(1) Adjustments to compensation to ICMA-RC under this Agreement may only be implemented through a written Agreement signed by the parties.

(2) ICMA-RC may propose an adjustment to administrative and operational arrangements by written notice to the Employer given at least 60 days before the effective date of the adjustment and the notice may appear in disclosure documents such as Employer Bulletins and the Retirement Investment Guide. Such adjustment shall become effective unless, within the 60-day period before the effective date the Employer notifies ICMA-RC in writing that it does not accept such adjustment, in which even the parties shall negotiate with respect to the adjustment.

(c) No failure to exercise and no delay in exercising any right, remedy, power or privilege hereunder shall operate as a waiver of such right, remedy, power or privilege.

13. Notices

All notices required under this Agreement shall be delivered personally or by registered or certified mail, postage prepaid, return receipt requested, to (i) Legal Department, ICMA-RC, 777 North Capitol Street, N.E., Suite 600, Washington, D.C, 20002-4240; (ii) Employer as set forth below, or to any other address designated by the party to receive the same by written notice similarly given.

Employer Address: City of Plano
Attention: City Manager and City Attorney
P.O. Box 860358
Plano, TX 75086-0358

14. Complete Agreement

This Agreement shall constitute the sole agreement between ICMA-RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

15. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

In Witness Whereof, the parties hereto have executed this Agreement as of the Inception Date first above written.

CITY OF PLANO

by:
Signature/Date

Name and Title (Please Print)

INTERNATIONAL CITY MANAGEMENT ASSOCIATION RETIREMENT (ICMA-RC) CORPORATION

by: Paul F. Gallagher
Paul Gallagher
Corporate Secretary

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Legal		Initials	Date
Department Head	Diane Wetherbee	Executive Director		
Dept Signature:	D. Wetherbee	City Manager		11/7/05
Agenda Coordinator (include phone #):	Betsy Allen # 7545			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER

CAPTION

Council discussion and direction on the regulation of temporary signs, including garage sale signs, and whether temporary sign regulations should remain in the Zoning Ordinance or the General Code of Ordinances; Council action to call a public hearing for the Zoning Commission to repeal the temporary sign regulations from the Zoning Ordinance and to correct the fine discrepancy in Section 3.1604(8)(b)(i).

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

See Attached Memo

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Memo to Council dated 11/1/05; Zoning Ordinance Sec. 3.1603(5), 3.1604	n/a

MEMORANDUM

DATE: November 3, 2005

TO: Honorable Mayor and Members of Council

FROM: Diane C. Wetherbee, City Attorney DW

SUBJECT: **Temporary Sign Regulations – Garage Sale Signs**

Garage sale signs fall within the temporary sign regulations in the Zoning Ordinance. Prior to November 2000, the temporary sign regulations were in the General Code of Ordinances. Council may wish to consider relocating the temporary signs regulations from the Zoning Ordinance to the Code of Ordinances for the following reasons. The maximum fine for temporary signs as a zoning violation is $2000. For general code violations, the maximum fine is $500, which allows a more reasonable range of fines for temporary sign violations. Also, the temporary sign ordinance was part of a successful 1990 initiative process. State law precludes initiatives that are offered as a zoning amendment. If a citizen or Council wished to use the initiative process to now amend the temporary sign ordinance, it would not be effective because by law initiatives are not effective for zoning amendments. Separate from the foregoing, the current violation provision, section 3.1604(8)(b)(i) has a discrepancy in the fine amount. It is appropriate to correct this discrepancy as well.

In order to relocate these regulations, at this meeting the Council should call a public hearing for the Zoning Commission to consider amending the Zoning Ordinance to delete the temporary sign regulations contained in Section 3.1604(5) and make corrections to the discrepancy in the violation provision, Section 3.1604(8)(b)(i). By separate action, the Council would then readopt the temporary sign regulations as part of the General Code of Ordinances.

DW/lj

c: Thomas H. Muehlenbeck, City Manager
Phyllis Jarrell, Planning Director
Selso Mata, Chief Building Official

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M:\m-temporary signs-garage sale.doc

(4) Miscellaneous Requirements for Freestanding Signs

(a) Freestanding signs shall not be placed in any sight visibility triangle.

(b) In the case of a multi-face sign, the gross surface area of each face shall not exceed two times the allowable square footage divided by the number of sign faces.

(c) No sign shall be located within any easement unless a hold harmless agreement has been obtained from the easement holder.

(d) Any projecting or overhanging portion of a freestanding sign must be a minimum of ten feet above any walking surface and 14 feet above any driving surface.

(e) No advertising matter shall be displayed on or attached to any freestanding sign. No guys, braces, attachments, banners, flags, balloons, or similar devices shall be attached to any sign.

(f) Freestanding signs shall be protected by wheel or bumper guards when required by the Building Official.

(g) Minimum five foot radius required around a fire hydrant.

(h) Unless otherwise set forth, a minimum of 60 feet shall be required between all freestanding signs.

(i) Unless otherwise set forth, all freestanding signs shall provide a minimum eight foot setback from any property line.

(j) Signs that have a base or pole that exceeds 50% of the total width of the sign shall be classified as a monument sign.

(k) When the minimum building line setback is less than the minimum sign setback, the minimum building line shall apply to any freestanding sign, including temporary signs.

(l) No single tenant shall be allowed to advertise on more than one sign per street front.

(5) Temporary Signs

(a) Banners

A temporary banner is allowed and shall be securely attached to the front or side of a building face. Each business shall be allowed two banner permits per calendar year, and each permit shall be good for a maximum of 30 days. A minimum of 30 days shall be required between each banner permit. Banners shall be kept in good repair and remain firmly anchored or secured. Commercial banners are prohibited in single-family residential districts.

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(b) Development/Construction Signs

Development or construction signs may be erected in nonresidential and residential zoning districts. Such signs shall relate only to the property or subdivision on which they are located and shall not exceed 100 square feet with a maximum height of 20 feet. Required setback shall be 20 feet from the front property line. Each property or subdivision may have one such sign or one for each 50 acres or portion thereof. A development or construction sign shall be removed upon completion of the project or subdivision.

(c) Model Home Signs

Model home signs may be erected in residential zoning districts and shall not exceed 16 square feet with a maximum height of six feet. Required setback shall be 50% of the distance between the front property line and the building but no less than ten feet from the front property line. Model home signs are limited to one per premise. Each builder in a subdivision may have one model home sign, and the permit for such sign shall be granted for a period of time to coincide with the validity of the model home's Certificate of Occupancy.

(d) Political Signs/Noncommercial Purpose Signs

Political and noncommercial purpose signs 36 square feet or less are allowed on private property with the consent of the property owner, but are prohibited on public property, including the rights-of-way. Political signs may be placed on private property no earlier than 120 days prior to the election for which the sign is applicable and must be removed not later than the 15th day following the election. City personnel may remove and dispose of any sign placed on public property or within the rights-of-way.

(e) Real Estate Signs

Real estate signs may be erected in nonresidential and residential zoning districts and shall not exceed 32 square feet with a maximum height of 15 feet. Required setback shall be eight feet from front property line, and signs are limited to one per street front. A real estate sign shall be removed upon the sale of the property. Real estate signs advertising the lease of individual units in multifamily districts shall be allowed upon issuance of a Certificate of Occupancy for a period not to exceed one year.

(f) Promotional Signage

(i) Promotional signage described in the following paragraph is allowed for two, two-week periods each calendar year per legal business. A two-week period will commence on the first day promotional signage is displayed. The two, two-week periods shall not occur in the same or consecutive months. A legal business shall include any commercial, industrial, or institutional use for which the Building Inspection Department has issued a Certificate of Occupancy. In the case of a special promotion for a grand opening celebration, one period may be extended to a three-week period provided the promotion commences within the first three months of the date of issuance of a Certificate of Occupancy, and the grand opening is limited to the address noted on the Certificate of Occupancy.

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(ii) Promotional signage may include banners, flags, pennants, streamers, balloons, inflatable signs, and any legal signs allowed by this ordinance. Any device described as promotional signage shall not exceed an overall height of 35 feet.

(iii) A separate permit is required for each two-week period promotional signage will be used. If any device described as promotional signage in the above paragraph is installed prior to issuance of a permit, an investigation fee, outlined in Subsection 3-1601.7., will be assessed in addition to the permit fee.

(iv) Promotional signage shall be contained on the property of the legal business and shall not extend into the city right-of-way. Signage shall not be located in any sight visibility triangle nor shall any combustible materials be placed in contact with lighted signs or any electrical fixtures.

(g) Signage for Temporary/Seasonal Businesses

Seasonal business signage is reviewed as part of the overall seasonal business permit requirements as set out in the Code of Ordinances, City of Plano, and shall be limited to one of the following:

(i) A temporary, freestanding sign, maximum 32 square feet in area with an eight foot setback from the front property line.

(ii) An onsite banner, maximum 32 square feet in area with an eight foot setback from the front property line. The banner must be securely installed and be completely mounted on a rigid surface.

(h) Garage Sale Signs

Garage sale signs may be displayed on private property with the consent of the owner on the day of the sale and shall not exceed a maximum of eight square feet.

(i) Special Event Signage

Special event signage shall be reviewed as part of the overall Special Event Permit as set out in the Code of Ordinances, City of Plano, and shall be limited to the following:

(i) Any signage allowed under promotional signage.

(ii) One, maximum 100 square foot sign, maximum height of 15 feet.

(iii) All special event signage shall be limited to the property holding the event.

(iv) The sign shall be allowed up to 14 days prior to the event and shall be removed within 24 hours at the end of the event.

(6) Illumination

(a) A sign in a residential district, where allowed by this ordinance, may be illuminated. Any illumination shall be located so as not to produce intense glare or direct illumination across the bounding property line. Internal illumination shall not exceed 40 watts per every 25 square feet or any portion thereof.

(b) Illuminated changeable copy signs shall not change copy more than once every 30 minutes, excluding time and temperature.

1-5

(c) No lighted sign shall be erected within 150 feet of a residential district as measured from the location of the sign nearest to the property line of each neighboring lot unless it meets the illumination criteria listed above.

(d) All illumination shall comply with the City of Plano illumination ordinance.

(7) Wind Pressure and Dead Load Requirements

All signs shall be designed and constructed to receive wind loads as required by the Building Code of the City of Plano.

(8) Reader Boards/Electronic Message Center

Any reader board or electronic message center area of a sign shall not exceed 75% of the allowable square footage for any sign type.

3.1604 General

(1) Overlay Districts/Planned Developments/Heritage Resource District/Downtown Sign District

Signs within an overlay district, planned development, Heritage Resource District, or Downtown Sign District shall be regulated by the ordinance regulating signs located within the relevant district.

(2) Preserving Rights and Violations under Existing Ordinances

By the passage of this ordinance, no presently illegal use of signs shall be deemed to have been legalized, and no offense committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time this ordinance is adopted, shall be discharged or affected by such repeal; but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures may be instituted or caused presently pending proceeded with, in all respects as if such prior ordinance or portion of such ordinance, had not been repealed.

