

CITY COUNCIL

1520 AVENUE K



DATE: 11/22/2010
CALL TO ORDER: 7:00 p.m.
INVOCATION: Rabbi Stefan Weinberg
Congregation Anshai Torah
PLEDGE OF ALLEGIANCE: Cub Scout Pack 261
Christie Elementary

| ITEM NO. | EXPLANATION | ACTION TAKEN |
|----------|--|--------------|
| (a) | <p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u> Presentation: Amy Fortenberry - 20 Year Anniversary</p> <p><u>COMMENTS OF PUBLIC INTEREST</u> <u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u> <u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u> November 8, 2010</p> | |

| ITEM NO. | EXPLANATION | ACTION TAKEN |
|----------|--|--------------|
| | <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> | |
| (b) | Bid No. 2010-28-C for a one (1) year contract with three (3) City optional renewals to purchase full encirclement pipe repair clamps, flange coupling adapters, service saddles, and steel couplings for Warehouse Inventory from Ferguson Enterprises Inc., Mainline Supply Company, & Municipal Water Works Supply in an estimated amount of \$53,353 and authorizing the City Manager to execute all necessary documents. | |
| (c) | Bid No. 2009-60-C for an initial term of 48 months, with two (2) one-year City optional renewals for Personal Protective Clothing for Structural Fire Fighting to Casco Industries Inc. in the amount of \$449,280 and authorizing the City Manager to execute all necessary documents. | |
| | <p>Purchase from an Existing Contract</p> | |
| (d) | To approve the purchase of GIS Maintenance in the amount of \$57,100 from ESRI through an existing contract with Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR-SDD-492) | |
| (e) | To approve a contract for the purchase of Commvault-Galaxy Software Premium Support Coverage, in the amount of \$118,774 from CDW Government, through an existing contract with The Cooperative Purchasing Network (TCPN), and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R4713) | |
| (f) | To approve a contract for the purchase of maintenance support for network infrastructure switches in the amount of \$243,767 from INX, Inc. through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1386) | |
| (g) | To approve a contract for the purchase of microwave backhaul links to the new Emergency Operations Center, in the amount of \$314,775 from Scientel Wireless, LLC, through an existing contract with the Houston-Galveston Area Council (HGAC), and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. CW10-09) | |
| | <p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p> | |
| (h) | To approve of an annual contract with renewals by and between the City and E-Recycler for electronic recycling collection services and authorizing the City Manager to execute all necessary documents. (2011-30-C) | |
| (i) | To approve of the agreement with CaremarkPCS Health, L.L.C. for pharmacy benefit management services at the estimated cost of \$4,000,000 annually for pharmacy claims, entered into through an existing agreement with PEBA (Public Employee Benefits Alliance), and authorizing the City Manager to execute all necessary documents. | |

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| (j) | <p>Approval of Change Order</p> <p>To Hencie International, Inc., increasing the contract by \$104,283 for the 2009-2010 Pavement Maintenance Project- Phase I, Project No. 6020, Change Order No. 1, Original Bid No. 2010-69-B.</p> | |
| | <p><u>Adoption of Resolutions</u></p> | |
| (k) | <p>To approve the action of the Arts of Collin County Commission, Inc. to dedicate and convey a portion of land to the City of Allen, Texas to maintain the Six City Trail; and providing an effective date.</p> | |
| (l) | <p>To approve the terms and conditions of a grant awarded by the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) to the City of Plano, Texas for Child Sexual Predator Program (CSPP); authorizing the execution of any and all documents in connection therewith by the City Manager; and providing an effective date.</p> | |
| (m) | <p>To support a study of US75 regarding necessary improvements to accommodate the increasing traffic volume; authorizing the City Manager to effectuate such study; and providing an effective date.</p> | |
| (n) | <p>To approve the issuance of a letter in support of the North Texas Municipal Water District's request for a two-year extension of time to comply with the Federal Stage 2, Disinfection Byproduct Rule; authorizing its execution by the Mayor and providing an effective date.</p> | |
| | <p><u>Adoption of Ordinances</u></p> | |
| (o) | <p>To repeal in its entirety Ordinance No. 2008-11-28, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date.</p> | |
| (p) | <p>To repeal Ordinance No. 2005-12-14; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department in a rank less than Battalion Chief serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date.</p> | |

| ITEM NO. | EXPLANATION | ACTION TAKEN |
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| | <p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p> <p>(1) To approve the terms and conditions of a Depository Services Contract with Frost Bank for the Treasury department, and authorizing the City Manager to execute the contract and all other necessary documents for CSP No. 2010-170-C; and providing an effective date.</p> <p>(2) Consideration of a Resolution to approve the Investment Portfolio Summary for the quarter ending September 30, 2010 and providing an effective date.</p> <p>(3) Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 124 for tax abatement consisting of two tracts of land totaling 6.837 acres located in the Maria C. Vela Survey, Abstract No. 935 and the Henry Cook Survey, Abstract No. 183, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p> <p>(4) Consideration of a Resolution to approve the terms and conditions of an agreement by and between the City of Plano, Texas, County of Collin, Texas, KDC Legacy North Investments One, LP, and Encana Oil and Gas (USA) Inc.; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.</p> <p>(5) Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Encana Oil & Gas (USA) Inc.; authorizing its execution by the City Manager; and providing an effective date.</p> | |

| ITEM NO. | EXPLANATION | ACTION TAKEN |
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| (6) | <p>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2010-18 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-434-Retail, on 10.5± acres located at the northeast corner of McDermott Road and Coit Road in the City of Plano, Collin County, Texas, to reduce landscape edge requirements and amend related sections of the ordinance; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: Ronald McCutchin Family Partnership, Ltd.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p> | |



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | City Manager's Office | | |
| Department Head | | Thomas Muehlenbeck | | |
| Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161 | | | | |
| CAPTION | | | | |
| Presentation: Amy Fortenberry 20 Year Anniversary | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): | | | | |
| COMMENTS: | | | | |
| SUMMARY OF ITEM | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| | | | | |

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
November 8, 2010**

COUNCIL MEMBERS

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

STAFF

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

Mayor Dyer called the meeting to order at 5:02 p.m., Monday, November 8, 2010, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice; and to receive information regarding Economic Development, Section 551.087; and Personnel, Section 551.074; for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 5:50 p.m.

Consideration and Action Resulting From Executive Session

No items were brought forward.

Zero-Base Budget Discussion

Director of Budget and Research Rhodes-Whitley advised that Zero-base budgeting is a system that begins every budget cycle at zero, rejecting any assumption that the activities that were funded in the last budget will continue in the coming one. She provided a history of the process and stated that while state and local governments tried implementation, most ended due to the paperwork generated and time required. Ms. Rhodes-Whitley advised that development of a Zero-base budget would include decision packages for each program, service and/or business offered by the City including differing levels of funding and service. She spoke to the City of Plano's 449 identified programs and development of three alternatives for each.

Ms. Rhodes-Whitley advised that the current process is a combination of target/priority-based budgeting in which departments are provided a target and utilize decision packages to provide justification or make adjustments to their budgets with services ranked based on how well they align with strategic priorities. She further stated that the Strategic Plan, developed by the Council, identifies the goals for the City and the Core Business Matrix identifies programs/services. Ms. Rhodes-Whitley advised that implementation of Zero-base budgeting would take at least two years requiring a financial system to categorize programs/services to cost centers (rather than departments), restructuring of commodity codes, orders and reporting, and resetting all access security. She advised that implementation would also require restructuring of the personnel system to allocate time dedicated to each program/system. Ms. Rhodes-Whitley advised that budget preparation would require additional department time, training on the new budget and financial systems and additional Budget Department personnel. She spoke to a survey of cities nationwide indicating that most use a modified approach of target/priority/outcome and reviewed a new initiative which will prioritize all programs city-wide in light of the strategic plan.

Council Member Smith spoke in support of overall prioritization, Council review of line items to determine justification for expenditures and bringing forward further discussion following appointment of a new city manager. Council Member Davidson spoke to Zero-base budgeting as a point to reestablish a base budget and in support of overall prioritization. Council Member Callison stated concern regarding implementation of Zero-base budgeting and in support of prioritization.

Discussion/Direction Regarding Issuance of Debt for Water/Sewer

Director of Finance Tacke spoke to previous discussion regarding the issuance of debt to fund water/sewer improvements. She advised that certificates of obligation require no voter authorization, must be published in the newspaper and can be bundled with general obligation bond offerings. She further stated that they are subject to referendum by a voter's petition and are backed by the full faith and credit of the City. Ms. Tacke further advised that revenue bonds require no voter authorization, are paid solely from water/sewer revenues and require a reserve fund.

City Manager Muehlenbeck spoke to prior concern regarding funding levels for capital improvement projects as the City has no reserves in place and spoke to the certificates of obligation utilized for the Police Department's radio system and the moto-mesh system. Mr. Muehlenbeck advised that even though the City did not make the "take or pay" requirements of its contract with the North Texas Municipal Water District, revenues are better than anticipated. He further recommended that current capital programs for water/sewer in the amount of \$13.2 million be funded without issuing debt and monies be set aside to develop a reserve fund. He spoke in support of revenue debt rather than certificates of obligation in the future.

Comprehensive Monthly Financial Report

Finance Director Tacke advised that for the month of September 2010, General Fund revenue was down slightly as a percentage of budget when compared to last year with the Water/Sewer, Sustainability and Civic Center funds up slightly. She advised that actual figures indicate the General Fund is down \$2.3 million as compared to last year partially due to reductions in ad valorem taxes. Ms. Tacke spoke the level of sales tax being up as compared to the prior year and advised regarding lower General Fund expenses (\$7 million). Ms. Tacke advised that the unemployment rate decreased slightly to 7.3%, provided a recap of the real estate market and advised that actual water/sewer revenues are up \$8.2 million due to decreased rainfall and a rate increase.

Discussion/Direction Regarding Annual Fire Inspection Program

Chief Esparza advised that per Council direction, Staff has reduced proposed fees to cover only expenses for additional personnel and spoke to issues related to the timing of promotions to inspector's positions, funding, and billing methodology asking for Council's input regarding a possible delay in implementation until 2011-12. Chief Esparza responded to Council Member Smith, advising that inspectors must be state certified and stated that moving personnel from a station to inspections would result in a lower staffing level for trucks. He responded to the Council that inspectors must be fire fighters, that Staff is considering one inspector rather than two and Staff researched fees charged by other municipalities. The Council stated a consensus to approve the fee schedule and directed Staff to move forward as timing permits.

Discussion and Direction re Supporting a US75 Corridor Study

Mayor Dyer spoke regarding traffic counts for US75 and in support of a study.

Mayor Dyer stepped down from the bench at 6:47 p.m. and did not return.

City Manager Muehlenbeck spoke to a letter received from Collin County Judge Self requesting the City of Plano support a US75 Corridor Study. The Council stated consensus directing Staff to prepare a resolution in support.

Personnel Appointments - Self Sufficiency Committee

Upon a motion made by Council Member Smith and seconded by Council Member Davidson, the Council voted 8-0 to appoint Jason Beck.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agendas

Council Member Smith requested that Consent Agenda Item “H,” consideration of a resolution to approve the terms and conditions of a First Addendum to the Real Estate Contract by and between the City of Plano, Texas and Emajeon Haggard Hall relating to the purchase of 51.103 acres at the northwest corner of Alma Drive and Park Boulevard be removed for individual consideration due to a possible conflict of interest.

Nothing further was discussed. Mayor Pro Tem Dunlap adjourned the Preliminary Meeting at 6:49 p.m.

Phil Dyer, Mayor

Lee Dunlap, Mayor Pro Tem

ATTEST:

Diane Zucco, City Secretary

PLANO CITY COUNCIL
November 8, 2010

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Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, November 8, 2010, at 7:04 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Pastor Brian McClane of Northpointe Church, flags were posted by the American Legion Post 321 Honor Guard and the Pledge of Allegiance was led by Cub Scout Pack 235, Den 3 Webelos of Thomas Elementary School.

Mayor Dyer presented proclamations recognizing Veterans Day, National Nurse Practitioners Week and Animal Shelter Week and presented special recognition to Bradley Robertson who received an award at the SWANA National Truck Road-E-O.

Mayor Dyer administered Oaths of Office to incoming board members Shelly Bracken (Library Advisory Board) and Fred Balda (Planning and Zoning Commission).

COMMENTS OF PUBLIC INTEREST

Megan Seymour, University of Dallas student, requested the Council consider reducing Parks and Recreation usage fees for Plano Independent School District non-residents to resident levels, citing potential increased usage and additional revenues for City retail establishments. She further spoke to revising youth rates to include high school students and lowering rates for local college students.

CONSENT AGENDA

Upon the request of Mayor Dyer, Consent Agenda Item “F,” reimbursement of oversize participation to Wolverine Equities Company 2000 Highway 190, L.P. for public improvements associated with the construction of Mapleshade Road from Ohio Drive to Coit Road in the amount of \$53,357 was removed for individual consideration due to a possible conflict of interest.

Upon the request of Council Member Smith, Consent Agenda Item “H” was removed for individual consideration due to a possible conflict of interest.

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

Approval of Minutes (Consent Agenda Item “A”)

October 25, 2010

Approval of Expenditures

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

Bid No. 2010-211-C for a one (1) year contract with three (3) optional one year renewals for Security Personnel Services for Municipal Courts to Allegiance Security Group, LLC in the amount of \$57,048 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Bid No. 2010-247-B for Plano Senior Center Roof Replacement to Tice Enterprises, Ltd., in the amount of \$131,988 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

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

RFQ No. 2010-138-B for a one (1) year contract with six (6) optional one year renewals for the purchase of Advertising Agency services for the Plano Convention and Visitors Bureau to The Atkins Group in the amount of \$457,666 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “D”)

To approve an Engineering Services Contract by and between the City and Birkhoff, Hendricks & Carter, L.L.P., in the amount of \$359,100 for Custer Pump Station, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “E”)

Approval of Expenditure

To approve of the purchase of replastering the Oak Point Center indoor pool in the amount of \$128,580 from Sunbelt Pools through an existing contract or agreement with BuyBoard and authorizing the City Manager to execute all necessary documents (BuyBoard Contract 288-08). (Consent Agenda Item "G")

Adoption of Resolutions

Resolution No. 2010-11-1(R): To authorize the payment of disputed sales tax in the amount of \$82,502 for certain operations at the Pecan Hollow Golf Course and for the City Manager to execute any agreements to effectuate this settlement; and providing an effective date. (Consent Agenda Item "I")

Adoption of Ordinances

Ordinance No. 2010-11-2: To transfer the sum of \$82,502 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2010-11 for the purpose of providing funds for payment of disputed sales tax for certain operations at the Pecan Hollow Golf Course; amending the budget of the City and Ordinance 2010-9-8, declaring this action to be a case of public necessity; and providing an effective date. (Consent Agenda Item "J")

END OF CONSENT

Due to a possible conflict of interest, Mayor Dyer stepped down from the bench on the following item.

Reimbursement of Oversize Participation - To approve and authorize reimbursement to Wolverine Equities Company 2000 Highway 190, L.P. for oversize participation for public improvements associated with the construction of Mapleshade Road from Ohio Drive to Coit Road, in the amount of \$53,357. (Consent Agenda Item "F")

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to approve and authorize reimbursement to Wolverine Equities Company 2000 Highway 190, L.P. for oversize participation for public improvements associated with the construction of Mapleshade Road from Ohio Drive to Coit Road, in the amount of \$53,357.

Mayor Dyer resumed his seat at the bench.

Due to a possible conflict of interest, Council Member Smith stepped down from the bench on the following item.

Resolution No. 2010-11-3(R): To approve the terms and conditions of a First Addendum to the Real Estate Contract by and between the City of Plano, Texas and Emajeon Haggard Hall relating to the purchase of 51.103 acres at the northwest corner of Alma Drive and Park Boulevard in the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "H")

Resolution No. 2010-11-3(R) (cont')

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Harris, the Council voted 7-0 to approve the terms and conditions of a First Addendum to the Real Estate Contract by and between the City of Plano, Texas and Emajean Haggard Hall relating to the purchase of 51.103 acres at the northwest corner of Alma Drive and Park Boulevard in the City of Plano, Texas; and further to adopt Resolution No. 2010-11-3(R).

Council Member Smith resumed her seat at the bench.

Resolution No. 2010-11-4(R): To ratify the terms and conditions of a Contract by and between Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, a Delaware corporation, hereinafter referred to as "Contractor", and the City of Plano, Texas, a home-rule municipality, hereinafter referred to as "City", to be effective upon approval of the City Council and subsequent execution by the City Manager. (Regular Agenda Item "1")

Director of Environmental Services and Sustainability Nevil spoke to the recycling processing agreement with Allied Waste including a processing allowance of \$51.00 per ton deducted from gross revenues and capped at \$80,000 with Allied paying the City 80% of net revenues. Ms. Nevil reviewed items recycled, the City's relationship providing for revenues and spoke to the history of the Materials Recovery Facility (MRF) and single-stream technology. She spoke to comparison of processing allowances and negotiations involving the commercial franchise agreement resulting in the proposed rates. Ms. Nevil spoke to benefits of the partnership including revenue sharing, collection/cost avoidance reductions and the savings of \$1 million over ten years. She further advised that an ordinance establishing commercial rates will come forward on November 22, 2010.

Mayor Pro Tem Dunlap spoke to the commercial franchise agreement having no impact on residential rates and to the benefits of the recycling in receiving grant monies. He spoke to this agreement as a public/private partnership and contributions of Allied Waste to the community.

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Harris, the Council voted 8-0 to ratify the terms and conditions of a Contract by and between Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano and the City of Plano; and further to adopt Resolution No. 2010-11-4(R).

Public Hearing and adoption of Ordinance No. 2010-11-5 as requested in Zoning Case 2010-17 to amend Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to unified-lot signs; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano (Regular Agenda Item "2")

Ordinance No. 2010-11-5 (cont'd)

Director of Planning Jarrell spoke to the concept of unified-lot signs in which owners have entered into an agreement to treat properties as one so that a business may have signage on another's property. She stated that current regulations limit free-standing signs and deter redevelopment by limiting visibility. She spoke to retaining spacing, size and setback requirements and placing the burden on property owners/managers to determine signage. Ms. Jarrell advised that the Planning and Zoning Commission recommended approval subject to the following: (Deletions are indicated in strikethrough text; additions are indicated in underlined text)

Amend Subsection 3.1602 (Definitions) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations).

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| Sign - Unified-lot | Any identification or multipurpose sign located on a premise consisting of two or more contiguous lots that the owner(s) has agreed to treat as one lot for the limited purpose of providing shared signage. |
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Amend Subsection 3.1603 (Design and Construction Specifications) 2. (Freestanding Signs) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations).

(k) Unified-lot Signs

- i. Unified-lot signs may be erected in nonresidential zoning districts and shall comply with the all area, height, setback, spacing, and composition restrictions ~~applicable to multipurpose signs~~ for freestanding signs in Subsection 3.1603.
- ii. ~~One~~ Unified-lot signs per street front may be placed on a premise consisting of two or more contiguous lots where each lot owner has entered into a binding agreement to treat their separate lots as one lot for the limited purpose of signage. The agreement shall contain a legal description of the properties subject to the agreement; ~~state that the parties, their heirs, and assigns forego any rights to additional freestanding street front signage on the premises covered by the agreement; state that the agreement is a covenant running with the land to be filed and made a part of the Deed Records of Collin or Denton County, Texas; and that the agreement cannot be amended or terminated without the consent of the Building Official.~~ A unified-lot sign agreement shall not be effective until a true and correct copy of the approved agreement is filed in the Deed Records of the applicable county and a file-marked copy is filed with the Building Official.
- iii. ~~A unified lot sign agreement shall not be effective until a true and correct copy of the approved agreement is filed in the Deed Records of the applicable county and a file-marked copy is filed with the Building Official.~~
- iv. ~~Individual lots that are part of a unified lot sign agreement shall not be entitled to any other freestanding street front signage.~~

Ordinance No. 2010-11-5 (cont'd)

Ms. Jarrell responded to the Council, advising that this amendment would allow for new buildings or tenant signage in the future.

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

Upon a motion made by Deputy Mayor Pro Tem Miner and seconded by Council Member Davidson, the Council voted 8-0 to amend Section 3.1600 of Article 3 and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24; as requested in Zoning Case 2010-17 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2010-11-5.

Resolution No. 2010-11-6(R): To approve the terms and conditions of an Agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; providing for a real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "3")

Director of Finance Tacke advised that this item represents the third phase of development for Capital One including construction of a fourth building on their Plano campus (Reinvestment Zone No. 111) with commercial office space of 135,000 square feet by March 31, 2012. She advised that the agreement includes the creation or transfer of 200 full-time job equivalents on or before July 1, 2012, taxable real property values of \$5 million with a ten-year term beginning January 1, 2012 and ending December 31, 2021. Mayor Pro Tem Dunlap spoke to contributions made by Capital One to the community.

Upon a motion made by Deputy Mayor Pro Tem Miner and seconded by Council Member Harris, the Council voted 8-0 to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, and Capital One, National Association, providing for a real property tax abatement; and further to adopt Resolution No. 2010-11-6(R).

Resolution No. 2010-11-7(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "4")

Director of Finance Tacke advised that Capital One would occupy not less than 135,000 square feet of space and transfer or create 200 full-time jobs. She advised that the value of taxable real property improvements is \$5 million, business personal property \$4 million and terms of the lease are for ten years. Ms. Tacke advised that the City would grant up to \$100,000 reimbursement for permits and Building Inspection, Engineering and Planning fees; \$120,000 for the first 200 jobs; and up to \$180,000 for additional jobs (over 200) at \$600/each.

Resolution No. 2010-11-7(R) (cont'd)

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Smith, the Council voted 8-0 approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Capital One, National Association; and further to adopt Resolution No. 2010-11-7(R).

Resolution No. 2010-11-8(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas corporation; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "5")

Director of Finance Tacke advised that Futurewei Technologies, Inc. [d/b/a Huawei Technologies (USA)] would occupy not less than 35,000 square feet of existing office space and retain or create 110 full-time jobs by May 1, 2011 with up to an additional 90 full-time jobs by December 31, 2013. She advised that the value of taxable real property improvements is not less than \$1.25 million with business personal property of \$500,000, terms of the lease are for seven years beginning May 1, 2011, and that the agreement is in the amount of \$240,000.

Upon a motion made by Council Member Harris and seconded by Council Member Davidson, the Council voted 8-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Futurewei Technologies Inc., d/b/a Huawei Technologies (USA); and further to adopt Resolution No. 2010-11-8(R).

Resolution No. 2010-11-9(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Telect, Inc., a Washington corporation; authorizing its execution by the City Manager and providing an effective date. (Regular Agenda Item "6")

Director of Finance Tacke advised that Telect, Inc. would occupy not less than 100,000 square feet of existing commercial space and transfer or create 125 full-time jobs by December 31, 2010. She advised that the value of taxable real property improvements is not less than \$1.5 million, terms of the lease are for seven years and that the agreement is in the amount of \$87,500.

Upon a motion made by Deputy Mayor Pro Tem Miner and seconded by Council Member Callison, the Council voted 8-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Telect, Inc.; and further to adopt Resolution No. 2010-11-9(R).

Nothing further was discussed and Mayor Dyer adjourned the meeting at 7:52 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|-------------------------|--|------------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/10 | | |
| Department: | | Purchasing/Warehouse | | |
| Department Head | | Mike Ryan/Josh Matthews | | |
| Agenda Coordinator (include phone #): Earl Whitaker x7074 | | | | |
| CAPTION | | | | |
| Bid No. 2010-28-C for a one (1) year contract with three (3) City optional renewals to purchase full encirclement pipe repair clamps, flange coupling adapters, service saddles, and steel couplings for Warehouse Inventory from Ferguson Enterprises Inc., Mainline Supply Company, & Municipal Water Works Supply in an estimated amount of \$53,353 and authorizing the City Manager to execute all necessary documents. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 1,300,092 | 0 | 1,300,092 |
| Encumbered/Expended Amount | 0 | -83,263 | 0 | -83,263 |
| This Item | 0 | -53,353 | 0 | -53,353 |
| BALANCE | 0 | 1,163,476 | 0 | 1,163,476 |
| FUND(s): WAREHOUSE | | | | |
| COMMENTS: Funds are included in the FY 2010-11 adopted budget to purchase pipe clamps, couplings, and adapters for the Warehouse in the amount of \$53,353, from the Warehouse Stock Purchases account. STRATEGIC PLAN GOAL: Providing Warehouse Inventory equipment relates to the City's Goal of a "Financially Strong City with Service Excellence." | | | | |
| SUMMARY OF ITEM | | | | |
| Staff recommends approval of a one (1) year contract with three (3) City optional renewals to purchase full encirclement pipe repair clamps, flange coupling adapters, service saddles, and steel couplings for Warehouse Inventory from Ferguson Enterprises Inc. in the estimated amount of \$18,155.32 (Items: 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25) and Mainline Supply Company in the estimated amount of \$636.00 (Items: 10, 11) and Municipal Water Works Supply in the estimated amount of \$34,561.58 (Items: 1, 2, 16) for a total estimated amount of \$53,352.90 (Bid No. 2010-28-C) | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| Award Memo, Bid Recap | | | NA | |



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



MEMORANDUM

DATE: OCTOBER 28, 2010

TO: EARL WHITAKER

FROM: GENTRY STRICKLAND

SUBJECT: AWARD OF BID 2010 – 28 - C

I have completed the review and evaluation of proposals submitted in the above mentioned bid. I have also completed the evaluation of samples provided by the vendors.

Your Analysis for Award reflects the overall low bid being from Morrison Supply Company. However, their proposal for item #2010-28-C-1-02 was for a Midco #30 2" Flanged Coupling Adaptor, subject to acceptance as an equal to the Smith-Blair 926 (with alternate pricing). The Midco #30 is a much different design than the Smith-Blair 926. Currently within our system, there are thousands of the Smith-Blair 926 installed to connect the customers' water service to our water meter. Upon replacing the water meters (in conjunction with the Fixed Network Program), the flanged coupling adaptor is also replaced. It would not be advisable to replace those with a different design. To do so would be troublesome, more time consuming, and could cause damage to the customers' side during installation. The Smith-Blair is a compression type adaptor which can be easily slid onto the customers' line. The Midco has to be threaded onto the customers' line. I am unable to accept the Midco product as an equal. Thus in considering the alternate pricing, Morrison Supply Company would not be the lowest bid neither by line item, nor by overall.

The overall lowest bid would be from Municipal Water Works Supply for \$56,392.39 However by awarding to multiple vendors, the City stands to save \$3,039.49

It is my recommendation the bid be awarded to multiple vendors as follows:

Line items # 1, 2, and 16 to Municipal Water Works Supply for \$34,561.58

Line items # 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, and 25 to Ferguson Waterworks for \$18,155.32

Line items # 10 and 11 to Mainline Supply for \$636.00

Making the total cost of the contract \$53,352.90, a potential savings of \$3,039.49

CITY OF PLANO

BID NO. 2010-28-C

Full Encirclement Pipe Repair Clamps, Flange Coupling Adapters,
Service Saddle and Steel Coupling

BID RECAP

Bid opening Date/Time: October 4, 2010 prior to 3:00 pm

Number of Vendors Notified: 2102

Vendors Submitting "No Bids": 2

Number of Bids Submitted: 5

Bids Evaluated Non-Responsive to Specification: Morrison Supply Company non-responsive to line item #2.

| | |
|---|-------------|
| <u>ACT Pipe & Supply</u> | \$72,423.80 |
| <u>Ferguson Enterprises Inc.</u> | \$66,473.98 |
| <u>Mainline Supply (MSC Waterworks)</u> | \$94,875.90 |
| <u>Morrison Supply Company</u> | \$52,788.90 |
| <u>Municipal Water Works Supply</u> | \$56,392.39 |

Recommended Vendors:

| | |
|--|-------------|
| <u>Ferguson Enterprises Inc.</u> Items: 3, 4, 5, 6, 7, 8, 9, 12,13,14,15, 17, 18, 19, 20, 21, 22, 23, 24, and 25 | \$18,155.32 |
| <u>Mainline Supply Company</u> Items: 10, and 11 | \$636.00 |
| <u>Municipal Water Works Supply</u> Items: 1, 2, and 16 | \$34,561.58 |

Totals: **\$53,352.90**

Earl S. Whitaker

Earl S. Whitaker
Buyer

November 3, 2010

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|--|---|------------------------------|--|---------------------|-----------------|
| CITY SECRETARY'S USE ONLY | | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | | |
| Council Meeting Date: | | 11/22/10 | | | |
| Department: | | Purchasing | | | |
| Department Head | | Mike Ryan | | | |
| Agenda Coordinator (include phone #): Glenna Hayes (x7539) | | | | | |
| CAPTION | | | | | |
| Bid No. 2009-60-C for an initial term of 48 months, with two (2) one-year City optional renewals for Personal Protective Clothing for Structural Fire Fighting to Casco Industries Inc. in the amount of \$449,280, and authorizing the City Manager to execute all necessary documents. | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: | 2010-11, 2011-12, 2012-13, 2013-14 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | 0 | 112,320 | 336,960 | 449,280 |
| Encumbered/Expended Amount | | 0 | 0 | 0 | 0 |
| This Item | | 0 | -112,320 | -336,960 | -449,280 |
| BALANCE | | 0 | 0 | 0 | 0 |
| FUND(S): GENERAL FUND | | | | | |
| <p>COMMENTS: This item approves price quotes. Expenditures will be made in the Fire Department based on need within the approved budget appropriations for each year of the contract. The estimated total 48-month expenditure is \$449,280, which will be made within approved budget appropriations.</p> <p>STRATEGIC PLAN GOAL: Contracts for purchasing protective clothing for use by the Fire Department relate to the City's goals of "Financilly Strong City with Service Excellence" and "Safe Large City".</p> | | | | | |
| SUMMARY OF ITEM | | | | | |
| Staff recommends award to Casco Industries Inc. in the estimated annual amount of \$112,320 for an initial term of 48 months totaling \$449,280, with two (2) one-year City optional renewals be accepted as the best value for Protection Clothing for Structural Fire Fighting for the City of Plano Fire Department, conditioned upon timely execution of any necessary contract documents. 2009-60-C | | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | | |
| Award Recommendation; Bid Recap; Evaluation Matrix | | | | | |

Memorandum

Date: November 3, 2010
To: Glenna Hayes, Contract Specialist
From: Michael Malone, Fire Lieutenant
Subject: Award Recommendation: PPE for Structural Fire Fighting (2009-60-C)

After review of Bid Tabulation Packet **2009-60-C** Personal Protective Clothing for Structural Fire Fighting, the Fire Department recommends award to **Casco Industries**; the respondent providing the “Best Value” to the City of Plano Fire Department.

Project Overview

The Fire Department evaluation team for Bid 2009-60-C, comprised of six end users of varying ranks, duties and tenures of service, began its work on this project in May-2009 and concluded its business in October-2010. Project oversight and specification requirements were provided by FD Support Svcs. The City of Plano Purchasing Division was responsible for bid preparation and development of the multiphase “Best Value” Criterion outlined below:

“Best Value” Criterion

- **Phase-I Bid Evaluation**
 - Ability of the respondent to meet *Minimum Requirements* as specified (Pass/Fail)
 - Respondents that satisfied the minimum requirements were evaluated and scored
 - Respondents with the three (3) highest scores were selected to advance to Phase-II
- **Phase-II Wear Testing**
 - Respondents submitted six (6) complete sets of PPE for evaluation (one set per team member)
 - Evaluation team members performed an initial inspection and “Donning/Doffing” exercise
 - Evaluation team members participated in a six (6) month “Wear-Test”
 - Evaluation team members “Wear-Test” experiences were entered and scored on survey sheets
- **Phase-III Combined Scoring—FINAL**
 - Phase-I and Phase-II scores were weighted, combined and totaled for each respective respondent
 - Award to the respondent with the highest combined score, providing the “Best Value” to the City

Evaluation Summary

It was clearly evident throughout the evaluation process that the three respondent finalists provided the Fire Department with well designed quality manufactured products. Evaluation team members exercised great care during each phase of the evaluation process to even

handedly evaluate and score the three submitted bids, product offerings and their individual “Wear-Test” experiences as merited.