(3) Prohibited Signs

Except as otherwise expressly allowed by this ordinance, the following signs and conditions are prohibited:

(a) Signs displaying materials determined to be obscene by a court of law or prohibited by law, subject to the appeal and judicial review proceedings provided for in Subsection 3.1601.9.f. (ZC 2004-24; Ordinance No. 2004-8-21)

(b) Signs placed in any location which by reason of their location will obstruct the view of any authorized traffic sign, signal, or other traffic control device by vehicular or pedestrian traffic. No sign shall be erected which, by reason of shape, color, size, design, or position, would be reasonably likely to create confusion with, to be confused as, or to interfere with any traffic signal or device which is authorized by the appropriate state or local governmental authorities. Further, no sign shall be placed in a location that will obstruct vision of a vehicle operator while entering, exiting, or traveling upon the public right-of-way.

(c) Signs placed so as to prevent or inhibit free ingress to or egress from any door, window, or any exit way required by the Building Code of the City of Plano or by Fire Department regulations.

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(d) Portable signs

This provision does not restrict identification signs on vehicles or other signs attached to vehicles, which are legally licensed and operated upon public streets. However, these vehicles shall not be parked where the intent is to use the vehicle as advertising.

(e) A-frame and sandwich board signs.

(f) Signs that are animated by any means not providing constant illumination, except time and temperature units. Signs which rotate or emit audible sound or visible matter. No sign shall be illuminated to such intensity or in such a manner so as to cause a glare or brightness to a degree that it constitutes a hazard or nuisance to vehicular traffic, pedestrians, or adjacent properties.

(g) Signs located on public property including, but not limited to, signs attached to any public utility pole or structure, street light, tree, fence, fire hydrant, bridge, curb, sidewalk, park bench, or other location on public property.

(h) Balloons, flags, pennants, or other floating or inflatable signs or devices anchored to the ground or to any other structure, except as allowed under the provisions of Subsection 3-1603.5. (Exception: See Subsection 3-1601.8. for certain flag exemptions.) (ZC 2004-24; Ordinance No. 2004-8-21)

(i) Roof signs.

(j) Temporary signs except as allowed under Subsection 3-1603.5. and Subsection 3-1601.8.

(k) Amenity signs.

(l) Billboard signs.

(m) Signs attached to a standpipe or fire escape.

(n) Signs erected on or over public property or in the right-of-way of any thoroughfare within the city of Plano, unless the same is erected by the city or with the permission of the city for public purposes. (Exception: Signs located in the Downtown Business/Government district may be erected over the public sidewalk provided the sign projects no more than the width of the sidewalk minus one foot and provided the clearance between the bottom of the sign and the sidewalk below is a minimum of seven feet.)

(o) No person shall attach any sign, paper, or other material, or paint, stencil, or write any name, number (except house numbers), or otherwise mark on any sidewalk, curb, gutter, street, utility pole, public building, or structure, except as otherwise allowed by this ordinance.

(p) No person shall place on or suspend from any building, light fixture, pole structure, sidewalk, parkway, driveway, or parking area any goods, wares, merchandise, or other advertising object or structure for the purpose of advertising such items other than a sign, as defined, regulated, and prescribed by this ordinance, except as otherwise allowed by this ordinance.

1-7

(q) It shall be unlawful for any person to place or cause to be placed any private temporary directional sign(s) within the city of Plano on any public right-of-way of any major or minor thoroughfare (street designated as Type A, B, C, D, E, or F in the City of Plano Thoroughfare Plan). The Building Official may impound all signs in violation of this section.

(r) Searchlights.

(s) Offsite/Premise signs (except as allowed in Subsection 3.1603.5.i.).

(4) Violations

(a) A person is responsible for a violation of this ordinance if the person is: (1) the permit holder, owner, agent, or person(s) having the beneficial use of the sign, (2) the owner of the land or structure on which the sign is located, or (3) the person in charge of erecting the sign.

(b) It shall be unlawful for any person to erect, replace, alter, or relocate any sign within the city of Plano, or cause the same to be done, without first obtaining a permit to do so from the Building Official of the City of Plano, except as may be hereinafter provided.

(c) It shall be unlawful for any person to use, maintain, or otherwise allow the continued existence of any sign for which the required permit was not obtained.

(d) It shall be unlawful for any person to install, construct, or display a prohibited sign, as defined herein, or any sign in violation of the provisions of this ordinance within the city of Plano.

(e) It shall be unlawful for any person to violate any term or provision of this ordinance.

(5) Illegal Signs

Illegal signs are those which do not meet the requirements of this ordinance and which have not received nonconforming status.

(6) Nonconforming Signs

(a) Legal Nonconforming Uses

Subject to the provisions of this section, signs for a legal nonconforming use, as defined in the Comprehensive Zoning Ordinance of the City of Plano, are allowed. Any such sign legally existing on the effective date of this ordinance but which does not comply with the regulations of this ordinance, shall be deemed to be a nonconforming sign under the provisions of this ordinance and shall be subject to alteration or removal in accordance with the provisions of this ordinance.

(b) Moving, Relocating, or Altering of Signs

No nonconforming sign shall be moved, altered, removed and reinstalled, or replaced unless it is brought into compliance with the requirements of this ordinance.

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(c) Change in Use or Occupant of Structure

Any nonconforming sign may continue to be utilized as long as the occupancy within the structure remains the same. When a use changes from one occupancy category to another, or when there is a change in occupant, all signs serving that occupant shall be brought into conformance with the provisions of this section.

(7) Maintenance of Signs

(a) Maintenance

Each sign shall be maintained in a safe, presentable, and good condition, including the replacement of defective parts and other acts required for the maintenance of such sign, without altering the basic copy, design, or structure of the sign. The Building Official shall require compliance or removal of any sign determined by the Building Official to be in violation of this section in accordance with the enforcement provisions set forth below.

(b) Dilapidated or Deteriorated Signs

No person shall maintain or permit to be maintained on any premises owned or controlled by him or her any sign which is in a dilapidated or deteriorated condition as defined herein. Upon notice of violation, any such sign shall be promptly removed or repaired by the owner of the sign or the owner of the premises upon which the sign is located in accordance with the enforcement provisions set forth in 8. below.

(8) Enforcement

(a) Authority

The Building Official, or his respective designee(s), any peace officer, and any code enforcement officer is hereby authorized to issue a citation and to order the repair or removal of any dilapidated, deteriorated, abandoned, illegal, or prohibited signs from property within the corporate city limits of Plano, in accordance with the enforcement mechanisms set forth in this section. (ZC 2004-24; Ordinance No. 2004-8-21)

(b) Notice of Violation

When the Building Official, or his respective designee, determines that a dilapidated, deteriorated, illegal, prohibited, or abandoned sign located on private property within the corporate city limits of Plano requires removal by the city, they shall issue a notice of violation to the owner of the sign or to the owner, occupant, or person in control of the property on which the sign is located, except when the sign poses an immediate or imminent threat to public safety because of the condition of the sign, in which case it may be removed without notice. (ZC 2004-24; Ordinance No. 2004-8-21)

(i) Contents of Notice of Violation

The notice of violation shall contain:

1. Name of the owner, occupant, manager, or other person in control of the property.
2. Street address sufficient to identify the property on which the alleged violation occurred.

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3. Description of alleged violation and reference to the portion of this section that has been violated.

4. Statement of the action required to correct the violation and a deadline for completing the corrective action.

5. Statement that failure to take the corrective action within the time specified may result in (1) a criminal penalty not exceeding $500 per day for each violation and (2) the city filing a civil action against owner seeking injunctive relief and/or civil penalties up to $1,000 per day for each violation.

6. Statement informing recipient of their right to appeal the decision of the Building Official to the Board of Adjustment in accordance with Section 6.200.

(ii) Service of Notice of Violation (ZC 2004-24; Ordinance No. 2004-8-21)

The Building Official, or his designee, shall serve a written notice of violation on the owner of the sign or the owner, occupant, or person in control of the property on which the sign is located for sign violations on private property within the corporate limits of the city of Plano. The notice of violation should be served by either hand delivery or by certified mail, return receipt requested. Service by certified mail shall be effective three days after the date of mailing.

(iii) Notice Not Prerequisite to Issuance/Enforcement of Citation (ZC 2004-24; Ordinance No. 2004-8-21)

Citations shall be issued and enforced pursuant to this section independent of any required notice provisions. It shall not be a prerequisite to enforcement of any citation issued pursuant to this section that notice of violation was served on any party.

(iv) Notice Not Required (ZC 2004-24; Ordinance No. 2004-8-21)

Notice of violation shall not be required under this section if a sign is placed in or upon any public or city-owned property. Signs placed on public or city-owned property within the corporate limits of the city of Plano in violation of the law may be removed and disposed of immediately without notice to interested parties. Notice of violation shall not be required in an emergency situation for which the threat to public safety is imminent and immediate.

(c) Enforcement Remedies

(i) Criminal Penalties

Any person, firm, or corporation violating any of the provisions or terms of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, be subject to a fine not exceeding $2,000 for each offense, and each and every day or portion thereof that such violation shall continue shall constitute a separate offense.

(ii) Civil Remedies

The city may file a civil action to enforce the requirements of this ordinance pursuant to any applicable law. (ZC 2004-24; Ordinance No. 2004-8-21)

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(iii) Emergency Removal of Sign

The city may remove a sign which the Building Official finds to be an immediate and imminent threat to the public safety because of its dilapidated, deteriorated, or structural condition. The notice of violation provisions found in this section shall not apply to emergency removal of a sign. (ZC 2004-24; Ordinance No. 2004-8-21)

(iv) Remedies Cumulative

All remedies authorized under this section are cumulative of all others unless otherwise expressly provided. Accordingly, the filing of a criminal action shall not preclude the pursuit of a civil or administrative action for violation of this section nor shall the filing of a civil action preclude the pursuit of any other action or remedy, administrative or criminal.

3.1605 Downtown Sign District

(1) Purpose

The purpose of this section is to regulate the construction of new signs and alterations made to existing signs to ensure consistency with the historic, urban, pedestrian-oriented nature of this district, and the dense, compact development absent in other areas of the city. The objective of this section is to ensure (1) that new signage is appropriate to the architectural design of the building and the district and (2) that signs do not visually obscure significant architectural features of a building or the district in general.

The Downtown Sign District encompasses all properties that are zoned Downtown Business/Government. The Downtown Sign District is further classified into two areas - Area A and Area B. The boundary of Area A is defined below. Area B consists of all properties within the Downtown Business/Government zoning that are not within the boundary of Area A.