Respondent “Best Value” Rankings, according to their respective 1ST, 2ND or 3RD finishes were:

“Best Value” Rankings

- **Phase-I Bid Evaluation**
 1. Casco Industries/Globe
 2. MES/Morning Pride
 3. Metro Fire/Sperian

- **Phase-II Wear Testing**
 1. Casco Industries/Globe
 2. Metro Fire/Sperian
 3. MES/Morning Pride

- **Phase-III Combined Scoring–FINAL**
 1. **Casco Industries/Globe**
 2. Metro Fire/Sperian
 3. MES/Morning Pride

Accordingly, final analysis and scoring verifies the Fire Department’s “Best Value” recommendation of award to Casco Industries; estimated annual expenditure \$112,320.00.

Respectfully submitted,

Michael Malone

Michael Malone
Lieutenant – FD SupportSvcs

cc: Fire Chief Hugo Esparza
Assistant Chief Dan Thompson

CITY OF PLANO

BID NO. 2009-60-C PERSONAL PROTECTIVE CLOTHING For STRUCTURAL FIRE FIGHTING

BID RECAP

Bid opening Date/Time: March 16, 2009 @ 3:00 pm

Number of Vendors Notified: 587

Vendors Submitting "No Bids": 0

Number of Bids Submitted: 4

Casco Industries Inc.

Metro Fire Apparatus Specialists Inc.

Municipal Emergency Services, Inc.

Quaker Safety Products

Recommended Vendor:

Casco Industries Inc. \$112,320

Glenna Hayes

Glenna Hayes C.P.M.
Contract Specialist

November 10, 2010

Date

2009-60-C

PERSONAL PROTECTIVE CLOTHING for STRUCTURAL FIRE FIGHTING

EVALUATION MATRIX

FINAL SCORES

| Vendor | Casco Industries Inc. | Municipal Emergency Services Inc. (MES) | Metro Fire Apparatus |
|---------------|-----------------------|---|----------------------|
| Clothing Mfgr | Globe | Morning Pride | Sperian |
| Phase I 40% | 1.55 | 1.47 | 1.46 |
| Phase II 60% | 2.14 | 2.02 | 2.08 |
| TOTAL | 3.69 | 3.49 | 3.54 |



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|-------------------------|--|----------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | Purchasing | | |
| Department Head | | Mike Ryan | | |
| Agenda Coordinator (include phone #): Heather Parkerson x 7554 | | | | |
| CAPTION | | | | |
| To approve the purchase of GIS Maintenance in the amount of \$57,100 from ESRI through an existing contract with Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR-SDD-492) | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| 10-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| FISCAL YEAR: | | | | |
| Budget | 0 | 111,700 | 0 | 111,700 |
| Encumbered/Expended Amount | 0 | -17,000 | 0 | -17,000 |
| This Item | 0 | -57,100 | 0 | -57,100 |
| BALANCE | 0 | 37,600 | 0 | 37,600 |
| FUND(s): GENERAL FUND | | | | |
| COMMENTS: Funds are included in the 2010-11 Planning Department budget. This item, in the amount of \$57,100 will leave a current year balance of \$37,600 for other GIS Maintenance expenses. STRATEGIC PLAN GOAL: GIS maintenance relates to the City's Goal of Financially Strong City with Service Excellence. | | | | |
| SUMMARY OF ITEM | | | | |
| This item is an agreement with ESRI through the Department of Information Resources, State of Texas (DIR) in an amount of \$57,100 for annual maintenance, support and right-to-use licensing for the City's GIS software. The annual maintenance agreement covers all GIS software in use within the City with the exception of Public Works, which is covered within their department budget. The City is authorized to purchase from the State Contact List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies any State Law requiring the local governments to seek competitive bids for the items. Contract # DIR SDD-492 | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| Staff Memo Quote 25436065 | | | | |

11/8/2010

M E M O

TO: Phyllis Jarrell, Director of Planning

FROM: Ron Reynolds, GIS Manager

SUBJECT: GIS software maintenance

I am submitting for approval of renewal of our annual GIS software maintenance and upgrades of ESRI's GIS software. The maintenance item cover all support and licensing of ESRI software used in the City. The maintenance contract is required for us to continue to receive support from the vendor for upgrades, technical assistance or software patches. Without the maintenance we will be unable to efficiently or reliably support GIS systems or other city systems with a GIS component. Nor would the division be able to upgrade the GIS software in the future without first repurchasing the software. Other city systems that rely on GIS would be prevented from upgrading as well without upgrades to the core GIS products.

This product is not available in any other Cooperative.

RR



ESRI Inc
380 New York Street
REDLANDS CA 92373

SUBJECT: MAINTENANCE QUOTE

DATE: 09/07/2010
TO: RON REYNOLDS
ORGANIZATION: CITY OF PLANO
PLANNING DEPT
FAX #: 972-941-7396 **PHONE #:** 972-941-7242
FROM: Barbara Walker
FAX #: 909-307-3083 **PHONE #:** 909-793-2853 Ext. 3936
EMAIL: bwalker@esri.com

Number of pages transmitted
(including this cover sheet): 6

QUOTATION #25436065
DOCUMENT DATE: 09/04/2010

DIR-SDD-492
2006MPA4409

Please find the attached***REVISED*** quotation for your forthcoming software maintenance term. Keeping your maintenance current entitles you to exclusive benefits, and if you choose to discontinue your coverage, you will become ineligible for these valuable benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your coverage at a later date. For details regarding the maintenance program benefits for your licensing, please visit <http://www.esri.com/maintenancebenefits>.

Customers who have multiple copies of some ESRI products may have the option of supporting some of their licenses with secondary maintenance. Please contact Customer Service to find out more about the availability of secondary maintenance.

For information about ESRI Desktop terms and conditions, please visit http://www.esri.com/legal/pdfs/mla_e204_e300/english.pdf; for information about ESRI Server software, Developer software, or Web services terms and conditions, please visit <http://www.esri.com/legal/pdfs/mla.pdf>

For details about ECP discounts and waivers for non-profit users please visit <http://www.conservationgis.org/grant>

If you have any questions or need additional information, please contact Customer Service at 888-377-4575.



esri[®] 380 New York Street
 REDLANDS, CA 92373
 Phone: 909-793-28533936
 Fax #: 909-307-3083

Quotation

Date: 09/04/2010

Quotation Number: 25436065

Send Purchase Orders To:

ESRI, Inc.
 380 New York Street
 Redlands, CA 92373-8100
 Attn: Barbara Walker

Please include the following remittance address on your Purchase Order:

ESRI Inc.
 File #54630
 Los Angeles, CA 90074-4630

CITY OF PLANO
 PLANNING DEPT
 1520 AVE K STE 250
 PLANO TX 75074
Attn: RON REYNOLDS

Customer Number: 6245

For questions regarding this document, please contact Customer Service at 888-377-4575.

| Item | Qty | Material# | Unit Price | Extended Price |
|------|-----|---|------------|----------------|
| 10 | 2 | 52384 ArcInfo Concurrent Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 3,000.00 | 6,000.00 |
| 1010 | 10 | 52385 ArcInfo Concurrent Use Secondary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 1,200.00 | 12,000.00 |
| 2010 | 1 | 52396 ArcCOGO Floating Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 500.00 | 500.00 |
| 3010 | 1 | 86497 ArcEditor Concurrent Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 1,500.00 | 1,500.00 |
| 4010 | 5 | 86500 ArcEditor Concurrent Use Secondary Maintenance Start Date: 12/22/2010 | 1,200.00 | 6,000.00 |

This quotation is valid for 90 days and is subject to your ESRI License Agreement. The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (ESRI).

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. ESRI reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide ESRI with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Issued By: Barbara Walker

Ext: 3936

[CSBATCHDOM]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



esri[®]

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533936
Fax #: 909-307-3083

Quotation

Page 2

Date: 09/04/2010

Quotation Number: 25436065

| Item | Qty | Material# | Unit Price | Extended Price |
|-------|-----|---|------------|----------------|
| | | End Date: 12/21/2011 | | |
| 5010 | 3 | 87194 ArcView Concurrent Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 700.00 | 2,100.00 |
| 6010 | 24 | 87195 ArcView Concurrent Use Secondary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 500.00 | 12,000.00 |
| 7010 | 1 | 87232 ArcGIS Spatial Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 500.00 | 500.00 |
| 8010 | 1 | 87233 ArcGIS Spatial Analyst Concurrent Use Secondary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 200.00 | 200.00 |
| 9010 | 1 | 87198 ArcGIS 3D Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 500.00 | 500.00 |
| 10010 | 1 | 87236 ArcGIS Geostatistical Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 500.00 | 500.00 |
| 11010 | 2 | 93094 ArcView with Extension Single Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 1,000.00 | 2,000.00 |
| 12010 | 7 | 87193 ArcView Single Use Secondary Maintenance | 300.00 | 2,100.00 |

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Issued By: Barbara Walker

Ext: 3936

[CSBATCHDOM]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



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380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533936
Fax #: 909-307-3083

Quotation

Page 3

Date: 09/04/2010

Quotation Number: 25436065

| Item | Qty | Material# | Unit Price | Extended Price |
|-------|-----|--|------------|----------------|
| | | Start Date: 12/22/2010 End Date: 12/21/2011 | | |
| 13010 | 1 | 93303 ArcEditor Single Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 1,500.00 | 1,500.00 |
| 14010 | 1 | 100571 ArcGIS Network Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 500.00 | 500.00 |
| 15010 | 1 | 100572 ArcGIS Network Analyst Concurrent Use Secondary Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 200.00 | 200.00 |
| 17010 | 2 | 109839 ArcGIS Server Standard Enterprise Up to Four Cores Migrated Maintenance Start Date: 12/22/2010 End Date: 12/21/2011 | 2,000.00 | 4,000.00 |
| 18010 | 1 | 115680 ArcGIS Server Standard Enterprise Up to Four Cores from ArcIMS 9.1 Migrated Maintenance Includes ArcGIS Server Basic Enterprise Up to Four Cores from ArcSDE 9.1 Migrated Maintenance Bundle | 5,000.00 | 5,000.00 |
| 18020 | 1 | 109839 ArcGIS Server Standard Enterprise Up to Four Cores Migrated Maintenance Item equals \$2,000.00 of the bundled price. Start Date: 12/22/2010 End Date: 12/21/2011 | | |
| 18030 | 1 | 109840 ArcGIS Server Basic Enterprise Up to Four Cores Migrated Maintenance Item equals \$3,000.00 of the bundled price. Start Date: 12/22/2010 | | |

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Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. ESRI reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide ESRI with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Issued By: Barbara Walker

Ext: 3936

[CSBATCHDOM]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



esri[®]

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533936
Fax #: 909-307-3083

Quotation

Page 4

Date: 09/04/2010 **Quotation Number:** 25436065

| Item | Qty | Material# | Unit Price | Extended Price |
|------|-----|-----------|------------|----------------|
|------|-----|-----------|------------|----------------|

End Date: 12/21/2011

| | |
|----------------------|---------------------|
| Subtotal | 57,100.00 |
| Estimated Tax | 0.00 |
| Total | \$ 57,100.00 |

DUNS/CEC: 06-313-4175 CAGE: 0AMS3

This quotation is valid for 90 days and is subject to your ESRI License Agreement. The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (ESRI).

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. ESRI reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide ESRI with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Issued By: Barbara Walker

Ext: 3936

[CSBATCHDOM]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



esri[®]

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533936
Fax #: 909-307-3083

Quotation

Page 5

Date: 09/04/2010 **Quotation Number:** 25436065 **Customer Number:** 6245

| Item | Qty | Material# | Unit Price | Extended Price |
|------|-----|-----------|------------|----------------|
|------|-----|-----------|------------|----------------|

BY SIGNING BELOW, YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

To expedite your order, either attach a copy of this quotation to your purchase order when it is remitted to ESRI, or sign below and return this quotation to indicate your acceptance. ESRI's address and fax number are provided on the first page of this quotation.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax ESRI the signed quote in its entirety in order for the quote to be accepted.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

By signing below, you are authorizing ESRI to issue a software support invoice in the amount of \$_____ plus sales tax, if applicable.

Please check one of the following:

I agree to pay any applicable sales tax.

I am tax exempt. Please contact me if ESRI does not have my current exempt information on file.

Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether ESRI is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

Signature of Authorized Representative Date

Name (Please Print) Title

This quotation is valid for 90 days and is subject to your ESRI License Agreement. The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (ESRI).

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. ESRI reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide ESRI with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Issued By: Barbara Walker

Ext: 3936

[CSBATCHDOM]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|---|----------------------------------|-------------------------|--|------------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | Technology Services | | |
| Department Head | | David Stephens | | |
| Agenda Coordinator (include phone #): Amy Powell X7342 | | | | |
| CAPTION | | | | |
| To approve a contract for the purchase of Commvault-Galaxy Software Premium Support Coverage, in the amount of \$118,774 from CDW Government, through an existing contract with The Cooperative Purchasing Network (TCPN), and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R4713) | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 2,828,389 | 0 | 2,828,389 |
| Encumbered/Expended Amount | 0 | -660,179 | 0 | -660,179 |
| This Item | 0 | -118,774 | 0 | -118,774 |
| BALANCE | 0 | 2,049,436 | 0 | 2,049,436 |
| FUND(S): TECHNOLOGY SERVICES FUND (66) | | | | |
| COMMENTS: Funds are included in the 2010-11 Technology Services budget for this maintenance agreement. The remaining balance will be used throughout the year for other maintenance agreements. | | | | |
| STRATEGIC PLAN GOAL: Maintenance agreements relate to the City's Goal of "Financially Strong City with Service Excellence". | | | | |
| SUMMARY OF ITEM | | | | |
| Technology Services recommends Council approve an expenditure for Commvault-Galaxy Software Support Coverage with CDW Government through The Cooperative Purchasing Network, in the amount of \$118,774 for a premier support services agreement to provide the City with critical software support. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (TCPN Contract No. R4713). | | | | |
| List of Supporting Documents: Staff Memo and Contract | | | Other Departments, Boards, Commissions or Agencies | |

Interoffice Memo

Date: 11/3/10
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Annual Maintenance for Commvault Backup Software

We must purchase maintenance for Commvault backup software, which is the software used to backup the City's network. We recommend purchasing this maintenance from CDW Government for a price of \$ 118,774.23 from their TCPN Contract No. R4713. The term of maintenance will run through December 27, 2011. We obtained other quotes from Dell and SHI, but both of these quotes were higher than the price provided by CDW Government.

Commvault is our major component of software we currently use to assure compliance with any legal discoveries and to also provide business continuity for critical City data and applications.

We recommend purchasing this maintenance from CDW Government as stated above.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND CDW GOVERNMENT
FOR COMMVAULT GALAXY SUPPORT COVERAGE**

THIS CONTRACT is made and entered into by and between **CDW GOVERNMENT**, whose address is 230 North Milwaukee Avenue, Vernon Hills, IL, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide Commvault software support. These services shall be provided in accordance with this Contract and with the TCPN Contract No. R4713, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The TCPN Contract No. R4713, on file with the City of Plano Technology Services Department;
- (c) CDW Government's Statement of Work (Exhibit "A");
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

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

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **ONE HUNDRED EIGHTEEN THOUSAND SEVEN HUNDRED SEVENTY-FOUR AND 23/100 DOLLARS (\$118,774.23)**.

**III.
TERM**

The term of this Contract shall be a period of one (1) year commencing upon the effective date hereof.

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the TCPN Contract No. R4713 or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

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

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

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

**VII.
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

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

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR

Service Contract

Page 2

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

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

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

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

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY

**INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3
IN THE HEREIN INDEMNIFICATION SECTION.**

**X.
VENUE**

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

**XI.
ASSIGNMENT AND SUBLETTING**

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

**XII.
INDEPENDENT CONTRACTOR**

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

**XIII.
FORCE MAJEURE**

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

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
TERMINATION FOR CAUSE**

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

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVI.
SEVERABILITY**

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

**XVII.
TERMINATION FOR CONVENIENCE**

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

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

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

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

**XIX.
MAILING OF NOTICES**

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

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

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

CDW Government
230 North Milwaukee Avenue
Vernon Hills, IL 60061
Attn: Al Digiovanni

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

**XX.
ENTIRE AGREEMENT**

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

City agrees to reference this Contract and TCPN Contract No. R4713 on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically Service Contract

Page 6

refer to this Contract; (ii) clearly indicate the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXI.
AUTHORITY TO SIGN**

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

**XXII.
SUCCESSORS AND ASSIGNS**

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

**XXIII.
HEADINGS**

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

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

CDW GOVERNMENT

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

CITY OF PLANO, TEXAS

Date: _____
By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY



**The Right Technology.
Right Away.™**

www.CDWG.com
800-808-4239

SALES QUOTATION

| QUOTE NO. | ACCOUNT NO. | DATE |
|-----------|-------------|------------|
| VWW3794 | 5860407 | 11/02/2010 |

B TISH HURT
I 1117 E 15TH ST
L
L CITY OF PLANO
T PLANO, TX 75074-6223
O

S CITY OF PLANO
H 1117 E 15TH ST
I
P TISH HURT
T PLANO, TX 75074-6223
O Contact: TISH HURT 972-941-7283

Customer Phone # 9729417283

Customer P.O. # VWW3794 QUOTE

| ACCOUNT MANAGER | SHIPPING METHOD | TERMS | EXEMPTION CERTIFICATE |
|----------------------------|------------------|--------------------|-----------------------|
| AL DIGIOVANNI 866-339-6939 | DROP SHIP-GROUND | MasterCard/Visa Go | GOVT-EXEMPT |

| QTY | ITEM NUMBER | DESCRIPTION | UNIT PRICE | EXTENDED PRICE |
|-----|-------------|--|------------|----------------|
| 1 | 2228359 | COMMVault-GALAXY SW PREM SUP COVRG Mfg#: CVL-S-PREM-RNWL-- Contract: TCPN CONTRACT #R4713 R4713 | 118774.23 | 118774.23 |
| | | SUBTOTAL | | 118774.23 |
| | | FREIGHT | | .00 |
| | | SALES TAX | | .00 |

| | |
|----------------|---------------------------|
| TOTAL ➔ | US Currency 118,774.23 |
|----------------|---------------------------|

CDW Government
230 North Milwaukee Ave.
Vernon Hills, IL 60061
General Phone: 847-371-5000 Fax: 847-419-6200
Account Manager's Direct Fax: 312-705-9150

Please remit payment to:
CDW Government
75 Remittance Drive
Suite 1515
Chicago, IL 60675-1515

EXHIBIT A
PAGE 1 OF 2

| | |
|-------------------|----------------|
| Total | 118,774.23 |
| FMV Lease Option | 3,417.13/Month |
| Total | 118,774.23 |
| \$BO Lease Option | 3,710.51/Month |

Monthly payment based on 36 month lease. Other terms and options are available. Contact you Account Manager for details. Payment quoted subject to change. **

=====

Why finance?

- * Lower Upfront Costs. Get the products you need without impacting cash flow. Preserve your working capital and existing credit line.
- * Flexible Payment Terms. 100% financing with no money down, payment deferrals and payment schedules that match your company's business cycles.
- * Predictable, Low Monthly Payments. Pay over time. Lease payments are fixed and can be tailored to your budget levels or revenue streams.
- * Technology Refresh. Keep current technology with minimal financial impact or risk. Add-on or upgrade during the lease term. And choose to return or purchase the equipment at end of lease.
- * Bundle Costs. You can combine hardware, software, and services into a single transaction! Which means you can pay for your software licenses over time. We know your challenges and understand the need for flexibility.

General Terms and Conditions:

**This quote is not legally binding and is for discussion purposes only. The rates are estimate only and are based on a collection of industry data from numerous sources. All rates and financial quotes are subject to final review, approval, and documentation by our leasing partners. Payments above exclude all applicable taxes. Financing is subject to credit approval and review of final equipment and services configuration. Fair Market Value leases are structured with the assumption that the equipment has a residual value at the end of the lease term.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---|----------------|----------------------------------|--|-------------------------|------------------|
| CITY SECRETARY'S USE ONLY | | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | | |
| Council Meeting Date: | | 11/22/2010 | | | |
| Department: | | Technology Services | | | |
| Department Head | | David Stephens | | | |
| Agenda Coordinator (include phone #): Amy Powell X7342 | | | | | |
| CAPTION | | | | | |
| To approve a contract for the purchase of maintenance support for network infrastructure switches in the amount of \$243,767 from INX, Inc. through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1386). | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: | 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | 0 | 2,828,389 | 0 | 2,828,389 |
| Encumbered/Expended Amount | | 0 | -660,179 | 0 | -660,179 |
| This Item | | 0 | -243,767 | 0 | -243,767 |
| BALANCE | | 0 | 1,924,443 | 0 | 1,924,443 |
| FUND(S): TECHNOLOGY SERVICES FUND (66) | | | | | |
| COMMENTS: Funds are included in the 2010-11 Technology Services budget for annual maintenance on the Cisco switches. The remaining balance will be used throughout the year for other maintenance agreements. STRATEGIC PLAN GOAL: Network switches and other infrastructure maintenance support services relate to the City's Goal of "Financially Strong City with Service Excellence". | | | | | |
| SUMMARY OF ITEM | | | | | |
| Technology Services recommends Council approve a contract in the amount of \$243,767 to INX, Inc. through the Department of Information Resources (DIR) Contract for maintenance support on network infrastructure switches. This maintenance is for a one-year term and provides the City with on-site support for our Cisco Equipment should we have any power outages. 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 items. (DIR-SDD-1386). | | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | | |
| Contract and Staff Memo | | | | | |

Interoffice Memo

Date: 10/19/10
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Cisco Switch Maintenance

We are recommending that the attached Cisco Maintenance be acquired as listed in the attached document from INX, Inc. This maintenance is for a one year term and provides us on-site support for our Cisco Equipment should we have any hardware outages.

Our Cisco switch maintenance is a critical part of our support of our network backbone. INX, Inc. as a value added vendor of Cisco has serviced our account for the last seven years and has a knowledge of our network infrastructure that brings additional value to their continuing to be our Cisco VAR of choice. They assist in the expediting of service from Cisco and work beside our staff to assist when we have problems. We have 24/7 access to their services and they have aided us during several network outages to shorten our outage time by having staff on-site and working beside our staff. They also have a staff of certified Cisco engineers that bring value to their service and our network. In addition, INX is a local company and our other company submitting a quote is in Houston. INX has been on-site within 2 or 3 hours when we have needed assistance shortening the outage window.

So we are recommending that we award this maintenance contract for our Cisco switches to INX, Inc. and their State of Texas, DIR contract number DIR-SDD-1386 for a total price of \$ 243, 766.86. We obtained a second quote from another DIR vendor that is attached for a total price of \$ 240, 719.79, but recommend INX for this contract due to the added value they bring to our network support outlined above and their knowledge of our network.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND INX, INC.
FOR CISCO SWITCH MAINTENANCE**

THIS CONTRACT is made and entered into by and between **INX, INC.**, whose address is 1955 Lakeway Drive, Suite 220, Lewisville, Texas, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide Cisco Switch Maintenance for support of the City's Cisco Equipment in the event of hardware outages. These services shall be provided in accordance with this Contract and with the Department of Information Resources Contract No. SDD-1386, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Department of Information Resources Contract No. SDD-1386 on file with the City of Plano Technology Services Department;
- (c) INX, Inc.'s Statement of Work (Exhibit "A");
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

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

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **TWO HUNDRED FORTY-THREE THOUSAND SEVEN HUNDRED SIXTY-SIX AND 86/100 DOLLARS (\$243,766.86)**.

**III.
TERM**

The term of this Contract shall be a period of one (1) year commencing upon the effective date hereof.

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the Department of Information Resources Contract No. SDD-1386 or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

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

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

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

**VII.
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

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

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND

Service Contract

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

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

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

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

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY
Service Contract

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**INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3
IN THE HEREIN INDEMNIFICATION SECTION.**

**X.
VENUE**

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

**XI.
ASSIGNMENT AND SUBLETTING**

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

**XII.
INDEPENDENT CONTRACTOR**

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

**XIII.
FORCE MAJEURE**

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

XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST

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

XV.
TERMINATION FOR CAUSE

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

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

XVI.
SEVERABILITY

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

XVII.
TERMINATION FOR CONVENIENCE

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

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

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

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

**XIX.
MAILING OF NOTICES**

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

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

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

INX, Inc.
1955 Lakeway Drive
Suite 220
Lewisville, Texas 75057
Attn: Traci Chrisman

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

**XX.
ENTIRE AGREEMENT**

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

City agrees to reference this Contract and The Department of Information Resources Contract No. SDD-1386 on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Contract; (ii) clearly indicate Service Contract

the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXI.
AUTHORITY TO SIGN**

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

**XXII.
SUCCESSORS AND ASSIGNS**

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

**XXIII.
HEADINGS**

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

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

INX, INC.

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

CITY OF PLANO, TEXAS

Date: _____
By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas



INX Inc.
 1955 Lakeway Drive
 Suite 220
 Lewisville, TX 75057
 Traci Chrisman
 tchrisman@inx.com
 Ph: 469-549-3841
 Fx: 469-549-3871

Contract Number DIR-SDD-1386

INX Inc.
 1955 Lakeway Drive
 Suite 220
 Lewisville, TX 75057
 CISV# 1-76-051-5249-906

Quote Date: 8/27/2010
 DIR Total: \$ 243,766.86
 Quote #: 1976288
 Quote Name:
 List Price: \$ 304,708.57

| SERIAL NUMBER | PRODUCT NUMBER | PRODUCT TARGET | TARGET \$ | BEGIN DATE | END DATE | GU NAME SITE | ADDI SITE | CITY | ANNUAL | PRO RATED | DIR Disc | Total |
|---------------|--------------------|----------------|-----------|------------|-------------|--------------|--------------------|-----------|-------------|-------------|----------|-------------|
| | | | | | | | | | LIST PRICE | LIST PRICE | | |
| FTX1229T1BG | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B3 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1334N138 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1501956 | SNTP | 22-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 90.00 | \$ 99.86 | 20% | \$ 79.89 |
| FTX1334N137 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1501956 | SNTP | 22-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 90.00 | \$ 99.86 | 20% | \$ 79.89 |
| FTX1334N134 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1501956 | SNTP | 22-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 90.00 | \$ 99.86 | 20% | \$ 79.89 |
| FTX1229T1BA | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1334N136 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1501956 | SNTP | 22-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 90.00 | \$ 99.86 | 20% | \$ 79.89 |
| FTX1334N135 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1501956 | SNTP | 22-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 90.00 | \$ 99.86 | 20% | \$ 79.89 |
| JMX1334Z1KA | ASA5505-50-BUN-K9 | ASA 5505 | 1501956 | SNTP | 26-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 142.00 | \$ 156.01 | 20% | \$ 124.81 |
| JMX1334Z1KB | ASA5505-50-BUN-K9 | ASA 5505 | 1501956 | SNTP | 26-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 142.00 | \$ 156.01 | 20% | \$ 124.81 |
| JMX1334Z1KC | ASA5505-50-BUN-K9 | ASA 5505 | 1501956 | SNTP | 26-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 142.00 | \$ 156.01 | 20% | \$ 124.81 |
| JMX1334Z1K9 | ASA5505-50-BUN-K9 | ASA 5505 | 1501956 | SNTP | 26-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 142.00 | \$ 156.01 | 20% | \$ 124.81 |
| JMX1334Z1KD | ASA5505-50-BUN-K9 | ASA 5505 | 1501956 | SNTP | 26-Sep-2010 | 31-Oct-2011 | CITY OF P 1117 E | 151PLANO | \$ 142.00 | \$ 156.01 | 20% | \$ 124.81 |
| FTX1229T1BF | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B1 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1BD | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B9 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FOC1421W42Q | WS-C3560G-24TS-S | Catalyst 35 | 1501956 | SNTP | 11-Jul-2011 | 31-Oct-2011 | CITY OF P SUSTAINA | PLANO | \$ 534.00 | \$ 165.32 | 20% | \$ 132.26 |
| FTX1229T1B2 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1AX | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1AZ | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FHK0550YODN | WS-C2950G-12-EI | ^Catalyst 2 | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 177.00 | \$ 177.00 | 20% | \$ 141.60 |
| FTX1229T1BC | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B5 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B6 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B7 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B0 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B4 | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1AT | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1AY | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1BE | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1AV | AIR-LAP1131AG-A-K9 | 802.11ag L | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| CAT0830Y1EQ | WS-C3750G-24T-S | Catalyst 37 | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 504.00 | \$ 504.00 | 20% | \$ 403.20 |
| JMX1229LOQ8 | ASA5550-BUN-K9 | ASA 5550 | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 2,399.00 | \$ 2,399.00 | 20% | \$ 1,919.20 |
| JMX1229LOQ7 | ASA5550-BUN-K9 | ASA 5550 | 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 | EASTPLANO | \$ 2,399.00 | \$ 2,399.00 | 20% | \$ 1,919.20 |