(2) Area A Boundary Description

BEING a 17.86 acre tract of land situated in Collin County, Texas, and being more particularly described as follows:

BEGINNING at the intersection of centerline of Municipal Avenue (variable R-O-W) with the centerline of 15th Street (variable R-O-W) to a point for a corner;

THENCE continuing west along said 15th Street centerline to a point for a corner at the intersection of 15th Street and the centerline of K Avenue (variable R-O-W);

THENCE continuing north along said K Avenue centerline to a point for a corner at the intersection of K Avenue and the centerline of 16th Street (variable R-O-W);

THENCE continuing along said 16th Street centerline to a point for a corner at the intersection of 16th Street and the centerline of the Dallas Area Rapid Transit (DART) R-O-W (variable R-O-W) located in Tract 68 of the Sanford Beck Survey, City of Plano, Collin County, Texas;

THENCE continuing south a distance of 1,125 feet along said DART R-O-W to a point for a corner intersecting the centerline of 14th Street (variable R-O-W);

THENCE continuing east following along said 14th Street centerline to a point for a corner at the intersection of 14th Street and the centerline of Municipal Avenue;

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Legal		Initials	Date
Department Head	Diane Wetherbee	Executive Director		
Dept Signature:		City Manager		11/7/05
Agenda Coordinator (include phone #):	Paige Mims – 5235			

ACTION REQUESTED: ☒ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

An ordinance of the City of Plano, Texas amending Chapter 6, Building and Building Regulations of the City of Plano Code of Ordinances, by adding Article XII, Temporary Signs, providing Temporary Signs Regulations and Definitions; providing a penalty clause, a severability clause; a repealing clause; a publication clause; and an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

This ordinance creates regulations for temporary signs and incorporates the existing regulations from the Zoning Ordinance into the General Code of Ordinances. Enforcement is by the Building Official, or his respective designee(s), any peace officer, and any code enforcement officer, and the maximum fine for a violation is $500.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
n/a	n/a

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS OF THE CITY OF PLANO CODE OF ORDINANCES, BY ADDING ARTICLE XII, TEMPORARY SIGNS, PROVIDING TEMPORARY SIGNS REGULATIONS AND DEFINITIONS; PROVIDING A PENALTY CLAUSE; A SEVERABILITY CLAUSE; A REPEALING CLAUSE; A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.

WHEREAS, the City Council has enacted regulations regarding temporary signs in the City of Plano, which regulations are now part of the Comprehensive Zoning Ordinance of the City of Plano; and

WHEREAS, to allow enforcement by the Building Official, or his respective designee(s), any peace officer, and any code enforcement officer, the City Council must add temporary signs regulations to Chapter 6 of the City Code of Ordinances.

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

Section I. Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano is hereby amended by adding Article XII to read in its entirety as follows:

"ARTICLE XII. TEMPORARY SIGNS

DIVISION 1. DEFINITIONS

Sec. 6-486. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Banner means a temporary sign made of cloth, canvas, or other light fabric.

Dilapidated or Deteriorated Condition means:

2-2

(1) Where elements of the surface or background have portions of the finished material missing, broken, or otherwise existing such that they are illegible.
(2) Where the structural support or frame members are visibly bent, broken, dented, or torn.
(3) Where the panel is visibly cracked or, in the case of wood and similar products, splintered in such a way as to constitute an unsightly or harmful condition.
(4) Where the sign or its elements are twisted, leaning, or at angles other than those at which it was originally erected (such as may result from being blown or the failure of a structural support).
(5) Where the message or wording can no longer be clearly read.
(6) Where the sign or its elements are not in compliance with the requirements of the current Electrical Code and/or the Building Code of the City of Plano.

Public right-of-way means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by or under the control of the city to which the city holds the property rights. The term is synonymous with "street," "public way," and "right-of-way." Private property does not include the area that is between the curb and outside edge of the sidewalk.

Sign means any device conveying either commercial or noncommercial messages or both commercial and noncommercial messages for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public but not including any lawful display of merchandise. The term "sign" shall also mean and include any display of one or more of the following:

(1) Any letter, numeral, figure, emblem, picture, outline, character, spectacle delineation, announcement, trademark, or logo.
(2) Multicolored bands, stripes, patterns, outlines, or delineations displayed for the purpose of commercial identification.
(3) Anything specified above in part or in combination by any means whereby the same are made visible from beyond the boundaries of the lot or parcel of property on which the same are displayed for the purpose of attracting attention outdoors to make anything known.

Sign – A-frame/Sandwich Board means self-supporting A-shaped sign with two visible sides that is situated on or adjacent to a sidewalk.

Sign – Amenity means any sign advertising options, features, or conveniences offered by a business and installed in a manner which is temporary as defined by this ordinance.

Sign – Development/Construction means any onsite temporary sign pertaining to the development of land or construction of buildings and/or the identity of a developer or any related party, for such building or land.

Sign – Freestanding means an onsite sign or three-dimensional representation of a figure or object not attached to any building, supported by uprights, braces or some other approved support, which is capable of withstanding the stress from weight and wind load.

Sign – Garage Sale means any sign advertising the sale of personal household goods in a residential zoning district or on the property of a nonprofit organization for which a garage sale permit has been issued.

Sign – Model Home means any sign identifying a new home, either furnished or unfurnished, as being a builder's or contractor's model open to the public for inspection.

Sign – Noncommercial means any sign used for a noncommercial purpose.

Sign – Political means any sign relating to a particular candidate for a partisan or nonpartisan office, or to a political proposition or measure.

Sign – Portable means any sign that is not permanently attached to or affixed to the ground, a building, an object, or other fixed structure. This term specifically includes an advertising display affixed to or installed on a vehicle or other mobile unit, such as trailer, wheel, or skid.

Sign – Promotional means any temporary advertising items used to promote a business. Such items include banners, flags, pennants, streamers, balloons, inflatable signs, and any legal sign allowed by this ordinance.

Sign – Real Estate means any onsite temporary sign pertaining to the sale or rental of property and advertising property only for the use for which it is legally zoned.

Sign – Sandwich Board See Sign – A-frame.

Sign – Special Event means signage allowed in conjunction with a Special Event Permit.

2-4

Sign – Temporary means any sign used to display information relating to a land use or event of limited duration which is not rigidly and permanently installed in the ground, attached to a building, or as identified in this ordinance.

Sign – Temporary Directional means any temporary sign used to direct potential customers to a legal business location within the city limits of Plano.

Sign – Setback means the horizontal distance between a sign and the front or side property line, as measured from that part of the sign, including its extremities and supports nearest to any point on any imaginary vertical plane projecting vertically from the front or side property line.

DIVISION 2. PROHIBITED SIGNS

Sec. 6-487. Prohibited Signs

Except as otherwise expressly allowed by this ordinance, the following signs and conditions are prohibited:

(a) Signs displaying materials determined to be obscene by a court of law or prohibited by law, subject to the appeal and judicial review proceedings provided for in Subsection 3.1601.9.f of the Comprehensive Zoning Ordinance.

(b) Signs placed in any location which by reason of their location will obstruct the view of any authorized traffic sign, signal, or other traffic control device by vehicular or pedestrian traffic. No sign shall be erected which, by reason of shape, color, size, design, or position, would be reasonably likely to create confusion with, to be confused as, or to interfere with any traffic signal or device which is authorized by the appropriate state or local government authorities. Further, no sign shall be placed in a location that will obstruct vision of a vehicle operator while entering, exiting, or traveling upon the public right-of-way.

(c) Signs placed so as to prevent or inhibit free ingress to or egress from any door, window, or any exit way required by the Building Code of the City of Plano or by Fire Department regulations.

(d) Portable signs, including those on vehicles where the intent is to use the vehicle as advertising. This provision does not restrict identification signs on vehicles or other signs attached to vehicles, which are legally licensed and operated upon public streets.

(e) A-frame and sandwich board signs except where allowed in a zoning district.

(f) Signs that are animated by any means not providing constant illumination, except time and temperature units. Signs which rotate or emit audible sound or visible matter. No sign shall be illuminated to such intensity or in such a manner so as to cause a glare or brightness to a degree that it constitutes a hazard or nuisance to vehicular traffic, pedestrians, or adjacent properties.

(g) Signs located on public property including, but not limited to, signs attached to any public utility pole or structure, street light, tree, fence, fire hydrant, bridge, curb, sidewalk, park bench, or other location on public property.

(h) Balloons, flags, pennants, or other floating or inflatable signs or devices anchored to the ground or to any other structure, except, as allowed under the provisions of this article.

(i) Roof signs.

(j) Temporary signs except as allowed by this article.

(k) Amenity signs.

(l) Billboard signs.

(m) Signs attached to a standpipe or fire escape.

(n) Signs erected on or over public property or in the right-of-way of any thoroughfare within the City of Plano, unless the same is erected by the city or with the permission of the city for public purposes. (Exception: Signs located in the Downtown Business/Government district may be erected over the public sidewalk provided the sign projects no more than the width of the sidewalk minus one foot and provided the clearance between the bottom of the sign and the sidewalk below is a minimum of seven feet.)

(o) No person shall attach any sign, paper, or other material, or paint, stencil, or write any name, number (except house numbers), or otherwise mark on any sidewalk, curb, gutter, street, utility pole, public building, or structure, except as otherwise allowed by this ordinance.

2-6

(p) No person shall place on or suspend from any building, light fixture, pole structure, sidewalk, parkway, driveway, or parking area any goods, wares, merchandise, or other advertising object or structure for the purchase of advertising such items other than a sign, as defined, regulated, and prescribed by this ordinance, except as otherwise allowed by this ordinance.

(q) It shall be unlawful for any person to place or cause to be placed any private temporary directional sign(s) within the city of Plano on any public right-of-way of any major or minor thoroughfare (street designated as Type A, B, C, D, E, F, or G in the City of Plano Thoroughfare Plan). The Building Official may impound all signs in violation of this section.

(r) Searchlights.

(s) Offsite/Premise signs (except as allowed in Subsection 3.1503.5.i of the City of Plano Comprehensive Zoning Ordinance).

DIVISION 3. PERMITTED SIGNS

Sec. 6-488. Banners

A temporary banner is allowed and shall be securely attached to the front or side of a building face. Each business shall be allowed two banner permits per calendar year, and each permit shall be good for a maximum of 30 days. A minimum of 30 days shall be required between each banner permit. Banners shall be kept in good repair and remain firmly anchored or secured. Commercial banners are prohibited in single-family residential districts.

Sec. 6-489. Development/Construction Signs

Development or construction signs may be erected in nonresidential and residential zoning districts. Such signs shall relate only to the property or subdivision on which they are located and shall not exceed 100 square feet with a maximum height of 20 feet. Required setback shall be 20 feet from the front property line. Each property or subdivision may have one such sign or one for each 50 acres or portion thereof. A development or construction sign shall be removed upon completion of the project or subdivision.

Sec. 6-490. Model Home Signs

Model home signs may be erected in residential zoning districts and shall not exceed 16 square feet with a maximum height of six feet. Required setback

shall be 50% of the distance between the front property line and the building but no less than then feet from the front property line. Model home signs are limited to one per premise. Each builder in a subdivision may have one model home sign, and the permit for such sign shall be granted for a period of time to coincide with the validity of the model home's Certificate of Occupancy.

Sec. 6-491. Political Signs/Noncommercial Purpose Signs

Political and noncommercial purpose signs 36 square feet or less are allowed on private property with the consent of the property owner, but are prohibited on public property, including the rights-of-way. Political signs may be placed on private property no earlier and 120 days prior to the election for which the sign is applicable and must be removed not later than the 15th day following the election. City personnel may remove and dispose of any sign placed on public property or within the rights-of-way.

Sec. 6-492. Real Estate Signs

Real estate signs may be erected in nonresidential and residential zoning districts and shall not exceed 32 square feet with a maximum height of 15 feet. Required setback shall be eight feet from front property line, and signs are limited to one per street front. A real estate sign shall be removed upon the sale of the property. Real estate signs advertising the lease of individual units in multifamily districts shall be allowed upon issuance of a Certificate of Occupancy for a period not to exceed one year.

Sec. 6-493. Promotional Signage

(a) Promotional signage is allowed for two, two-week periods each calendar year per legal business. A two-week period will commence on the first day promotional signage is displayed. The two, two-week periods shall not occur in the same or consecutive months. A legal business shall include any commercial, industrial, or institutional use for which the Building Inspection Department has issued a Certificate of Occupancy. In the case of a special promotion for a grand opening celebration, one period may be extended to a three-week period provided the promotion commences within the first three months of the date of issuance of a Certificate of Occupancy, and the grand opening is limited to the address noted on the Certificate of Occupancy.

(b) Promotional signage may include banners, flags, pennants, streamers, balloons, inflatable signs, and any legal signs allowed by this ordinance. Any device described as promotional signage shall not exceed an overall height of 35 feet.

2-8

(c) A separate permit is required for each two-week period promotional signage will be used. If any device described as promotional signage in the above paragraph is installed prior to issuance of a permit, and investigation fee will be assessed in addition to the permit fee.

(d) Promotional signage shall be contained on the property of the legal business and shall not extend into the city right-of-way. Signage shall not be located in any sight visibility triangle nor shall any combustible materials be placed in contact with lighted signs or any electrical fixtures.

Sec. 6-494. Signage for Temporary/Seasonal Businesses

Seasonal business signs are reviewed as part of the issuance of a seasonal business permit as set out in Section 11-156 of Chapter 11, Licenses and Building Regulations of this Code, and shall be limited to one of the following:

(a) A temporary, freestanding sign, maximum 32 square feet in area with an eight foot setback from the front property line.

(b) An onsite banner, maximum 32 square feet in area with an eight foot setback from the front property line. The banner must be securely installed and be completely mounted on a rigid surface.

Sec. 6-495. Garage Sale Signs

Garage sale signs may be displayed on private property with the consent of the owner on the day of the sale and shall not exceed a maximum of eight square feet. Private property does not include the area that is between the curb and outside edge of the sidewalk.

Sec. 6-496. Special Event Signage

Special event signage shall be reviewed as part of the overall Special Event Permit as set out in Section 11-311 of Chapter 11, Licenses and Building Regulations of this Code, and shall be limited to the following:

(a) Any signage allowed under promotional signage.

(b) One, maximum 100 square foot sign, maximum height of 15 feet.

(c) All special event signage shall be limited to the property holding the event.

(d) The sign shall be allowed up to 14 days prior to the event and shall be removed within 24 hours at the end of the event.

DIVISION 4. PERMIT REQUIREMENTS AND EXEMPTIONS

Sec. 6-497. Exempt Signs

All signs allowed under this article must obtain a permit from the Building Official of the City of Plano unless specifically exempt. The following signs are exempt from the permit requirement; however, such signs shall comply with all other ordinance requirements:

(a) Signs not exceeding eight square feet in area which advertise the sale, rental, or lease of the premises on which such signs are located.

(b) Signs not exceeding 16 square feet in area when located upon the premises of a public, charitable, or religious organization.

(c) Signs located inside a building and which are not displayed so as to be visible from outside the building including, but not limited to, signs located in covered mall buildings.

(d) Temporary contractor signs not exceeding 16 square feet in area provided they comply with all other requirements of this ordinance.

(e) Political and noncommercial purpose signs on private property.

(f) Incidental signs provided they comply with all other requirements of this ordinance.

(g) Memorial signs or tablets, names of buildings, and date of erection, when cut into any masonry surface or when constructed of bronze or other noncombustible materials.

(h) Temporary or seasonal sale signage provided that they comply with all other requirements of this ordinance.

(i) Traffic or street signs, legal notices, railroad crossing signs, danger, and such emergency, temporary or non-advertising signs as approved by the City of Plano.

2-10

(j) Window signs provided all other requirements of the ordinance are met.

(k) Garage sale signs provided that they comply with all other requirements of this ordinance.

(l) Copy change only for signs otherwise allowed under this ordinance.

(m) Nameplates not exceeding one square foot in area.

(n) Onsite directional signs provided that they comply with all other requirements of this ordinance.

(o) Occupational signs provided then they comply with all other requirements of this ordinance.

(p) Flags and flagpoles under 20 feet in height provided that they comply with all other requirements of this ordinance.

(q) Signage for Special Event Permits shall be reviewed with the Special Events Permits and shall comply with all requirements of this ordinance.

(r) Sign facings when replaced for the same business.

(s) Replacement of letters on non-illuminated wall signs with identical letters (same shape and size).

DIVISION 5. VIOLATIONS AND ENFORCEMENT

Sec. 6-498. Violations

(a) A person is responsible for a violation of this ordinance if the person is: (1) the permit holder, owner, agent, or person(s) having the beneficial use of the sign, (2) the owner of the land or structure on which the sign is located, or (3) the person in charge of erecting the sign.

(b) It shall be unlawful for any person to erect, replace, alter, or relocate any sign within the City of Plano, or cause the same to be done, without first obtaining a permit to do so from the Building Official of the City of Plano, except for those signs exempt from a permit under Section 6-497 of this Article.

(c) It shall be unlawful for any person to use, maintain, or otherwise allow the continued existence of any sign for which the required permit was not obtained.

(d) It shall be unlawful for any person to install, construct, or display a prohibited sign, as defined herein, or any sign in violation of the provisions of this ordinance within the City of Plano.

(e) It shall be unlawful for any person to violate any term or provision of this ordinance.

Sec. 6-499. Enforcement

(a) Authority. The Building Official, or his respective designee(s), any peace officer, and any code enforcement officer is hereby authorized to issue a citation and to order the repair or removal of any dilapidated, deteriorated, abandoned, illegal, or prohibited signs from property within the corporate city limits of Plano, in accordance with the enforcement mechanisms set forth in this section.

(b) Removal of Sign.

(1) Signs placed on public or city-owned property within the corporate limits of the City of Plano in violation of the law shall be removed and disposed of immediately without notice to interested parties.

(2) The City may remove a sign from private property which the Building Official finds to be an immediate and imminent threat to the public safety because of its dilapidated, deteriorated, or structural condition. If an emergency removal is required, within five (5) business days of the removal, the official shall notify in writing the owner of the sign, if known, and property owner where the sign was found of the grounds for removal. If impounded, the official shall notify in writing the owner of the sign, if known, and property owner of the process for retrieval. Notice to the owner is not a prerequisite to the removal of the sign."

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

2-12

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

Section IV. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, 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 V. The repeal of any ordinance or part of ordinances affected by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this ordinance.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Planning		Initials	Date
Department Head	Phyllis M. Jarrell	Executive Director		11/8/05
Dept Signature:	P. Jarrell	City Manager		11/8/05
Agenda Coordinator (include phone #):				

ACTION REQUESTED: ☒ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER PUBLIC HEARING

CAPTION

PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, SO AS TO REZONE 56.5± ACRES (TRACT I - 17.3± ACRES AND TRACT II – 39.2± ACRES) OUT OF THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 153, LOCATED ON THE NORTH SIDE OF MCDERMOTT ROAD, 270± FEET EAST OF OHIO DRIVE, AND WEST OF THE FUTURE EXTENSION OF RASOR PARKWAY IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM REGIONAL COMMERCIAL AND NEIGHBORHOOD OFFICE TO PLANNED DEVELOPMENT-177-SINGLE-FAMILY RESIDENCE ATTACHED (TRACT I - 17.3± ACRES) AND PLANNED DEVELOPMENT-178-SINGLE-FAMILY RESIDENCE-6 (TRACT II – 39.20± ACRES); DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE. TABLED 10/24/2005.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

At the applicant's request, this item was tabled to the November 14, 2005, City Council meeting.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Ordinance Staff Write Up Follow Up Memo	Planning & Zoning Commission

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Z:CC/ZC2005-36 (TE)

REV 08/98

DATE: October 4, 2005

TO: Honorable Mayor & City Council

FROM: Laura Williamson, Chairman, Planning & Zoning Commission

SUBJECT: Results of Planning & Zoning Commission Meeting of October 3, 2005

AGENDA ITEM NO. 8A - PUBLIC HEARING
ZONING CASE 2005-36
APPLICANTS: CAY TRUST NO. 2 AND PRESTON/121 J.V.

DESCRIPTION:

A request to rezone 56.5± acres located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Boulevard **from** Regional Commercial and Neighborhood Office **to** Planned Development-Single-Family Residence Attached and Planned Development-Single-Family Residence-6. Zoned Regional Commercial and Neighborhood Office. Tabled 09/19/05.

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

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **FAVOR:** 2 **OPPOSE:** 0

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

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

STIPULATIONS:

Recommended for approval subject to:

The western 17.3± acre area of the request is recommended as PD-SF-A subject to:

1. The minimum lot area shall be 2,000 square feet.
2. The minimum lot width shall be 24 feet.
3. The minimum lot depth shall be 85 feet.
4. The minimum front yard setback shall be ten feet.
5. The maximum lot coverage shall be 90% total for the primary dwelling plus accessory structures.

3-2

6. The minimum rear yard setback shall be zero feet. No off-street parking spaces exclusive of a garage or carport shall be required.

7. Required usable open space may be provided within the PD-SF-6 portion of the request.

The eastern 39.2± acre area of the request is recommended as PD-SF-6 subject to:

1. The minimum front yard setback shall be 20 feet.

2. The minimum side yard setback shall be six feet.

3. The maximum lot coverage shall be 50% total for the primary dwelling plus accessory structures.

Two commissioners voted in opposition to the request, citing concerns about traffic generation and excessive density and lot coverage of the proposed residential zoning.

FOR CITY COUNCIL MEETING OF: October 24, 2005 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

TE/pp

xc: Cay Trust No. 2
Kirk Williams, Winstead Sechrest & Minick
Lynn Woodall, Administrative Support Supervisor

CITY OF PLANO

PLANNING & ZONING COMMISSION

October 3, 2005

Agenda Item No. 8A

Public Hearing: Zoning Case 2005-36

Applicants: Cay Trust No. 2 and Preston/121 J.V.

DESCRIPTION:

A request to rezone 56.5± acres located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway **from** Regional Commercial and Neighborhood Office **to** Planned Development-Single-Family Residence Attached and Planned Development-Single-Family Residence-6. Zoned Regional Commercial and Neighborhood Office. Tabled 09/19/05.

REMARKS:

This item was tabled at the September 19, 2005, Planning & Zoning Commission meeting. It must be removed from the table.

The applicant is requesting to rezone the property from Regional Commercial (RC) and Neighborhood Office (O-1) to two residential districts. For the western 17.3± acres, the applicant proposes Planned Development-Single-Family Residence Attached (PD-SF-A) zoning. For the eastern 39.2± acres, the applicant proposes Planned Development-Single-Family Residence-6 (PD-SF-6) zoning. The SF-A district is intended to provide for a variety of residential housing types and densities in the medium density range (five to ten units per acre) on individually-platted lots or multiple units on a single lot. The SF-6 district is intended to provide for small-lot, urban, single family development protected from excessive noise, illumination, odors, visual clutter, and other objectionable influences to family living. A planned development (PD) district provides the ability to amend use, height, setback and other requirements at the time of zoning to promote innovative site design and better development controls appropriate to both offsite and onsite conditions.