| | | | | | | | | | | |
|-------------|-------------------|----------------------|------|-------------|-------------|--------------------------|--------------|--------------|-----|--------------|
| CAT0832Z07P | WS-C3750G-24T-S | Catalyst 37 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 504.00 | \$ 504.00 | 20% | \$ 403.20 |
| CAT0818Z04X | WS-C3750-24PS-S | Catalyst 37 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 336.00 | \$ 336.00 | 20% | \$ 268.80 |
| FDO1229V10A | WS-C3750E-24TD-E | Catalyst 37 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,079.00 | \$ 1,079.00 | 20% | \$ 863.20 |
| FDO1229V12Z | WS-C3750E-24TD-E | Catalyst 37 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,079.00 | \$ 1,079.00 | 20% | \$ 863.20 |
| JMX1037K0CX | ASA5520-BUN-K9 | ASA 5520 .1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 959.00 | \$ 959.00 | 20% | \$ 767.20 |
| FOC1217Y5XJ | WS-C2950-12 | *12 port, 11 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 52.00 | \$ 52.00 | 20% | \$ 41.60 |
| FOC1217Y5U9 | WS-C2950-12 | *12 port, 11 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 52.00 | \$ 52.00 | 20% | \$ 41.60 |
| JMX1131L14R | ASA5520-AIP20-K9 | ASA 5520 .2787071 | SU3 | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 3,902.00 | \$ 3,902.00 | 20% | \$ 3,121.60 |
| | WCS-APLOC-100 | Option Of \ 3550569 | SAU | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,799.00 | \$ 1,799.00 | 20% | \$ 1,439.20 |
| | WCS-APLOC-100 | Option Of \ 3550569 | SAU | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,799.00 | \$ 1,799.00 | 20% | \$ 1,439.20 |
| | WCS-APLOC-100 | Option Of \ 3550569 | SAU | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,799.00 | \$ 1,799.00 | 20% | \$ 1,439.20 |
| | 7606-SUP7203B-PS | ^Cisco 760 3768781 | C4P | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 6,301.00 | \$ 6,301.00 | 20% | \$ 5,040.80 |
| SAD11320324 | WS-SVC-ADM-1-K9 | Catalyst 65 3768781 | C4P | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 7,000.00 | \$ 7,000.00 | 20% | \$ 5,600.00 |
| SAD11320338 | WS-SVC-AGM-1-K9 | Catalyst 65 3768781 | C4P | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 16,000.00 | \$ 16,000.00 | 20% | \$ 12,800.00 |
| FTX1044A47A | CISCO3845-V/K9 | 3845 Voice 90599522 | SNTP | 01-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,414.00 | \$ 2,010.56 | 20% | \$ 1,608.45 |
| FTX1044A47D | CISCO3845-V/K9 | 3845 Voice 90599522 | SNTP | 01-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,414.00 | \$ 2,010.56 | 20% | \$ 1,608.45 |
| FOX104203TD | WS-C6504E-S32-GE | 6504-E Ch 90599522 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,822.00 | \$ 2,822.00 | 20% | \$ 2,257.60 |
| FOX104203U1 | WS-C6504E-S32-GE | 6504-E Ch 90599522 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,822.00 | \$ 2,822.00 | 20% | \$ 2,257.60 |
| FOX10480ZNY | WS-C6504E-S32-GE | 6504-E Ch 90599522 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,822.00 | \$ 2,822.00 | 20% | \$ 2,257.60 |
| FOX104203SH | WS-C6504E-S32-GE | 6504-E Ch 90599522 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,822.00 | \$ 2,822.00 | 20% | \$ 2,257.60 |
| FOX10480ZNX | WS-C6504E-S32-GE | 6504-E Ch 90599522 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,822.00 | \$ 2,822.00 | 20% | \$ 2,257.60 |
| JMX1052K11W | ASA5540-AIP20-K9 | ASA 5540 .90599525 | SU2 | 01-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 5,096.00 | \$ 4,244.34 | 20% | \$ 3,395.47 |
| JMX1052K11S | ASA5540-AIP20-K9 | ASA 5540 .90599525 | SU2 | 01-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 5,096.00 | \$ 4,244.34 | 20% | \$ 3,395.47 |
| JMX1051K1G4 | ASA5540-AIP20-K9 | ASA 5540 .90599525 | SU2 | 01-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 5,096.00 | \$ 4,244.34 | 20% | \$ 3,395.47 |
| JMX1052K11T | ASA5540-AIP20-K9 | ASA 5540 .90599525 | SU2 | 01-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 5,096.00 | \$ 4,244.34 | 20% | \$ 3,395.47 |
| JMX1052K0L3 | ASA5520-K8 | ASA 5520 .90599526 | S2P | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,679.00 | \$ 1,679.00 | 20% | \$ 1,343.20 |
| JMW1009K0T0 | ASA5520-K8 | ASA 5520 .90599526 | S2P | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 5,293.00 | \$ 5,293.00 | 20% | \$ 4,234.40 |
| 72800027 | 7206VXR/NPE-G1 | 7206VXR v 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| SAL0730H29R | WS-C6509 | ^Cat 6509 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| SAL09391E8X | WS-C6509 | ^Cat 6509 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| FOC1251F0K8 | AIR-WLC4402-25-K9 | 4400 Serie 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,152.00 | \$ 1,152.00 | 20% | \$ 921.60 |
| QCN1230000X | CSACSE-1113-UP-K9 | ^RMA use 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 320.00 | \$ 320.00 | 20% | \$ 256.00 |
| QCN12300019 | CSACSE-1113-UP-K9 | ^RMA use 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 320.00 | \$ 320.00 | 20% | \$ 256.00 |
| FOC0825W1T5 | WS-C2950-24 | *24 port, 11 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 58.00 | \$ 58.00 | 20% | \$ 46.40 |
| FOC1027Z31P | WS-C2950-24 | *24 port, 11 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 93.00 | \$ 93.00 | 20% | \$ 74.40 |
| FOC1030Z896 | WS-C2950-24 | *24 port, 11 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 93.00 | \$ 93.00 | 20% | \$ 74.40 |
| FOC1031W0DT | WS-C2950-24 | *24 port, 11 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 93.00 | \$ 93.00 | 20% | \$ 74.40 |
| FOC1045Z61J | WS-C2950-24 | *24 port, 11 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 93.00 | \$ 93.00 | 20% | \$ 74.40 |
| FOC1051Y191 | WS-C2950-24 | *24 port, 11 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 93.00 | \$ 93.00 | 20% | \$ 74.40 |
| FOC1031W13Q | WS-C2950-12 | *12 port, 11 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 83.00 | \$ 83.00 | 20% | \$ 66.40 |
| CAT0812Z1MH | WS-C3750-24PS-S | Catalyst 37 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 336.00 | \$ 336.00 | 20% | \$ 268.80 |
| CAT0814Z1VX | WS-C3750-48PS-S | Catalyst 37 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 504.00 | \$ 504.00 | 20% | \$ 403.20 |
| FOX102706VG | WS-C4503 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,822.00 | \$ 2,822.00 | 20% | \$ 2,257.60 |
| FOC1111W45Z | WS-C2950-24 | *24 port, 11 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 58.00 | \$ 58.00 | 20% | \$ 46.40 |
| FOX101501JM | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX11270JVB | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX11270KYM | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX10510R0T | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX11270JVC | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX111006BC | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX11270KZD | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX10460PGD | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |

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|-------------|--------------------|---------------------|------|-------------|-------------|--------------------------|--------------|--------------|-----|-------------|
| FOX11270JV9 | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX11270JV7 | WS-C4506 | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX11140DCG | WS-C4507R | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 4,432.00 | \$ 4,432.00 | 20% | \$ 3,545.60 |
| FOX1302GJZ8 | WS-C4507R | Catalyst 45 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 4,432.00 | \$ 4,432.00 | 20% | \$ 3,545.60 |
| CAT0920K2MZ | WS-C3750-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 806.00 | \$ 806.00 | 20% | \$ 644.80 |
| CAT0920K2CC | WS-C3750-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 806.00 | \$ 806.00 | 20% | \$ 644.80 |
| FDO1120Y2U0 | WS-C3750-48PS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 806.00 | \$ 806.00 | 20% | \$ 644.80 |
| FOC1111W34V | WS-C2950-24 | ^24 port, 111431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 58.00 | \$ 58.00 | 20% | \$ 46.40 |
| FDO1119Z13X | WS-C3560-24PS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 422.00 | \$ 422.00 | 20% | \$ 337.60 |
| FDO1344Y09G | WS-C3560-24PS-S | Catalyst 35 1501956 | SNTP | 01-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 422.00 | \$ 351.47 | 20% | \$ 281.18 |
| FOC1049Y0Z6 | WS-C2950SX-48-SI | ^48 10/100 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 370.00 | \$ 370.00 | 20% | \$ 296.00 |
| FOC1049Y0Z4 | WS-C2950SX-48-SI | ^48 10/100 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 370.00 | \$ 370.00 | 20% | \$ 296.00 |
| FOC1146X1Y9 | WS-C2950SX-48-SI | ^48 10/100 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 370.00 | \$ 370.00 | 20% | \$ 296.00 |
| FOC1143X27S | WS-C2950SX-48-SI | ^48 10/100 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 370.00 | \$ 370.00 | 20% | \$ 296.00 |
| FTX1340AJK3 | CISCO2821 | 2821 w/ AC 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 840.00 | \$ 784.77 | 20% | \$ 627.82 |
| SMG1102N0L5 | WS-C6509-E | Catalyst 65 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| FOC1109Y0F3 | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FOC1049Y6F7 | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FOC1049Y6D0 | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FOC1049Y6F2 | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FOC1049Y6FL | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FOC1128Y4NM | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FOC1345W65F | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 23-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 638.17 | 20% | \$ 510.54 |
| FOC1150Y2UX | WS-C3560G-48TS-E | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,210.00 | \$ 1,210.00 | 20% | \$ 968.00 |
| FOC1150Y2VT | WS-C3560G-48TS-E | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,210.00 | \$ 1,210.00 | 20% | \$ 968.00 |
| FOC1119Y108 | WS-C3750G-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,611.00 | \$ 1,611.00 | 20% | \$ 1,288.80 |
| FOC1119Y104 | WS-C3750G-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,611.00 | \$ 1,611.00 | 20% | \$ 1,288.80 |
| FOC1119Y469 | WS-C3750G-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,611.00 | \$ 1,611.00 | 20% | \$ 1,288.80 |
| FOC1119Y109 | WS-C3750G-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,611.00 | \$ 1,611.00 | 20% | \$ 1,288.80 |
| FOC1119Y0ZZ | WS-C3750G-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,611.00 | \$ 1,611.00 | 20% | \$ 1,288.80 |
| FOC1152Z4DK | WS-C3750G-48TS-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 1,611.00 | \$ 1,611.00 | 20% | \$ 1,288.80 |
| FOC1128Y2VA | WS-C3560G-24TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 534.00 | \$ 534.00 | 20% | \$ 427.20 |
| FOC1128Y2VC | WS-C3560G-24TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 534.00 | \$ 534.00 | 20% | \$ 427.20 |
| FOC1344W3LS | WS-C3560G-24TS-S | Catalyst 35 1501956 | SNTP | 04-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 534.00 | \$ 440.37 | 20% | \$ 352.30 |
| FOC1343Y08V | WS-C3560G-24TS-S | Catalyst 35 1501956 | SNTP | 04-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 534.00 | \$ 440.37 | 20% | \$ 352.30 |
| FOC1112Z57P | WS-C3560G-24TS-E | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 922.00 | \$ 922.00 | 20% | \$ 737.60 |
| JMX1203L1VV | ASA5510-BUN-K9 | ASA 5510 . 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 587.00 | \$ 587.00 | 20% | \$ 469.60 |
| JMX1201L0V6 | ASA5510-SEC-BUN-K9 | ASA 5510 . 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 755.00 | \$ 755.00 | 20% | \$ 604.00 |
| JMX1201L0V5 | ASA5510-SEC-BUN-K9 | ASA 5510 . 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 755.00 | \$ 755.00 | 20% | \$ 604.00 |
| FOC1029Z7TE | WS-C2960-24TT-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 120.00 | \$ 120.00 | 20% | \$ 96.00 |
| JMX13354073 | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1335Z0LL | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1335Z0LR | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1334Z0UQ | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| FOC1111W497 | WS-C2950-24 | ^24 port, 111431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 58.00 | \$ 58.00 | 20% | \$ 46.40 |
| JMX1334Z0V1 | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1334Z0UT | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1334Z0U6 | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1334Z0UH | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1334Z0UK | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| JMX1334Z0UE | ASA5505-50-BUN-K9 | ASA 5505 . 1501956 | SNTP | 25-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 142.00 | \$ 132.66 | 20% | \$ 106.13 |
| FOC1215V4ZY | WS-C2960G-8TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 130.00 | \$ 130.00 | 20% | \$ 104.00 |

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|-------------|--------------------|---------------------|------|-------------|-------------|---------------------------|--------------|--------------|-----|-------------|
| FDO1342SG3T | PWR-RPS2300= | Spare RPS 1501956 | SNTP | 15-Jan-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 282.00 | \$ 224.05 | 20% | \$ 179.24 |
| FOX114608CU | WS-C4506-E | Cat4500 E 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX114608FP | WS-C4506-E | Cat4500 E 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX11460839 | WS-C4506-E | Cat4500 E 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| FOX114608CG | WS-C4506-E | Cat4500 E 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,957.00 | \$ 2,957.00 | 20% | \$ 2,365.60 |
| SPE114000JK | WS-C4503-E | Cat4500 E 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 2,822.00 | \$ 2,822.00 | 20% | \$ 2,257.60 |
| FHK0624XOVV | WS-C2950-12 | *12 port, 111431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 52.00 | \$ 52.00 | 20% | \$ 41.60 |
| FOC1349W5RW | WS-C3560-12PC-S | Catalyst 35 1501956 | SNTP | 10-Feb-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 176.00 | \$ 127.30 | 20% | \$ 101.84 |
| FOC1349W5Q2 | WS-C3560-12PC-S | Catalyst 35 1501956 | SNTP | 10-Feb-2011 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 176.00 | \$ 127.30 | 20% | \$ 101.84 |
| FOC1211ZOUO | WS-C2950SX-48-SI | *48 10/100 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 370.00 | \$ 370.00 | 20% | \$ 296.00 |
| FOC1225V4Q7 | WS-C2960G-24TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 304.00 | \$ 304.00 | 20% | \$ 243.20 |
| FOC1221UO3K | WS-C2960G-8TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 130.00 | \$ 130.00 | 20% | \$ 104.00 |
| FOC1221UO5L | WS-C2960G-8TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 130.00 | \$ 130.00 | 20% | \$ 104.00 |
| FOC1221UO0S | WS-C2960G-8TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 130.00 | \$ 130.00 | 20% | \$ 104.00 |
| FHK0623Z038 | WS-C2950-12 | *12 port, 111431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 52.00 | \$ 52.00 | 20% | \$ 41.60 |
| FOC1224V69W | WS-C2960G-24TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 304.00 | \$ 304.00 | 20% | \$ 243.20 |
| FOC1221UO3M | WS-C2960G-8TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 130.00 | \$ 130.00 | 20% | \$ 104.00 |
| SMG1226N10H | VS-C6509E-S720-10G | Catalyst Ci 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| SMG1226N103 | VS-C6509E-S720-10G | Catalyst Ci 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| SMG1226N10J | VS-C6509E-S720-10G | Catalyst Ci 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| SMG1226N03W | VS-C6509E-S720-10G | Catalyst Ci 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 10,920.00 | \$ 10,920.00 | 20% | \$ 8,736.00 |
| FOC1223W5UG | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FOC1223W5TY | WS-C3560G-48TS-S | Catalyst 35 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 826.00 | \$ 826.00 | 20% | \$ 660.80 |
| FTX1339AJA5 | CISCO3845 | 3845 w/AC 1501956 | SNTP | 26-Oct-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,414.00 | \$ 2,453.68 | 20% | \$ 1,962.94 |
| JMX1319L0LD | ASA5520-BUN-K9 | ASA 5520. 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 1,343.00 | \$ 1,343.00 | 20% | \$ 1,074.40 |
| JMX1319L0LE | ASA5520-BUN-K9 | ASA 5520. 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 1,343.00 | \$ 1,343.00 | 20% | \$ 1,074.40 |
| FOC0921Y037 | WS-C2950-12 | *12 port, 111431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 52.00 | \$ 52.00 | 20% | \$ 41.60 |
| FOC1320Z2V3 | WS-C2960G-24TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 304.00 | \$ 304.00 | 20% | \$ 243.20 |
| FOC1320Z2V5 | WS-C2960G-24TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 304.00 | \$ 304.00 | 20% | \$ 243.20 |
| FOC1327V4K4 | WS-C2960G-8TC-L | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 130.00 | \$ 130.00 | 20% | \$ 104.00 |
| CAT1113R0DP | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1304R00C | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1304R00E | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1303R1DC | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1304R00J | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1303R1EE | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1303R1D9 | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1303R1E4 | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1303R1EB | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| FDO1303R1E2 | WS-C3750E-48TD-S | Catalyst 37 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 2,432.00 | \$ 2,432.00 | 20% | \$ 1,945.60 |
| SAD122804E7 | WS-SVC-WISM-1-K9= | Wireless S 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 3,680.00 | \$ 3,680.00 | 20% | \$ 2,944.00 |
| SAD122804DH | WS-SVC-WISM-1-K9= | Wireless S 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 3,680.00 | \$ 3,680.00 | 20% | \$ 2,944.00 |
| FTX1244N2WD | AIR-LAP1131AG-A-K9 | 802.11ag L 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FTX1229T1B8 | AIR-LAP1131AG-A-K9 | 802.11ag L 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| FOC1329Y2L9 | WS-C2960-24-S | Catalyst 29 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 67.00 | \$ 67.00 | 20% | \$ 53.60 |
| FTX1229T1AU | AIR-LAP1131AG-A-K9 | 802.11ag L 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| JMX1246Z35V | ASA5505-BUN-K9 | ASA 5505. 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 100.00 | \$ 100.00 | 20% | \$ 80.00 |
| FTX1229T1AW | AIR-LAP1131AG-A-K9 | 802.11ag L 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| JMX1246Z1P9 | ASA5505-50-BUN-K9 | ASA 5505. 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 142.00 | \$ 142.00 | 20% | \$ 113.60 |
| JMX1246Z35U | ASA5505-UL-BUN-K9 | ASA 5505. 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 167.00 | \$ 167.00 | 20% | \$ 133.60 |
| FTX1229T1AS | AIR-LAP1131AG-A-K9 | 802.11ag L 1431340 | SNT | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 EASTPLANO | \$ 56.00 | \$ 56.00 | 20% | \$ 44.80 |
| JMX1228Z026 | ASA5505-50-BUN-K8 | ASA 5505. 1501956 | SNTP | 01-Nov-2010 | 31-Oct-2011 | CITY OF P 1117 E 151PLANO | \$ 142.00 | \$ 142.00 | 20% | \$ 113.60 |