The applicant proposes to amend the lot area, lot width, lot depth, front yard setback, rear yard setback, lot coverage, and off-street parking standards of the base SF-A zoning district. The request does not propose to change the minimum ten percent usable open space requirement of the SF-A district; however, the request proposes to permit the open space to be provided within the PD-SF-6 portion of the request. The applicant proposes to amend the front yard setback, side yard setback, and lot coverage standards of the base SF-6 zoning district. A concept plan accompanies the zoning request as Agenda Item 8B.

Surrounding Land Use and Zoning

The area of the request is undeveloped and is used for agricultural purposes. The site has gentle terrain, sloping generally to the east and southeast. There are few trees and no significant native vegetation on the site.

The southern boundary of the property is McDermott Road, a four-lane divided thoroughfare. South of McDermott Road, the property is zoned Planned Development-12-Retail/General Office (PD-12-R/O-2) and is undeveloped. Properties to the north and west are zoned RC. These RC properties are partially developed as various building material sales, superstore, retail, restaurant, and automotive uses. The eastern boundary of the property is the future extension of Rasor Parkway, a six-lane divided thoroughfare. East of future Rasor Parkway, the property is zoned O-1 and is undeveloped. This property is designated as Major Parks and Recreation land use on the Future Land Use Plan, and as Proposed Park on the Park Master Plan.

Conformance to the Comprehensive Plan

Future Land Use Plan - The Future Land Use Plan designates this area as Major Corridor Development (MCD). The proposed PD-SF-A and PD-SF-6 zoning is inconsistent with the future Land Use Plan.

Adequacy of Public Facilities - The site has adequate water, sanitary sewer, and storm water facilities.

Traffic Impact Analysis (TIA) - A TIA is not required for single-family residential developments.

ISSUES:

Request to Rezone Nonresidential Property to Residential

The applicant is requesting to rezone the property from a nonresidential zoning classification to a residential classification. Policy Statement No. 2.0, Rezoning Property to Meet Demand, of the Land Use Element of the Comprehensive Plan, provides criteria to consider when reviewing such rezoning requests.

3-5

The request complies with Policy Statement No. 2.0. The area is physically appropriate for residential use. The area is not affected by adverse environmental conditions such as noise, light, fumes, or related nuisances. The rezoning of land would not result in a shortage of land for neighborhood retail or service uses, and would not diminish the land base considered prime for economic expansion. The rezoning of excess retail and office land to residential use is consistent with the intent of reducing the overall impact of zoning imbalance on the city's land use system. The rezoning would not leave a residual tract of nonresidentially zoned property that is inconsistent with the Comprehensive Plan or that could negatively affect the proposed residential use.

"Retail Study of Underperforming and Vacant Retail Areas"

In 2003, City Council adopted the *Retail Study of Underperforming and Vacant Retail Areas* initiated by the cities of Carrollton, Richardson, and Plano. The study examined the retail market conditions in the three cities and offered alternatives to address underperforming and vacant retail sites. The study recommended rezoning retail land to a residential zoning classification when there was "an oversupply of commercial space in the immediate area." There is approximately 750,000 square feet in Plano of developed retail space within one-half mile radius of the area of the request. The RC zoning of this tract and the other undeveloped RC and retail properties within the half-mile radius have the potential to increase the amount of retail space by approximately 250,000 square feet. The requested residential rezoning would reduce the amount of undeveloped retail zoning consistent with the study's recommendations.

Request for PD-SF-A Zoning

The applicant intends to develop a townhouse residential product that is a blend of Plano's urban and suburban townhouse standards. The planned development does not propose to change the building height, front yard setback (for rear-entry garage), visitor parking, and total open space area standards of the SF-A district. The following changes are proposed to the base SF-A district:

1. To reduce the minimum lot area from 2,250 square feet to 2,000 square feet.

2. To reduce the minimum lot width for interior lots from 25 feet to 24 feet.

3. To reduce the minimum lot depth from 90 feet to 85 feet.

4. To reduce the minimum rear yard setback from 20 feet (for rear-entry garages) to zero feet, and to delete the requirement for two off-street parking spaces exclusive of a garage or carport.

5. To increase the maximum lot coverage from 65% to 90% for primary dwelling plus accessory structures.

6. To permit usable open space to be within the PD-SF-6 portion of the development subject to SF-A open space distance, size, and street frontage criteria.

3-6

The applicant intends to develop a townhouse product that is different than other townhouse residences in Plano. The decreases in lot depth, width, and area, deletion of off-street parking spaces, and increase in lot coverage will create the street presence and minimal maintenance of an urban-style neighborhood. Townhouse development is an appropriate transition between the existing commercial development to the west and north and the proposed PD-SF-6 development to the east. The request is consistent with a major concept of the Housing Element of the Comprehensive Plan to have a wide variety of housing types to serve a diverse population.

Request for PD-SF-6 Zoning

The following changes are proposed to the base SF-6 district:

1. To reduce the minimum front yard setback from 25 feet to 20 feet.

2. To change the minimum side yard setback from the greater of six feet or ten percent of the lot width to six feet.

3. To increase the lot coverage from 35% for the primary dwelling plus ten percent for accessory structures to 50% total lot coverage for dwelling plus accessory structures.

These proposed amendments will allow construction of a large master suite on the first floor of the residence.

SUMMARY:

The request for PD-SF-A and PD-SF-6 zoning is not consistent with the MCD land use designation of the Comprehensive Plan; however, the rezoning of the property to residential use follows the recommendation of the *Retail Study of Underperforming and Vacant Retail Areas* to reduce land zoned for retail development. The physical character of the land is appropriate for residential use. The proposed townhouse stipulations will result in a unique residential product consistent with the Housing Element goal of providing a variety of housing types.

RECOMMENDATION:

Recommended for approval subject to:

The western 17.3± acre area of the request is recommended as PD-SF-A subject to:

1. The minimum lot area shall be 2,000 square feet.

2. The minimum lot width shall be 24 feet.

3. The minimum lot depth shall be 85 feet.

4. The minimum front yard setback shall be ten feet.

3-7

5. The maximum lot coverage shall be 90% total for the primary dwelling plus accessory structures.

6. The minimum rear yard setback shall be zero feet. No off-street parking spaces exclusive of a garage or carport shall be required.

7. Required usable open space may be provided within the PD-SF-6 portion of the request.

The eastern 39.2± acre area of the request is recommended as PD-SF-6 subject to:

1. The minimum front yard setback shall be 20 feet.

2. The minimum side yard setback shall be six feet.

3. The maximum lot coverage shall be 50% total for the primary dwelling plus accessory structures.

ORDINANCE NO. _____
(Zoning Case 2005-36)

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, SO AS TO REZONE 56.5± ACRES (TRACT I - 17.3± ACRES AND TRACT II – 39.2± ACRES) OUT OF THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 153, LOCATED ON THE NORTH SIDE OF MCDERMOTT ROAD, 270± FEET EAST OF OHIO DRIVE, AND WEST OF THE FUTURE EXTENSION OF RASOR PARKWAY IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM REGIONAL COMMERCIAL AND NEIGHBORHOOD OFFICE TO PLANNED DEVELOPMENT-177-SINGLE-FAMILY RESIDENCE ATTACHED (TRACT I - 17.3± ACRES) AND PLANNED DEVELOPMENT-178-SINGLE-FAMILY RESIDENCE-6 (TRACT II – 39.20± ACRES); DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 14th day of November, 2005, for the purpose of considering rezoning 56.5± acres (Tract I - 17.3± acres and Tract II – 39.2± acres) out of the Collin County School Land Survey, Abstract No. 153, located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway in the City of Plano, Collin County, Texas, from Regional Commercial and Neighborhood Office to Planned Development-177-Single-Family Residence Attached (Tract I - 17.3± acres) and Planned Development-178-Single-Family Residence-6 (Tract II – 39.2± acres); and

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

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 14th day of November, 2005; and

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

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

Section I. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to rezone 56.5± acres (Tract I - 17.3± acres and Tract II – 39.2± acres) out of the Collin County School Land Survey, Abstract No. 153, located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway in the City of Plano, Collin County, Texas, from Regional Commercial and Neighborhood Office to Planned Development-177-Single-Family Residence Attached (Tract I - 17.3± acres) and Planned Development-178-Single-Family Residence-6 (Tract II – 39.2± acres), said property being described in the legal description on Exhibit "A" attached hereto.

Section II. The change granted in Section I is granted subject to:

Tract I - 17.3± acres

1. The minimum lot area shall be 2,000 square feet.
2. The minimum lot width shall be 24 feet.
3. The minimum lot depth shall be 85 feet.
4. The minimum front yard setback shall be ten feet.
5. The maximum lot coverage shall be 90% total for the primary dwelling plus accessory structures.
6. The minimum rear yard setback shall be zero feet. No off-street parking spaces exclusive of a garage or carport shall be required.
7. Required usable open space may be provided within the Planned Development-Single-Family-6 portion of the request.

Tract II 39.2± acres

1. The minimum front yard setback shall be 20 feet.
2. The minimum side yard setback shall be six feet.
3. The maximum lot coverage shall be 50% total for the primary dwelling plus accessory structures.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

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

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

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

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

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

PASSED AND APPROVED THIS THE 14TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

Z:ORD\ZC2005-36 (TE)

EXHIBIT "A"
LEGAL DESCRIPTION

TRACT I – 17.275± ACRES
PLANNED DEVELOPMENT-SINGLE FAMILY – ATTACHED

BEING a tract of land situated in the Collin County School Land Survey No. 7, Abstract No. 153, Collin County (CC), Texas, and being a portion of a tract of land conveyed to Preston/121 Joint Venture by deed recorded in CC #95-0039500 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for the most southeasterly corner of Lot 6, Block A of Haggar Square Retail Center, an addition to the City of Plano according to the plat recorded in Cabinet L, Page 794 of the plat records of Collin County, Texas (PRCCT), said point being in the westerly line of a tract of land conveyed to Cay Trust No. 2 and the Nine – Fifteen Trusts by deed recorded in CC #93-0023016 (LRCCT);

THENCE along the westerly line of said Cay Trust No. 2 and the Nine – Fifteen Trusts (CC #95-0023016) tract South 00° 24' 06" East, a distance of 607.66 feet to a point for the most northerly corner of a tract of land conveyed to Cay Trust No. 2 and the Nine – Fifteen Trusts by deed recorded in CC #98-0018241 (LRCCT);

THENCE along the westerly line of said Cay Trust No. 2 and the Nine – Fifteen Trusts (CC #98-0018241) tract South 07° 29' 00" West a distance of 608.69 feet to a point for the intersection of the westerly line of said Cay Trust No. 2 and the Nine – Fifteen Trusts (CC #98-0018241) tract and the northerly right-of-way line of McDermott Road (92' right-of-way);