Ground Freight Included

\$ 304,708.57

\$ 243,766.86



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|---|----------------------------------|-------------------------|--|------------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | Technology Services | | |
| Department Head | | David Stephens | | |
| Agenda Coordinator (include phone #): Amy Powell X7342 | | | | |
| CAPTION | | | | |
| To approve a contract for the purchase of microwave backhaul links to the new Emergency Operations Center, in the amount of \$314,775 from Scientel Wireless, LLC, through an existing contract with the Houston-Galveston Area Council (HGAC), and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. CW10-09) | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 1,200,000 | 0 | 1,200,000 |
| Encumbered/Expended Amount | 0 | -549,681 | 0 | -549,681 |
| This Item | 0 | -314,775 | 0 | -314,775 |
| BALANCE | 0 | 335,544 | 0 | 335,544 |
| FUND(S): TECHNOLOGY FUND (62.62350) | | | | |
| COMMENTS: Funds are available in the 2010-11 Technology Fund budget for the purchase of two microwave backhaul links for the new data center at the EOC facility. The balance of funds will be used for other items required for the completion of the City's wireless backhaul redundant ring project. | | | | |
| STRATEGIC PLAN GOAL: Providing business continuity with a redundant virtual environment in case of the loss of business center or command center relates to the City's Goal of "Financially Strong City with Service Excellence". | | | | |
| SUMMARY OF ITEM | | | | |
| Technology Services recommends Council approve an expenditure for two microwave backhaul links to the new Emergency Operations Center for the purpose of providing a redundant microwave link into the City's wireless backhaul redundant ring. This additional redundancy will help the City make critical network connection to this facility in emergency situations. This work will be performed by Scientel Wireless, LLC through their contract with the Houston-Galveston Area Council, in the amount of \$314,775. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (HGAC Contract No. CW10-09). | | | | |
| List of Supporting Documents: Staff Memo and Contract | | | Other Departments, Boards, Commissions or Agencies | |

Interoffice Memo

Date: 11/03/10
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Plano EOC Backhaul

This agenda item is for Scientel Wireless, LLC to provide two microwave backhaul links to the new Emergency Operations Center for purposes of providing a redundant microwave link into the City's wireless backhaul redundant ring. This proposal also includes optimizing the overall microwave ring and moving equipment from the Parkwood and Jupiter towers onto the new Communications and School House radio communication towers. These moves will provide a more reliable backhaul and allow us to optimize our existing wireless mesh network.

In addition to the improvements of our existing microwave backhaul ring, the new redundant link and tower at the new emergency operations center will provide us with a redundant connection to the City's network. Currently we are connected to the City's network using the City's OC-48 S.O.N.E.T. ring provided by Verizon. This additional redundancy will help us make the network connection to this facility available in the case of emergency.

Scientel is a Plano firm which currently provides maintenance for our Wireless network and the microwave link. We recommend purchasing this material and installation from Scientel Wireless, LLC from their HGAC cooperative purchasing contract number CW10-09 for the not to exceed price of \$ 314,775.00.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND SCIENTEL WIRELESS, LLC
FOR MICROWAVE BACKHAUL LINKS TO EMERGENCY OPERATIONS CENTER**

THIS CONTRACT is made and entered into by and between **SCIENTEL WIRELESS, LLC**, whose address is 948 Springer Drive, Lombard, IL, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide two microwave backhaul links to the new emergency Operations Center. These services shall be provided in accordance with this Contract and with the Houston-Galveston Area Council Contract No. CW 10-09, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) Houston-Galveston Area Council Contract No. CW 10-09 on file with the City of Plano Technology Services Department;
- (c) Scientel LLC's Statement of Work (Exhibit "A");
- (d) Insurance Requirements and Certificate of Insurance (Exhibit "B");and
- (e) Affidavit of No Prohibited Interest (Exhibit "C").

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

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **THREE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED SEVENTY-FIVE AND 00/100 DOLLARS (\$314,775.00)**.

**III.
TIME OF COMPLETION**

Contractor agrees and covenants that all work hereunder shall be completed by February 28, 2011.

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the Houston-Galveston Area Council Contract No. CW 10-09 or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

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

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

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

**VII.
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

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

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR

Service Contract

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

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

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

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

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY

**INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3
IN THE HEREIN INDEMNIFICATION SECTION.**

**X.
VENUE**

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

**XI.
ASSIGNMENT AND SUBLETTING**

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

**XII.
INDEPENDENT CONTRACTOR**

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

**XIII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the Contract insurance coverage as set forth in Exhibit "B" including the City as a named insured.

**XIV.
FORCE MAJEURE**

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war, Service Contract

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riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

**XV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XVI.
TERMINATION FOR CAUSE**

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

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVII.
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.

**XVIII.
TERMINATION FOR CONVENIENCE**

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

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

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

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

**XX.
MAILING OF NOTICES**

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

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

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

Scintel Wireless, LLC
948 Springer Drive
Lombard, IL 60148
Attn: Nelson Santos

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.

**XXI.
ENTIRE AGREEMENT**

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

City agrees to reference this Contract and the Houston-Galveston Area Council Contract No. CW 10-09 on any purchase order issued in furtherance of this Contract, Service Contract

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

**XXII.
AUTHORITY TO SIGN**

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

**XXIII.
SUCCESSORS AND ASSIGNS**

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

**XXIV.
HEADINGS**

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

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

SCIENTEL WIRELESS, LLC

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

CITY OF PLANO, TEXAS

Date: _____ By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY
Service Contract



Proprietary Information
CITY OF PLANO

PLANO EOC MICROWAVE BACKHAUL

Submitted to



Date

November 1, 2010

Joe Mancino
Scientel Wireless, LLC

Scientel Wireless LLC
948 Springer Drive
Lombard, IL 60148
Office: (630)-652-3800
Fax: (630)-652-3805



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A. EOC MICROWAVE NETWORK

Scientel Wireless is pleased to provide this proposal to City of Plano for two links of microwave backhaul to connect the Emergency Operations Center (EOC) into the existing Plano Microwave Ring, including the required equipment moves from Parkwood and Jupiter Water towers to Communication and School House towers.

City of Plano Link Equipment

Scientel's quote is based on the following device counts:

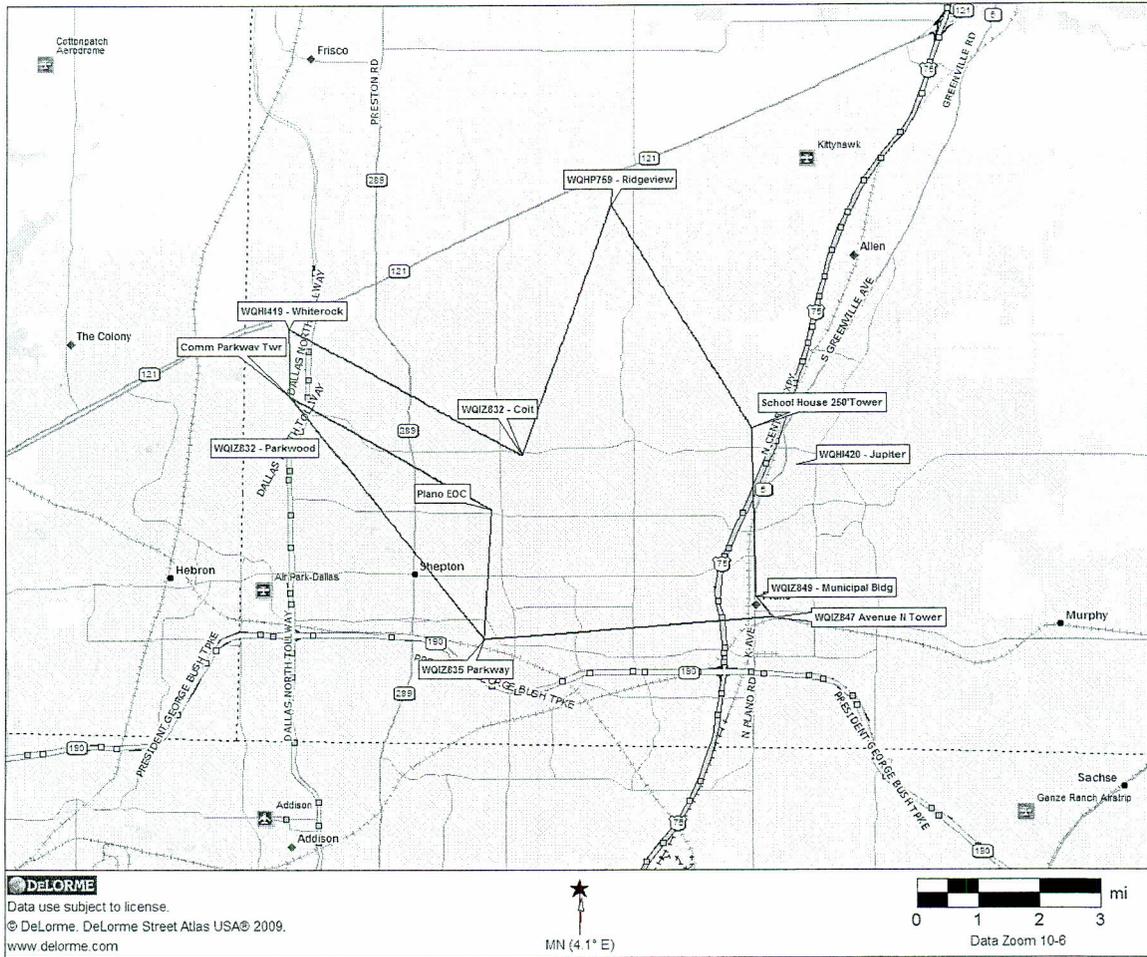
- Four Dragonwave Quantum 18 GHz Microwave Radios
- Two 2' 18 GHz Antennas
- One 2.5' 18 GHz Antenna
- One 4' 18 GHz Antenna
- One Prestressed concrete pole at Plano EOC

Assumptions

For this proposal, Scientel Wireless has made the following assumptions:

- Detailed RF design is the responsibility of Scientel Wireless.
- The number of devices will not exceed what is in section A1.
- The PTP locations selected are available for use and adequate mounting locations for the antennas exist.
- All equipment will be installed one towers, one pole and one water tower
- Installation permitting (if required) is the responsibility of City of Plano.
- Scientel Wireless can attached the new microwave radio cables to the existing cable runs at each of the existing tower.
- Power shall be provided within 10' equipment installation locations.
- Single mobilization on a per tower perspective.
- EOC Links and Tower moves can be coordinated and worked at the same time.

Network Overview



Path Summary

|  | EOC Location | Comm Pkwy Tower Location |
|--|--|--|
| Latitude Longitude Height (above mean sea level) Azimuth 1 - 2 (clockwise from N) Azimuth 2 - 1 (clockwise from N) Elevation 1 - 2 Elevation 2 - 1 | 33° 2' 32.77" N 96° 46' 21.15" W 14.6 m 299.64° 119.61° 0.30° -0.25° | 33° 4' 10.9" N 96° 49' 46.1" W 53.34 m |
| DragonWave Radio Product | HP 18 GHz HC277 in 40 MHz | |
| Antenna Size Antenna Gain (dBi) Coupler Loss (dB) | 120 cm / 4 ft 44.5 0.5 | 180 cm / 6 ft 47.8 0.5 |
| Frequency (GHz) Polarization Link length (miles) Free Space Loss (dB) Atmospheric Absorption (dB) Field Margin (dB) Site 1 Shroud Loss (dB) Site 2 Shroud Loss (dB) Net Path Loss (dB) | 18.700 Horizontal 3.80 133.62 0.43 3.00 0.00 0.00 45.75 | |
| Transmit Power (dBm) Transmit Power (mW) EIRP (dBm) | 19.50 89.1251 63.50 | 19.50 89.1251 66.80 |
| Un-Faded Rx Signal Level (dBm) Receiver Threshold (dBm) Link Margin (dB) | -26.25 -60.00 33.75 | |
| 0.01% Rain Rate (mm/hr) | 65.20 | |



| | |
|-----------------------------|----------|
| Rain Availability (%) | 99.994 |
| Geoclimatic Factor | 5.13E-04 |
| Multipath Availability (%) | 100.0000 |
| Cumulative Availability (%) | 99.994 |
| Cum. Error Minutes (min/yr) | 33.61 |

Note: Availabilities Calculated using ITU-R P.530-9 Methodology

|  DragonWave <i>Bold new ideas in broadband wireless</i> | EOC Location | Parkway Location |
|--|--|--|
| Latitude Longitude Height (above mean sea level) Azimuth 1 - 2 (clockwise from N) Azimuth 2 - 1 (clockwise from N) Elevation 1 - 2 Elevation 2 - 1 | 33° 2' 32.77" N 96° 46' 21.15" W 20 m 183.99° 3.99° 1.28° -1.25° | 33° 0' 42.22" N 96° 46' 30.3" W 85 m |
| DragonWave Radio Product | 18 GHz HC181 in 40 MHz | |
| Antenna Size Antenna Gain (dBi) Coupler Loss (dB) | 75 cm / 2.5 ft 41 0 | 120 cm / 4 ft 44.5 0 |
| Frequency (GHz) Polarization Link length (m) Free Space Loss (dB) Atmospheric Absorption (dB) Field Margin (dB) Site 1 Shroud Loss (dB) Site 2 Shroud Loss (dB) Net Path Loss (dB) | 18.700 Vertical 3414.62 128.55 0.24 2.00 0.00 0.00 45.30 | |
| Transmit Power (dBm) Transmit Power (mW) EIRP (dBm) | 10.50 11.2202 51.50 | 10.50 11.2202 55.00 |
| Un-Faded Rx Signal Level (dBm) Receiver Threshold (dBm) Link Margin (dB) | -34.80 -69.00 34.20 | |
| 0.01% Rain Rate (mm/hr) Rain Availability (%) Geoclimatic Factor Multipath Availability (%) Cumulative Availability (%) Cum. Error Minutes (min/yr) | 65.20 > 99.999 5.13E-04 100.0000 > 99.999 < 5.26 | |

Note: Availabilities Calculated using ITU-R P.530-9 Methodology



Detailed Site Survey and Construction Design

Scientel Wireless will provide a detailed site survey and provide a detailed Engineering Package of all equipment installed on all structures and identify all the materials required including cable lengths. Scientel Wireless shall develop site sketches and drawings depicting the equipment configuration and location recommended for each site. All data collected for the project shall be presented to City of Plano in a formal and usable report format (CAD Drawings). The report will reflect any communications with support structure landlords, potential project expansions, potential project threats, and recommendation for system configuration.

A detailed site survey will include the following:

Detailed Site Survey & Design

- ✓ Antenna support structure vertical plan drawing
- ✓ Site Drawings
- ✓ Equipment site locations on all structures
- ✓ Structural Analysis where required
- ✓ Equipment drawings
- ✓ Engineered Stamped Drawings if required
- ✓ Complete Bill of Materials
- ✓ Confirm power availability at each location including the type of power

Implementation, Integration and Configuration Services

Implementation, integration and configuration services include both implementation and configuration of equipment to the point of ingress to the customer network. Additional configuration of existing network equipment is the responsibility of City of Plano. Services include CAT 6, Fiber and ground cable installation, antenna stand-off installation, antenna installation, CAT 6 cable testing, lightning rod and ground cable installation, D.C. surge protection, and as-built documentation. Additional services include:

- Mobilize installation and construction equipment and tools to sites.



- Install Microwave Radio and antennas on buildings and/or other infrastructure according to the RF plan.
- Install antennas, CAT 5, LMR and accessories as required.
- Perform alignment, configuration and testing of equipment – compare actual results vs. designed results.

Warranty Statement

Scientel Wireless, LLC warrants that work will be performed in accordance with sound engineering practice and professional standards, but makes no other warranty, express or implied including the merchantability.

In the event of any error, omission, or other professional negligence or any breach of the above warranty of which Scientel Wireless, LLC is notified in writing within 90 days after system acceptance, the sole and exclusive responsibility of Scientel Wireless, LLC shall be to re-perform deficient work at its own expense, and Scientel Wireless, LLC shall have no other liability whatsoever.

In no event shall Scientel Wireless, LLC be liable, whether in contract or tort, including negligence, for loss of profit, loss of product, loss of use, or for indirect, consequential or special damages. The liability of Scientel Wireless, LLC for injury or damage to persons or property arising out of this work shall not exceed the lesser of the total amount received by Scientel Wireless, LLC pursuant to this contract or \$1,000,000, whether in contract or tort, including negligence and shall not extend to liability arising out of the negligence or other fault of the client.

B. WATER TOWER TO TOWER MOVES

Jupiter Water Tower/COW to School House Tower - Scope of Work

School House Tower Site

Tower:

- Install Dragonwave antenna mount at 175' facing 178.91 degree azimuth
- Install Dragonwave antenna mount at 175' facing 327.70 degree azimuth
- Install 3 Canopy FSK sector mounts at 195', one on each leg to achieve 0, 60, 120, 180, 240, and 300 degree azimuths
- Install 4 Canopy OFDM mounts at 190', two on one leg, then one on each additional leg, to achieve 0, 90, 180, and 270 degree azimuths
- Install spare Dragonwave 3' HP antenna on mount facing Municipal Building
- Install spare Canopy 6 FSK and 4 OFDM radios on mounts
- Install 4 lines of LDF4.5 cable (2 for each Dragonwave antenna)
- Install 8 lines of outdoor shielded CAT5 cable to the FSK Canopies at 195' (2 spares)
- Install 4 lines of outdoor shielded CAT5 cable to the OFDM Canopies at 190'
- Install ground kits on LDF4.5 cable
- Install LDF4.5 connectors and sweep lines
- Install GPS antenna for CMM's
- Align Dragonwave antenna facing Municipal Building

Shelter:

- Install 2 communication racks in predetermined space
- Install CMM4 and CMM Micro
- Install Dragonwave Duo Modems
- Install Cisco Switch
- Install UPs
- Power up all equipment and test

Municipal Building Site

- Install Duo combiner and proper RF heads on Dragonwave antenna facing School House tower 358.91 degree azimuth
- Connect LDF4.5 lines, add connectors to cable if necessary
- Install Duo Modems in cabinet, connect and test
- Align Muni antenna with School House tower antenna

SM Re-alignment

- Re-align all SM's currently pointing to the COW to School House Tower or other solution

COW Removal

- Remove two Dragonwave antennas and mounts from the top of the COW with a crane lift (take one antenna to School House Tower for path to Ridgeview and return other to Scientel warehouse to store as a spare)
- Remove 4 Canopy OFDM's and mounts with a crane lift
- Remove 6 Canopy FSK's (mount is part of COW, Do Not Remove Mount)
- Decommission COW
 - Lower tower
 - Disconnect power to trailer
 - Remove guy wires
 - Remove guy wire anchors
 - Tow trailer back to Scientel Office

Jupiter Water Tower Site***Tower***

- Remove all cables and conduit from top of tank, thru dry tube to cabinet at bottom
- Plug all holes left from conduit runs
- Remove GPS antenna, line and conduit
- Remove A/C power run and conduit
- Remove all equipment from cabinet
- Remove cabinet and repair any holes in floor

Ridgeview Tower Site

- Install Duo combiner and proper RF heads on Dragonwave antenna facing School House tower 147.67 degree azimuth
- Connect LDF4.5 lines, add connectors to cable if necessary
- Install Duo Modems in rack, connect and test
- Align Ridgeview antenna with School House antenna

Plano Parkwood to Communications - Scope of Work

Communications Tower Site

Tower

- Install Dragonwave antenna mount at 175' facing 141.67 degree azimuth (Parkway)
- Install Dragonwave antenna mount at 175' facing 0.08 degree azimuth (White Rock)
- Install 3 Canopy FSK sector mounts at 195', one on each leg to achieve 0, 60, 120, 180, 240, and 300 degree azimuths
- Install 4 Canopy OFDM mounts at 190', two on one leg, then one on each additional leg, to achieve 0, 90, 180, and 270 degree azimuths
- Install spare Dragonwave 3' HP antenna on mount facing Parkway tower.
- Install spare Canopy 6 FSK and 4 OFDM radios on mounts.
- Install 4 lines of LDF4.5 cable (2 for each Dragonwave antenna).
- Install 8 lines of outdoor shielded CAT5 cable to the FSK Canopies at 195' (2 spares)
- Install 4 lines of outdoor shielded CAT5 cable to the OFDM Canopies at 190'
- Install ground kits on LDF4.5 cable
- Install LDF4.5 connectors and sweep lines
- Install GPS antenna for CMM's
- Align Dragonwave antenna facing Parkway Tower

Shelter

- Install 2 communication racks in predetermined space
- Install CMM4 and CMM Micro
- Install Dragonwave Duo Modems
- Install Cisco Switch
- Install UPs
- Power up all equipment and test

Parkway Tower Site

- Install Duo combiner and proper RF heads on Dragonwave antenna facing Communications tower at 321.70 degree azimuth
- Connect LDF4.5 lines, add connectors to cable if necessary
- Install Duo Modems in rack, connect and test
- Align Parkway antenna with Communications tower antenna

SM Re-alignment

- Re-align all SM's currently pointing to Parkwood to Communications Tower or other solution

Parkwood Water Tower Site

Tower

- Remove two Dragonwave antennas and mounts (take one antenna to Communications for path to White Rock and save other for School House Tower install)
- Remove 4 Canopy OFDM's and mounts (save for School House Tower install)
- Remove 6 Canopy FSK's and mounts (save for School House Tower)
- Remove all cables and conduit from top of tank, thru dry tube to cabinet at bottom
- Plug all holes left from conduit runs
- Remove GPS antenna, line and conduit
- Remove A/C power run and conduit
- Remove all equipment from cabinet
- Remove cabinet and repair any holes in floor

White Rock Tower Site

- Install Duo combiner and proper RF heads on Dragonwave antenna facing Communications tower at 180.08 degree azimuth
- Connect LDF4.5 lines, add connectors to cable if necessary
- Install Duo Modems in rack, connect and test
- Align White Rock antenna with Communications antenna



C. GENERAL PROJECT RESPONSIBILITIES

The following general project responsibilities, not defined by specific tasks, include:

Scientel Wireless Responsibilities

Scientel Wireless will designate a Project Manager who will direct Scientel's efforts and serve as the primary point of contact for City of Plano Corp. The Scientel Wireless Project Manager will have significant authority to make certain decisions relative to the project, on behalf of Scientel, and will have direct access to Scientel's executive management for resolving problems beyond the Project Manager's immediate authority. The responsibilities of the Scientel Wireless Project Manager include:

- RF and Network Design Document.
- Participate with City of Plano in progress review meetings and submit status reports as requested that identify the activities of the previous review period, as well as activities planned for the upcoming review period, including an updated Project Schedule. Maintain project communications with the City of Plano Project Manager(s).
- Participate in weekly conference calls or face-to-face meetings and issue a mutually agreed upon agenda for each call or meeting.
- Manage the efforts of Scientel staff and coordinate activities with the City of Plano project team members.
- Measure, evaluate and report the progress against the Project Schedule.
- Resolve deviations from the Project Schedule.
- Monitor the project to ensure that support resources are available as scheduled and as identified in the contract.
- Assume accountability for all Scientel Wireless contractor and subcontractor supplied tasks within the Project Schedule, if any.
- Coordinate and oversee the installation of all City of Plano hardware and software.



- Review and administer change control procedures through City of Plano's Project Manager, commonly referenced as a "Project Change Request" (PCR), issued by the Scientel Project Manager.
- Work with the City of Plano Project Manager(s) in designing and approving the format of an action item log to be used in conjunction with the Project Schedule. The purpose of the log is to identify outstanding issues, provide continual status updates on specific tasks and to identify responsibilities of the parties.
- Prepare and submit regular status reports that identifies the activities and milestones completed in the previous month and activities planned for the current month and the next month, including progress and payment milestones, and an updated Project Schedule.
- In the event that Scientel must replace or substitute a Project Manager, Scientel will immediately notify City of Plano of such a change and will provide City of Plano with a resume of the person intends to substitute or change.
- Coordinate lift trucks and trained/authorized operators as well as licensed electricians to install devices as required. If tower crews are required per the defined type of installation in the summary section, it is the responsibility of Scientel.

City of Plano Responsibilities

The client will designate a Project Manager who will direct City of Plano's efforts and serve as the primary point of contact for City of Plano. City of Plano's Project Manager(s) will have significant authority to make certain decisions relative to the project, on behalf of City of Plano, and will have direct access to City of Plano executive management for resolving problems beyond the Project Manager's immediate authority. The responsibilities of the City of Plano Project Manager(s) include:

- Maintain project communications with the Scientel Wireless Project Manager.
- Identify the efforts required of the City of Plano staff to meet the client task requirements and milestones in the Statement of Work and Project Schedule.
- Measure and evaluate progress against the Project Schedule.

- Monitor the project to ensure that support resources are available as scheduled.
- Participate in Progress Reviews meetings.
- Provide timely responses to issues related to project progress raised by Scientel's Project Manager.
- Approve and release payments in a timely manner predicated on project deliverables.
- Ensure that all appropriate City of Plano personnel attend and actively participate in Progress Reviews, conference calls, and other project meetings.
- Assign one or more personnel who will work with Scientel Wireless staff as needed for the duration of the project, including at least one system administrator.
- Ensure acceptable Standard Change Request and Approval Letter(s) are approved by authorized signature(s).
- Provide building access to Scientel Wireless personnel to all facilities where the system is to be installed during the project. Temporary identification cards should be issued to Scientel personnel if required for access to client facilities. Access must be available after business hours where required by Scientel wireless, or as necessary to meet the project schedule.
- Provide any required parking permits to Scientel Wireless personnel for restricted access entry and/or parking.
- Obtain all FCC, zoning, site access, and other permits (including, but not limited to, easements, impact studies, planning commission approval, variances, etc) necessary for this project and any other agreements required to gain use of sites.
- Provide the appropriate fire inspection and building inspection certificates.
- Provide adequate space, electrical, communications lines and environmental appropriations for the Communications equipment to be installed by Scientel Wireless.
- Provide a location to ship and store all communications equipment throughout the duration of the project.



- Review and approve or revise delivered design documents within ten days of submission.

- City of Plano must inform Scientel Wireless of all relevant rules, regulations, and requirements for installation. Should these conditions impact the project schedule and limit installation, City of Plano may incur additional cost.

- The Scientel Wireless demarcation point on the network infrastructure end is the clients owned switch (to be determined on the IP Network Design). The client is responsible for connecting and configuring Host end servers to this router.

- Provide wall penetrations, conduit, cable trays and other supporting equipment necessary for the routing of power, grounding and networking cables.

- City of Plano shall provide power and grounding within 10' of each location.



D. PROPOSAL PRICING

See Attached HGAC Price Sheet



CONTRACT PRICING WORKSHEET
For Catalog & Price Sheet Type Purchases

Contract No.:

CW10-09

Date Prepared:

11/1/2010

This Form must be prepared by Contractor and given to End User. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.

| | | | |
|-----------------|-------------------|--------------|------------------------------|
| Buying Agency: | City of Plano, TX | Contractor: | Scientel Wireless |
| Contact Person: | Amy Powell | Prepared By: | Nelson Santos |
| Phone: | 972-941-7342 | Phone: | 1-630-652-3807 |
| Fax: | | Fax: | 1-630-652-3805 |
| Email: | amyp@plano.gov | Email: | nsantos@scientelwireless.com |

| | |
|---------------------------------|---|
| Catalog / Price Sheet Name: | City of Plano, TX Plano EOC Microwave Backhaul |
| General Description of Product: | Installation of Microwave System for EOC backup |

A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary

| Quan | Description | Unit Pr | Total |
|---|--|----------|--------|
| 2 | DragonWave/Bridgewave Design and Installation (per link)(SCI-DW-DI)(List Price - \$36,500) | 34675 | 69350 |
| 4 | Licensing Coordination (per link)(SCI-DSSD)(List Price - \$1500) | 1425 | 5700 |
| 4 | Detailed Site Survey & Design (per link)(SCI-DSSD)(List Price - \$2500) | 2375 | 9500 |
| 3 | Antenna, 18 GHz;4' Antenna;Clip Mount (SCI - A-ANT-11G-48-C)(List Price \$2,750) | 2557.5 | 7672.5 |
| 1 | Antenna, 18 GHz;6' Antenna;Clip Mount(SCI - A-ANT-11G-72-C)(List Price - \$4,750) | 4,417.50 | 4417.5 |
| 4 | Dragonwave 600;Standard Power;18 GHz FCC Band a;No Antenna;Dual Channel, Single Radio;48V DC;Rel. | 24300 | 97200 |
| 4 | IDU Cable: 80m LMR-400 Cable (SCI - A-CAB-IDU-80-LM)(List Price \$600) | 570 | 2280 |
| 4 | Licensed PTP Installation Kit(SCI-LPTP-KIT)(List Price \$1000) | 950 | 3800 |
| 4 | Dragonwave Single Radio AC Install Kit (N. America)(SCI - A-INK-HDS-AC-NA-R1) (List Price - \$1,700) | 1615 | 6460 |
| 4 | Dragonwave Upgrade 600 Mbps to 800 Mbps (Per Link)(SCI - A-UPG-BNW-600-800-HD)(List Price - \$3000) | 2850 | 11400 |
| 220 | Project Management Costs (per hour)(SCI-PM-MESH) (List Price - \$175) | 166.25 | 36575 |
| | | | 0 |
| Total From Other Sheets, If Any: | | | |
| Subtotal A: | | | 254355 |

B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary

(Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)

| Quan | Description | Unit Pr | Total |
|---|------------------------------------|---------|-------|
| 1 | 60' Concrete Pole and Installation | 21500 | 21500 |
| 1 | Canopy SM Realignment | 29045 | 29045 |
| 1 | Water Tower Cleanup & Repair | 9875 | 9875 |
| | | | 0 |
| Total From Other Sheets, If Any: | | | |
| Subtotal B: | | | 60420 |

Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).