THENCE along the northerly right-of-way line of said McDermott Road as follows:

South 89° 41' 08" West a distance of 14.83 feet to a point for beginning of a non-tangent curve to the right having a radius of 954.00 feet, a chord bearing north 85° 01' 17" West and a chord distance of 176.81 feet;

Along said non-tangent curve to the right through a central angle of 10° 38' 03" for an arc length of 88.79 feet to a point for the beginning of a curve to the left having a radius of 1,046.00 feet, a chord bearing North 84° 44' 39" West and a chord distance of 183.78 feet;

Along said curve to the left through a central angle of 10° 04' 47" for an arc length of 184.02 feet to the point;

North 89° 47' 03" West a distance of 212.72 feet to a point;

THENCE departing the northerly right-of-way line of said McDermott Road North 00° 08' 01" East a distance of 380.22 feet to a point for corner;

THENCE North 00° 05' 18" East a distance of 281.15 feet to a point for the most southeasterly corner of Lot 9, Block A of Haggar Square Retail Center, an addition to the City of Plano according to the plat recorded in Cabinet L, Page 780 (PRCCT);

THENCE along the easterly line of said Lot 9, Block A North 00° 24' 06" West a distance of 150.00 feet to a 1/2 inch iron rod found for the most northeasterly corner of said Lot 9, Block A;

THENCE departing the easterly line of said Lot 9, Block A North 89° 35' 54" East a distance of 39.81 feet to a point;

THENCE North 00° 19' 57" West a distance of 362.25 feet to a point;

THENCE North 89° 35' 54" East a distance of 623.75 feet to the POINT OF BEGINNING and CONTAINING within these metes and bounds 17.275 acres or 752.10 square feet of land, more or less.

TRACT II – 39.176± ACRES
PLANNED DEVELOPMENT-SINGLE FAMILY-6

BEING a tract of land situated in the Collin County School Land Survey No. 7, Abstract No. 153, Collin County, Texas, and being a portion of a tract of land conveyed to Cay Trust No. 2 and the Nine – Fifteen Trusts by deed recorded in CC #93-0018241 (LRCCT) and a portion of a tract of land conveyed to Cay Trust No. 2 and the Nine – Fifteen Trusts by deed recorded in CC #93-0023016 (LRCCT) and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found for corner in the easterly line of Lot 3, Block A of Haggar Square Retail Center Lots 2, 3, and 4, an addition to the City of Plano according to the plat recorded in Cabinet K, Page 616 of the Plat Records of Collin County, Texas (PRCCT), said point being in the westerly line of said Cay Trust No. 2 (CC #93-0023016) tract;

THENCE along and departing the easterly line of said Lot 3, Block A North 63° 15' 29" East a distance of 812.38 feet to a point;

THENCE South 43° 12' 33" East a distance of 559.16 feet to a point for corner in the westerly line of proposed Rasor Parkway (proposed 110' right-of-way);

THENCE South 61° 38' 34" East a distance of 110.00 feet to a point for corner in the easterly line of said proposed Robinson Road;

THENCE along the easterly line of said proposed Rasor Parkway as follows:

South 28° 21' 26" West a distance of 283.42 feet to a point for the beginning of a curve to the left having a radius of 1,945.00, a chord bearing South 17° 19' 15" West and a chord distance of 744.67 feet;

Along said curve to the left through a central angle of 22° 04' 21" for an arc length of 749.29 feet to a point for the beginning of a curve to the right having a radius of 1,055.00 feet, a chord bearing South 14° 50' 12" West and a chord distance of 313.78 feet;

Along said curve to the right through a central angle of 17° 06' 16" for an arc length of 314.95 feet to the point;

South 24° 06' 05" West a distance of 159.31 feet to a point for the beginning of a non-tangent curve to the right having a radius of 1,065.00 feet, a chord bearing South 34° 23' 15" West and a chord distance of 89.05 feet;

Along said non-tangent curve to the right through a central angle of 04° 47' 32' for an arc length of 89.08 feet to the point;

South 36° 47' 01" West a distance of 31.32 feet to a point;

South 31° 38' 32" East a distance of 18.39 feet to a point in the northerly right-of-way line of McDermott Road (variable width right-of-way) said point being the beginning of a non-tangent curve to the right having a radius of 795.00 feet and having a chord bearing of South 83° 34' 38" West and a chord distance of 126.03 feet;

THENCE departing the easterly line of said proposed Rasor Parkway and along the northerly right-of-way line of said McDermott Road as follows:

Along said non-tangent curve to the right through a central angle of 09° 05' 33" for an arc length of 126.16 feet to the point;

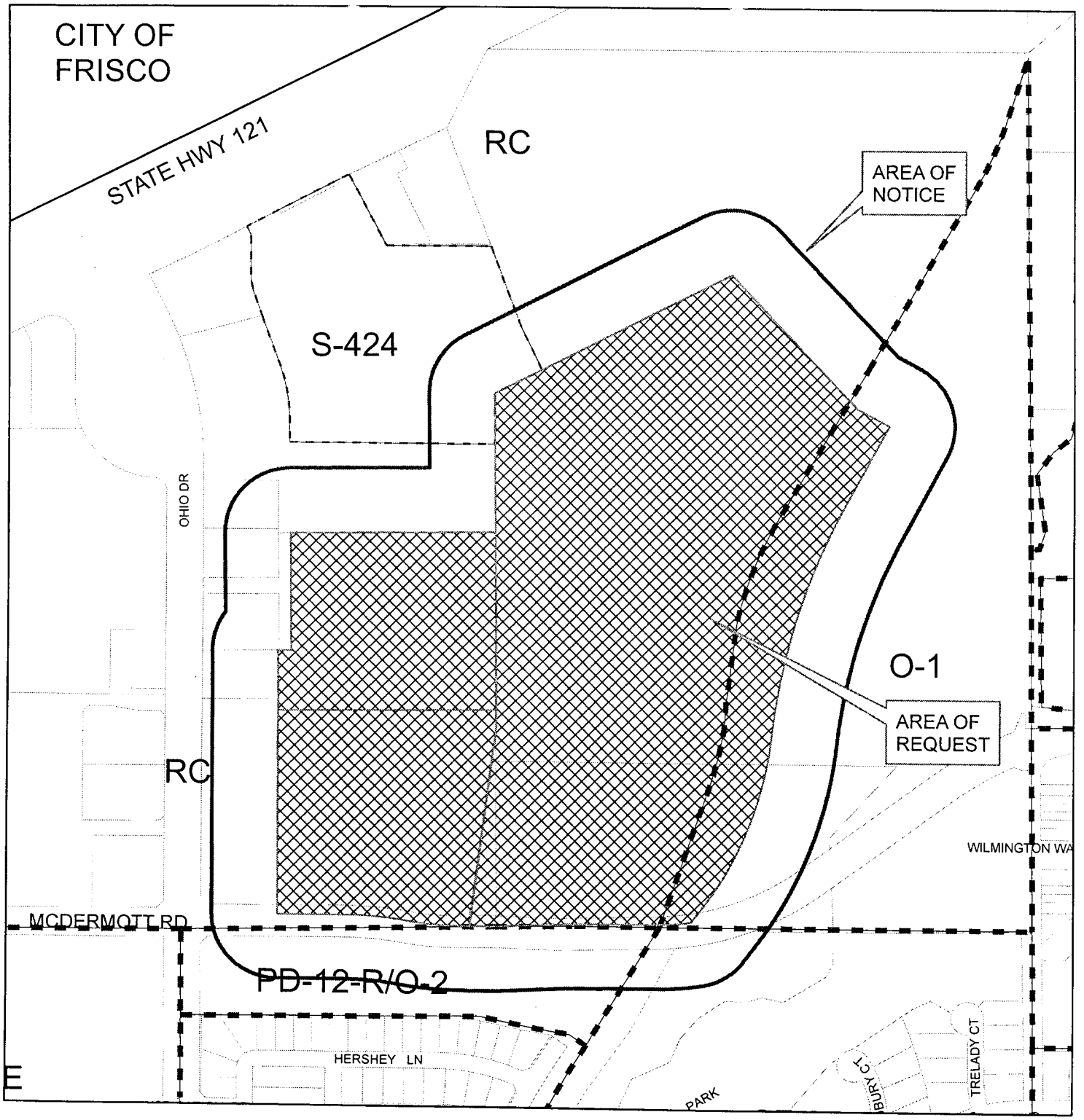
South 89° 38' 06" West a distance of 294.89 feet to a point for corner;

South 87° 06' 47" West a distance of 200.02 feet to a point for corner;

South 89° 41' 08" West a distance of 96.10 feet to a point for the intersection of the easterly line of said Preston/121 Joint Venture tract and the northerly right-of-way line of said McDermott Road;

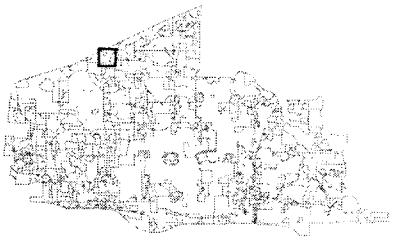
THENCE departing the northerly right-of-way line of said McDermott Road and along the easterly line of said Preston/121 Joint Venture tract North 07° 29' 00" East a distance of 608.69 feet to a point;

THENCE North 00° 24' 06" West a distance of 1,040.62 feet to the POINT OF BEGINNING and CONTAINING within these metes and bounds 39.176 acres or 1,706,505 square feet of land, more or less.



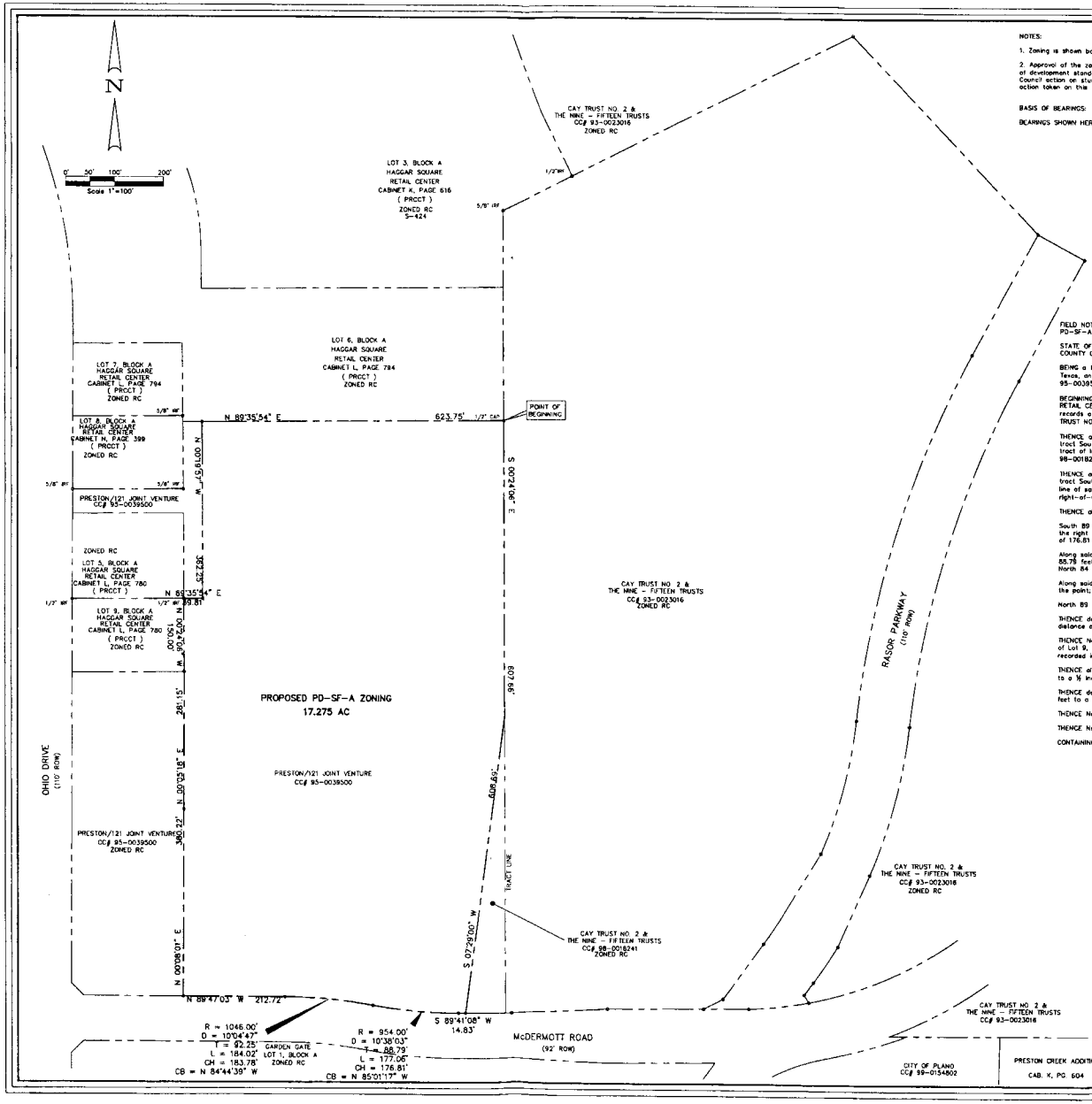
Zoning Case #: 2005-36

Existing Zoning: REGIONAL COMMERCIAL &
NEIGHBORHOOD OFFICE



○ 200' Notification Buffer

3-15



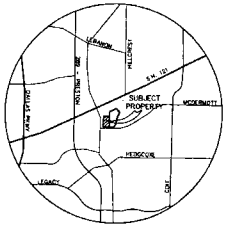
NOTES:

1. Zoning is shown based on the City of Plano website.

2. Approval of the zoning case associated with this exhibit shall not imply approval of any associated study, plat, or plan, approval of development standards shown hereon, or the initiation of the development process. Planning & Zoning Commission and/or City Council action on studies, plats or plans relating to development of this property shall be considered as an action separate from action taken on this zoning case.

BASIS OF BEARINGS:

BEARINGS SHOWN HEREON ARE BASED ON CITY OF PLANO MONUMENTS F8 AND H9.



LOCATION MAP

FIELD NOTE DESCRIPTION
PD-SF-A ZONING

STATE OF TEXAS
COUNTY OF COLLIN

BEING a tract of land situated in the COLLIN COUNTY SCHOOL LAND SURVEY NO. 7, Abstract No. 153, Collin County, Texas, and being a portion of a tract of land conveyed to PRESTON/121 JOINT VENTURE by deed recorded in CC# 95-0039500 of the Land Records of Collin County, Texas (LRCCT) and being more particularly described as follows:

BEGINNING at a ½ inch iron rod found for the most southeasterly corner of LOT 8, block A of HAGGAR SQUARE RETAIL CENTER, an addition to the City of Plano according to the plat recorded in Cabinet L, Page 794 of the plat records of Collin County, Texas (PRCCT), said point being in the westerly line of a tract of land conveyed to CAY TRUST NO. 2 AND THE NINE - FIFTEEN TRUSTS by deed recorded in CC# 93-0023016 (LRCCT);

THENCE along the westerly line of said CAY TRUST NO. 2 AND THE NINE - FIFTEEN TRUSTS (CC# 93-0023016) tract South 00 deg 24 min 06 sec East a distance of 607.69 feet to a point for the most northerly corner of a tract of land conveyed to CAY TRUST NO. 2 AND THE NINE - FIFTEEN TRUSTS by deed recorded in CC# 98-0018241 (LRCCT);

THENCE along the westerly line of said CAY TRUST NO. 2 AND THE NINE - FIFTEEN TRUSTS (CC# 98-0018241) tract South 07 deg 29 min 00 sec West a distance of 608.69 feet to a point for the intersection of the westerly line of said CAY TRUST NO. 2 AND THE NINE - FIFTEEN TRUSTS (CC# 98-0018241) tract and the northerly right-of-way line of MCDERMOTT ROAD (92' right-of-way);

THENCE along the northerly right-of-way line of said MCDERMOTT ROAD as follows:

South 89 deg 41 min 08 sec West a distance of 14.83 feet to a point for beginning of a non-tangent curve to the right having a radius of 954.00 feet, a chord bearing North 85 deg 01 min 17 sec West and a chord distance of 176.81 feet,

Along said non-tangent curve to the right through a central angle of 10 deg 38 min 03 sec for an arc length of 88.79 feet to a point for the beginning of a curve to the left having a radius of 1046.00 feet, a chord bearing North 84 deg 44 min 39 sec West and a chord distance of 183.78 feet;

Along said curve to the left through a central angle of 10 deg 04 min 47 sec for an arc length of 184.02 feet to the point;

North 89 deg 47 min 03 sec West a distance of 212.72 feet to a point;

THENCE departing the northerly right-of-way line of said MCDERMOTT ROAD North 00 deg 08 min 01 sec East a distance of 380.22 feet to a point for corner;

THENCE North 00 deg 03 min 18 sec East a distance of 281.15 feet to a point for the most southeasterly corner of Lot 9, Block A of HAGGAR SQUARE RETAIL CENTER, an addition to the City of Plano according to the plat recorded in Cabinet L, Page 780 (PRCCT);

THENCE along the easterly line of said Lot 9, Block A North 00 deg 24 min 06 sec West a distance of 150.00 feet to a ½ inch iron rod found for the most northeasterly corner of said Lot 9, Block A;

THENCE departing the easterly line of said Lot 8, Block A North 89 deg 35 min 54 sec East a distance of 39.81 feet to a point;

THENCE North 00 deg 19 min 57 sec West a distance of 382.25 feet to a point;

THENCE North 89 deg 35 min 54 sec East a distance of 623.75 feet to the POINT OF BEGINNING,

CONTAINING within these metes and bounds 17.275 acres or 752,510 square feet of land, more or less.

COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 153

PROPOSED PD-SF-A
ZONING EXHIBIT
17.275 ACRES
ZONING CASE 2005-36

WINKELMANN & ASSOC., INC.
6750 HILLCREST PLAZA DRIVE
SUITE 100
DALLAS, TEXAS 75230
972-490-7090

PORTRAIT HOMES L.P.
4949 HEDGCOXE ROAD, SUITE 110
PLANO, TEXAS 75024
972-335-8992

Winkelmann & Associates, Inc.
CONSULTING CIVIL ENGINEERS & SURVEYORS
6750 HILLCREST PLAZA DRIVE, SUITE 100
DALLAS, TEXAS 75230
(972) 490-7090
(972) 490-7099 FAX

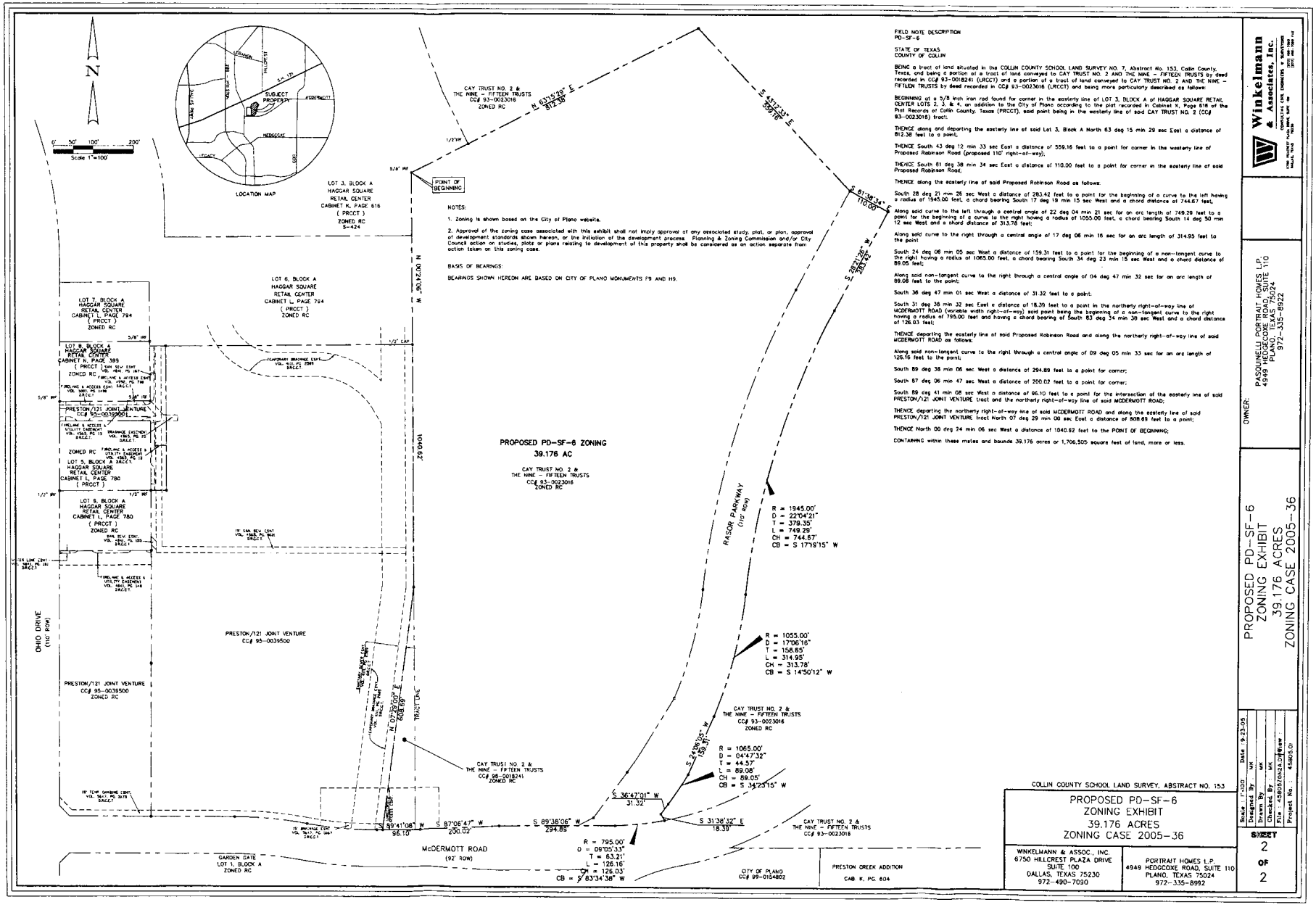
OWNER:
PASQUINELLI PORTRAIT HOMES L.P.
4949 HEDGCOXE ROAD, SUITE 110
PLANO, TEXAS 75024
972-335-8922

PROPOSED PD-SF-A
ZONING EXHIBIT
17.275 ACRES
ZONING CASE 2005-36

Scale 1"=100' Date 9-23-05
Designed By : MK
Drawn By : MK
Checked By : MK
File : 45805ZONE.Dwg Layout:
Project No. : 45805.01

SHEET
1
OF
2

3-16



NOTES:

1. Zoning is shown based on the City of Plano website.

2. Approval of the zoning case associated with this exhibit shall not imply approval of any associated study, plat, or plan, approval of development standards shown hereon, or the initiation of the development process. Planning & Zoning Commission and/or City Council action on studies, plats or plans relating to development of this property shall be considered as an action separate from action taken on this zoning case.

BASIS OF BEARINGS:

BEARINGS SHOWN HEREON ARE BASED ON CITY OF PLANO MONUMENTS F9 AND H9.

FIELD NOTE DESCRIPTION
PD-SF-6

STATE OF TEXAS
COUNTY OF COLLIN

BEING a tract of land situated in the COLLIN COUNTY SCHOOL LAND SURVEY NO. 7, Abstract No. 153, Collin County, Texas, and being a portion of a tract of land conveyed to CAY TRUST NO. 2 AND THE NINE - FIFTEEN TRUSTS by deed recorded in CC# 93-0018241 (LRCCT) and a portion of a tract of land conveyed to CAY TRUST NO. 2 AND THE NINE - FIFTEEN TRUSTS by deed recorded in CC# 93-0023016 (LRCCT) and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found for corner in the easterly line of LOT 3, BLOCK A of HAGGAR SQUARE RETAIL CENTER LOTS 2, 3, & 4, an addition to the City of Plano according to the plat recorded in Cabinet K, Page 616 of the Plat Records of Collin County, Texas (PRCCT), said point being in the westerly line of said CAY TRUST NO. 2 (CC# 93-0023018) tract;

THENCE along and departing the easterly line of said Lot 3, Block A North 63 deg 15 min 29 sec East a distance of 812.38 feet to a point;

THENCE South 43 deg 12 min 33 sec East a distance of 559.16 feet to a point for corner in the westerly line of Proposed Robinson Road (proposed 110' right-of-way);

THENCE South 81 deg 38 min 34 sec East a distance of 110.00 feet to a point for corner in the easterly line of said Proposed Robinson Road;

THENCE along the easterly line of said Proposed Robinson Road as follows:

South 28 deg 21 min 26 sec West a distance of 283.42 feet to a point for the beginning of a curve to the left having a radius of 1945.00 feet, a chord bearing South 17 deg 19 min 15 sec West and a chord distance of 744.67 feet;

Along said curve to the left through a central angle of 22 deg 04 min 21 sec for an arc length of 749.29 feet to a point for the beginning of a curve to the right having a radius of 1055.00 feet, a chord bearing South 14 deg 50 min 12 sec West and a chord distance of 313.78 feet;

Along said curve to the right through a central angle of 17 deg 06 min 16 sec for an arc length of 314.95 feet to the point

South 24 deg 06 min 05 sec West a distance of 159.31 feet to a point for the beginning of a non-tangent curve to the right having a radius of 1065.00 feet, a chord bearing South 34 deg 23 min 15 sec West and a chord distance of 89.05 feet;

Along said non-tangent curve to the right through a central angle of 04 deg 47 min 32 sec for an arc length of 89.08 feet to the point;

South 36 deg 47 min 01 sec West a distance of 31.32 feet to a point;

South 31 deg 38 min 32 sec East a distance of 18.39 feet to a point in the northerly right-of-way line of MCDERMOTT ROAD (variable width right-of-way) said point being the beginning of a non-tangent curve to the right having a radius of 795.00 feet and having a chord bearing of South 83 deg 34 min 38 sec West and a chord distance of 126.03 feet;

THENCE departing the easterly line of said Proposed Robinson Road and along the northerly right-of-way line of said MCDERMOTT ROAD as follows;

Along said non-tangent curve to the right through a central angle of 09 deg 05 min 33 sec for an arc length of 126.16 feet to the point;

South 89 deg 38 min 06 sec West a distance of 294.89 feet to a point for corner;

South 87 deg 06 min 47 sec West a distance of 200.02 feet to a point for corner;

South 89 deg 41 min 08 sec West a distance of 96.10 feet to a point for the intersection of the easterly line of said PRESTON/121 JOINT VENTURE tract and the northerly right-of-way line of said MCDERMOTT ROAD;

THENCE departing the northerly right-of-way line of said MCDERMOTT ROAD and along the easterly line of said PRESTON/121 JOINT VENTURE tract North 07 deg 29 min 00 sec East a distance of 605.89 feet to a point;

THENCE North 00 deg 24 min 06 sec West a distance of 1040.62 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 39.176 acres or 1,706,505 square feet of land, more or less.

COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 153

PROPOSED PD-SF-6
ZONING EXHIBIT
39.176 ACRES
ZONING CASE 2005-36

WINKELMANN & ASSOC., INC.
6750 HILLCREST PLAZA DRIVE
SUITE 100
DALLAS, TEXAS 75230
972-490-7090

PORTRAIT HOMES L.P.
4949 HEDGCOXE ROAD, SUITE 110
PLANO, TEXAS 75024
972-335-8992

Winkelmann & Associates, Inc.
CONSULTING CIVIL ENGINEERS & SURVEYORS
6750 HILLCREST PLAZA DRIVE, SUITE 100
DALLAS, TEXAS 75230
(972) 490-7090
(972) 490-7099 FAX

OWNER:
PASQUINELLI PORTRAIT HOMES L.P.
4949 HEDGCOXE ROAD, SUITE 110
PLANO, TEXAS 75024
972-335-8922

PROPOSED PD-SF-6
ZONING EXHIBIT
39.176 ACRES
ZONING CASE 2005-36

Scale	1"=100'
Date	9-23-05
Designed By	MK
Drawn By	MK
Checked By	MK
File	458057DN2A.DWGnew
Project No.	458005.01

SHEET 2 OF 2

3-17

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/14/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	City Secretary		Initials	Date
Department Head	Elaine Bealke	Executive Director		
Dept Signature:	Elaine Bealke	City Manager		10/24/05
Agenda Coordinator (include phone #):	Di Zucco - x7551			

ACTION REQUESTED: ☐ ORDINANCE ☒ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☐ OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, CASTING ITS BALLOT FOR THE ELECTION OF MEMBERS TO THE COLLIN COUNTY CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS UNDER THE PROVISION OF THE PROPERTY TAX CODE; AUTHORIZING THE MAYOR TO EXECUTE THE BALLOT FOR AND ON BEHALF OF THE CITY OF PLANO; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ 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

This item will provide for the casting of the City of Plano Ballot for the election of members to the Collin County Appraisal District Board of Directors.

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

4-1

REV 08/98

RECEIVED
OCT 2 2005
CITY SECRETARY'S OFFICE

Collin Central Appraisal District

October 19, 2005

Elaine Bealke, City Secretary
City of Plano
P. O. Box 860358
Plano, TX 75086

Dear Ms. Bealke:

Enclosed you will find the ballot listing the nominees for the Board of Director positions for the Central Appraisal District of Collin County. The candidates are listed alphabetically by their last name.

Each voting unit must vote in open meeting, report its vote by written resolution, and submit it to the chief appraiser before December 15, 2005. Each unit may cast all its votes for one candidate or distribute the votes among any number of the candidates listed. Since there is no provision for write-in candidates, the Chief Appraiser may not count votes for someone not listed on the official ballot.

Sincerely,

Jimmie C. Honea

Jimmie C. Honea
Chief Appraiser

JCH/mir

Enclosure

4-2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, CASTING ITS BALLOT FOR THE ELECTION OF MEMBERS TO THE COLLIN COUNTY CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS UNDER THE PROVISION OF THE PROPERTY TAX CODE; AUTHORIZING THE MAYOR TO EXECUTE THE BALLOT FOR AND ON BEHALF OF THE CITY OF PLANO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Property Tax Code provides a taxing jurisdiction may cast its ballot for members to the Collin County Central Appraisal District Board of Directors under certain terms and conditions as provided by law; and

WHEREAS, the City Council of the City of Plano, Texas, has deliberated on these matters and selected the person for whom it wishes to vote.

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

Section I. The City Council authorizes Mayor Pat Evans to cast the ballot for the City of Plano as follows:

_____

Section II. The official ballot of the Central Appraisal District of Collin County is attached hereto and made a part hereof of Exhibit "A."

Section III. This resolution shall become effective immediately upon its passage, and a certified copy shall be delivered to the Chief Appraiser prior to December 15, 2005.

DULY PASSED AND APPROVED THIS THE 14TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

4-3

Collin Central Appraisal District

OFFICIAL BALLOT

ISSUED TO: **City of Plano** NUMBER OF VOTES: **378**

FOR: **BOARD OF DIRECTORS, CENTRAL APPRAISAL DISTRICT OF COLLIN COUNTY.**

RONALD CARLISLE	_____ VOTES
DWAYNE ELLEDGE	_____ VOTES
DR. LEO FITZGERALD	_____ VOTES
CLYDE GEER	_____ VOTES
WAYNE MAYO	_____ VOTES
JIM OLK	_____ VOTES
GARY RODENBAUGH	_____ VOTES
SCOTT SHUPPERT	_____ VOTES
ROY WILSHIRE	_____ VOTES

OCTOBER 19, 2005

Jimmie C. Honea

Jimmie C. Honea, Chief Appraiser

Section 6.03 (g) of the State Property Tax Code requires the above action be taken by resolution, therefore, please attach a copy of the resolution to this ballot and return to the Chief Appraiser, at 2404 K Avenue, Plano, Texas 75074-5911, before December 15, 2005.

4-4

2006-2008
CENTRAL APPRAISAL DISTRICT
BOARD OF DIRECTOR'S NOMINATIONS

RONALD CARLISLE	Is a current board member and has served since 1/94. Nominated by Frisco ISD and McKinney ISD.
DWAYNE ELLEDGE	Nominated by the City of Murphy.
DR. LEO FITZGERALD	Is a current board member and has served since the beginning of the Appraisal District, 1/80. Nominated by Plano ISD and McKinney ISD.
CLYDE GEER	Nominated by the City of McKinney.
WAYNE MAYO	Is a current board member and has served since 1/98. Nominated by the City of Richardson and McKinney ISD.
JIM OLK	Nominated by the City of Lucas.
GARY RODENBAUGH	Is a current board member and has served since 1/01. Nominated by the City of Allen, Allen ISD, and McKinney ISD.
SCOTT SHUPPERT	Nominated by the City of Celina.
ROY WILSHIRE	Is a current board member and has served since 01/03. Nominated by the City of Plano and McKinney ISD.

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