For this transaction the percentage is:

24%

C. Other Allowances, Discounts, Trade-Ins, Freight, Make Ready or Miscellaneous Charges

| | | | |
|--------------------|--|--|---|
| | | | |
| | | | |
| | | | |
| Subtotal C: | | | 0 |

Delivery Date: 7/15/2010

D. Total Purchase Price (A+B+C):

314775

**City of Plano
Insurance Requirements**

Requirements

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

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

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

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

Additional Requirements:

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

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



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|---|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | Purchasing | | |
| Department Head | | Mike Ryan | | |
| Agenda Coordinator (include phone #): Nancy Corwin Ext 7137 | | | | |
| CAPTION | | | | |
| Approval of an annual contract with renewals by and between the City and E-Recycler for electronic recycling collection services and authorizing the City Manager to execute all necessary documents 2011-30-C. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 10/11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): N/A | | | | |
| COMMENTS: This agenda item has no financial impact to the City; however, it does establish rates which E-Recycler may charge residents for their electronic collection service. STRATEGIC PLAN GOAL: Allowing the collection of electronic waste for recycling at no cost to the City relates to the City's Goal of a "Financially Strong City with Service Excellence." | | | | |
| SUMMARY OF ITEM | | | | |
| Annual Contract with renewals Staff recommends offer of E-Recycler for once per month recycling collection services, based upon the following rates: \$5.00 per CRT Monitor; Varied pricing for television monitors dependent upon size with a minimum charge of \$10; and .15 per pound for other electronic equipment. This agreement establishes rates for the citizens who utilize this service. There is no actual cost to the city. This will result in an annual contract with three (3) City optional renewals. | | | | |
| List of Supporting Documents: Recommendation Memo | | | Other Departments, Boards, Commissions or Agencies | |



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



MEMORANDUM

DATE: NOVEMBER 11, 2010

TO: NANCY CORWIN

FROM: HEATHER MERCHANT

SUBJECT: APPROVAL OF OFFER 2011-30-C

I recommend approval of the offer from E-Recycler for electronic recycling services. They offer a once per month recycling collection service and charge participants the following rates:

\$5.00 per CRT Monitor; Varied pricing for television monitors dependent upon size with a minimum charge of \$10; and .15 per pound for other electronic equipment. This agreement establishes rates for the citizens who utilize this service. There is no actual cost to the city.



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | | |
|---|----------------------------------|------------------------------|---------------------|---------------------|--------------------|
| CITY SECRETARY'S USE ONLY | | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | | |
| Council Meeting Date: | | 11/22/10 | | | |
| Department: | | Human Resources | | | |
| Department Head | | LaShon Ross | | | |
| Agenda Coordinator (include phone #): Daryll McCarthy, x5216 | | | | | |
| CAPTION | | | | | |
| Approval of the agreement with CaremarkPCS Health, L.L.C. for pharmacy benefit management services at the estimated cost of \$4,000,000 annually for pharmacy claims, entered into through an existing agreement with PEBA (Public Employee Benefits Alliance), and authorizing the City Manager or his designee to execute all necessary documents. | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: | 010-11, 11-12 & 12-13 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | 0 | 23,417,213 | 8,000,000 | 31,417,213 |
| Encumbered/Expended Amount | | 0 | -558,271 | 0 | -558,271 |
| This Item | | 0 | -4,000,000 | -8,000,000 | -12,000,000 |
| BALANCE | | 0 | 18,858,942 | 0 | 18,858,942 |
| FUND(S): HEALTH CLAIMS FUND | | | | | |
| <p>COMMENTS: Funds are included in the 2010-11 Health Claims Fund for pharmacy benefit management services for pharmacy claims. This item is a three year contract for the estimated amount of \$12,000,000, approximately \$4,000,000 per year for 2010-11, 2011-12, and 2012-13. Future year payments will be made from approved budget appropriations.</p> <p>STRATEGIC PLAN GOAL: Pharmacy benefit management services for pharmacy claims for the City's self-funded health plan relate to the City's Goal of Financially Strong City with Service Excellence.</p> | | | | | |
| SUMMARY OF ITEM | | | | | |
| <p>Staff recommends acceptance of the agreement with CaremarkPCS Health, L.L.C. for pharmacy benefit management services, conditioned upon the timely execution of necessary contract documents. CaremarkPCS Health, L.L.C. will provide pharmacy and prescription benefit services for the self-funded plan for full-time City of Plano employees and qualified retirees. The cost for the pharmacy claims is estimated at \$4,000,000 annually. This will be a three (3) year agreement commencing on January 1, 2011, with optional renewals.</p> <p>The City entered into a purchasing alliance for employee benefits with the Public Employees Benefit Alliance (PEBA) in Texas. Through participation in this initiative, the City of Plano has an opportunity to join the contract for a pharmacy benefit manager service with Caremark.</p> | | | | | |



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| List of Supporting Documents: Recommendation Letter Agreement with CaremarkPCS Health, L.L.C. | Other Departments, Boards, Commissions or Agencies |
|---|--|
| | |

Memorandum

To: Thomas H. Muehlenbeck, City Manager
From: Sydney Covey, Compensation & Benefits Manager
Through: LaShon Ross, Deputy City Manager & Director Human Resources
Date: 11/9/2010
Re: Pharmacy Benefit Manager

In February 2006 the City entered into a purchasing alliance for employee benefits with the Public Employees Benefit Alliance (PEBA) in Texas. Through participation in this initiative, the City of Plano had an opportunity to join the contract for a pharmacy benefit manager service with Caremark. As you are aware, PEBA, through administration from TML, manages the bid proposal process. PEBA managed the bid process for pharmacy benefit manager this year for a new contract. Caremark again was the successful proposal. This Caremark agreement will be effective beginning plan year January 1, 2011.

The Benefits team has reviewed the Caremark agreement and recommends that the City of Plano enter into a contract with Caremark for Pharmacy Benefit Management services. In this environment of increasing medical costs, it is prudent to utilize opportunities to keep costs from increasing at double digit rates. Based on the savings analysis performed by Caremark on the 12 months (July '09 – July '10) of Plano's activity, it is anticipated with the enhanced rates we will see about an 11% savings.

PEBA pricing options with Caremark also includes:

- ❖ National Network (over 61,000 pharmacies)
- ❖ Four tiered copay which is in place today with this provider
- ❖ Continued Maintenance Choice option which our participants appreciate
- ❖ Copays which are determined by City
- ❖ Over the Counter prescription options
- ❖ Specialty pharmacy benefit
- ❖ Front-end employee deductible
- ❖ Performance guarantees
- ❖ Customer Service accountability and service goals
- ❖ Customer service team dedicated to PEBA members

Caremark is the largest provider of PMB services. They continue to provide the City with exceptional customer service and information and data that supports the City's goals and philosophy of a long term objective to provide a competitive benefit program.

Please contact me should you have any further questions regarding this recommendation.

PARTICIPATING GROUP AGREEMENT

This Prescription Benefit Services Agreement (the “Agreement”), dated as of January 1, 2011 (the “Effective Date”), is between CaremarkPCS Health, L.L.C., a Delaware limited liability company, (“Caremark”) (formerly known as CaremarkPCS Health, L.P.), and City of Plano Risk Pool, located at 1520 Avenue K, Plano, Texas 75074, on behalf of the City of Plano Risk Pool Pharmacy Benefit Plan (collectively, the “Participating Group”).

City of Plano Risk Pool has established a health benefit plan(s), as defined herein, for its Plan Participants and desires to retain Caremark to provide certain prescription benefit management, disease management and specialty pharmacy services with respect to Participating Group’s health benefit plan(s).

Participating Group is a member of the Public Employees Benefit Alliance (“PEBA”) and is eligible for Services to be provided by Caremark as stated herein provided that Participating Group remains an active member of PEBA.

Caremark desires to provide such services pursuant to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. Definitions.

- 1.1. **“AWP”** means the “average wholesale price” for a standard package size of a prescription drug from the most current pricing information provided to Caremark by First DataBank®, Medi-Span Prescription Pricing Guide (with supplements), or following prior notice to Participating Group, any other nationally available reporting service of pharmaceutical prices as utilized by Caremark as a pricing source for prescription drug pricing. The standard package size applicable to a mail service pharmacy shall mean one hundred (100) units (i.e., pills, tablets, capsules, etc.), unless only a smaller package size is available from the manufacturer, or the actual package size dispensed for liquids and topical treatments. The standard package size applicable to a Participating Pharmacy shall be the actual package size dispensed from a Participating Pharmacy as reported by such Participating Pharmacy to Caremark.
- 1.2. **“Change in Law”** means any (i) change in or adoption of any Law, (ii) change in the judicial or administrative interpretation of any Law, or (iii) change in the enforcement of any Law, in each case occurring after the date Caremark begins providing services or the Effective Date, whichever is earlier.
- 1.3. **“Claims”** means those prescription drug claims processed through Caremark’s on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with Participating Group’s Plan as defined herein.
- 1.4. **“Confidential Information”** means, any trade secrets or confidential or proprietary information relating to the business of the other party, including, but not limited to, information regarding contracts, audit results, SAS70 reports, pricing, finances, discounts or rebates; manuals; computer programs, systems and capabilities; databases, innovations and copyrighted materials; the value of which might be lost if the proprietary nature or confidentiality of such Confidential Information is not maintained and specifically includes but is not limited to the terms and conditions of this Agreement including any and all of the contents of Exhibit 1. “Confidential Information” does not include Protected Health Information, the use and disclosure of which is governed by Section 12 of this Agreement.

- 1.5. **“Contract Year”** means the full twelve (12) month period commencing on the Effective Date and each full consecutive twelve (12) month period thereafter that this Agreement remains in effect.
- 1.6. **“Cost Share”** means the amount which a Plan Participant is required to pay for a prescription in accordance with the PDD, as defined herein, which may be a deductible, a percentage of the prescription price, a fixed amount and/or other charge or penalty.
- 1.7. **“Drug Interchange”** means any substitution initiated by Caremark of a prescription drug that is not on the PDL or the Prescribing Guide, as defined herein, for a clinically comparable drug on the PDL or Prescribing Guide. Drug Interchange shall not include any substitution initiated by Caremark that is (i) due to a drug utilization review; (ii) due to Plan Participant safety reasons; (iii) due to market unavailability of the originally prescribed drug; (iv) a generic substitution of a brand drug; or (v) due to the originally prescribed drug not being covered by the Plan.
- 1.8. **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.
- 1.9. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated there under.
- 1.10. **“Law”** means any applicable federal, state, or local constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, or other legislative or administrative action of the United States of America, or any State, or any agency, department, authority, political subdivision or other instrumentality thereof or a decree or judgment or order of a court.
- 1.11. **“Losses”** means claims, liabilities, demands, damages, losses, costs or expenses of any kind, including, without limitation, reasonable attorneys’ fees and expenses.
- 1.12. **“Maximum Allowable Cost”** or **“MAC”** means the unit price that has been established by Caremark for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to Participating Group, which list may be amended from time to time by Caremark in maintaining its generic pricing program. Participating Group acknowledges that the MAC list applicable to Participating Group is not the same as the MAC list published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or “HCFA MAC”). A copy of such MAC drug list shall be provided to Participating Group prior to execution of this Agreement and thereafter upon Participating Group’s reasonable request.
- 1.13. **“Participating Pharmacy”** shall mean a retail pharmacy that participates in the Caremark network selected by Participating Group pursuant to an agreement between the pharmacy and Caremark.
- 1.14. **“PDL”** means one or more list(s) of preferred pharmaceutical products, created and managed by Caremark, as amended from time to time, which: (a) has been approved by Caremark’s Pharmacy and Therapeutics Committee, and (b) reflects Caremark’s recommendations as to which pharmaceutical products should be given favorable consideration by plans and their participants.
- 1.15. **“Plan”** means the health benefit plan(s) sponsored by Participating Group of which the prescription drug benefit is a part.
- 1.16. **“Plan Administrator”** means the Plan sponsor or committee designated by the Plan sponsor with respect to the Plan, as contemplated by section 3 (16)(A) of ERISA. The parties agree, however, that the Participating Group is not subject to ERISA.
- 1.17. **“Plan Design Document”** or **“PDD”** means the document prepared by Caremark and approved in writing by Participating Group that may be amended by Participating Group, from time to time, in accordance with this Agreement, which documents the relevant parts of Participating Group’s Plan for prescription drug benefits and which is used by Caremark to process Claims under this Agreement.
- 1.18. **“Plan Participant”** means each individual who Participating Group identifies in the eligibility file to be eligible for prescription drug benefits under its plan.
- 1.19. **“Prescriber”** means a health care practitioner licensed or authorized by Law to issue an order for a prescription drug.

- 1.20. **“Prescribing Guide”** means the Caremark Prescribing Guide, as modified and published from time to time, which has been approved by Caremark’s pharmacy and therapeutics committee.
 - 1.21. **“Protected Health Information” or “PHI”** shall have the meaning given such term at 45 C.F.R. 160.103, but limited to that information created or received by Caremark in its capacity as a pharmacy benefit manager (and not as a mail service pharmacy or other health care provider) on behalf of the Plan.
 - 1.22. **“Rebates”** shall have the meaning ascribed to such term in Exhibit 1 of this Agreement.
 - 1.23. **“Services”** means the prescription drugs, including biotech, biological and/or other specialty drugs, and all related products and services provided by Caremark under this Agreement.
 - 1.24. **“Specialty Drugs”** means certain pharmaceuticals and/or biotech or biological drugs that are used in the management of specific chronic or genetic disease, including but not limited to, injectible, infused, or oral medications, or otherwise require special handling, including those listed in Attachment 1 of Exhibit 1 (which Caremark may amend from time to time).
 - 1.25. **“Term”** shall mean the time period between the Effective Date and termination of this Agreement, including the Initial Term, as extended by any Renewal Term (as such terms are defined in Section 9.1).
 - 1.26. **“Usual and Customary” or “U&C”** means a Participating Pharmacy’s usual selling price for a prescription drug if the product were not eligible for coverage under the Plan.
2. **Caremark Services.** Caremark shall provide the Services hereunder in accordance with the PDD and the terms of this Agreement. Caremark may make changes to the Services from time to time and may use Claims information to improve or recommend additional Services to Participating Group provided such changes do not materially alter any of the provisions of this Agreement.
 - 2.1 Mail Service Pharmacy. Caremark shall be Participating Group’s exclusive mail service pharmacy, and shall provide the following products and services:
 - (a) Provide Participating Group with a reasonable number of copies of Caremark’s standard informational materials explaining the mail service pharmacy and the forms that must be used by Plan Participants to utilize mail service;
 - (b) Dispense through its mail service pharmacy new or refill Prescriptions upon receipt from a Plan Participant of (i) a Prescription and a completed order or refill order form and (ii) any applicable Cost Share;
 - (c) Fill Prescriptions subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, and product labeling and guidelines;
 - (d) Provide certain utilization management and clinical services as described in this Agreement;
 - (e) Ship all drugs to Plan Participants via U.S. Postal Service or other appropriate carriers to the address provided by Participating Group and/or the Plan Participant. Caremark shall not be liable to either Participating Group or Plan Participant for any delay in delivery resulting from circumstances beyond Caremark’s reasonable control as set forth in Section 13.3; and
 - (f) Comply with Caremark’s terms and conditions applicable to mail pharmacy services in effect as may be amended from time to time.
 - 2.2 Retail Pharmacy Network. Caremark contracts with Participating Pharmacies, which are independent contractors, to provide prescription drugs and related products and services with respect to the Plan In so doing, Caremark shall:
 - (a) Require Participating Pharmacies to service Plan Participants during their normal business hours, in all applicable geographic areas;

- (b) Include in its standard retail network agreements that Participating Pharmacies must comply with Caremark's terms and conditions applicable to participation in the retail pharmacy network in effect as may be amended from time to time;
- (c) Provide information to Participating Pharmacies concerning drug interaction, safety edits, and information relating to generic substitution and therapeutic intervention programs selected by Participating Group;
- (d) Subject to Section 2.2(g) direct Participating Pharmacies to collect all applicable Cost Shares or the lesser of Cost Share or U&C from Plan Participants;
- (e) Provide and maintain toll free telephone access to Participating Pharmacies to address claim submission and clinical drug utilization review issues;
- (f) Maintain a database of Participating Pharmacies so that Plan Participants and Participating Group may locate a Participating Pharmacy using Caremark's website;
- (g) Maintain a claims adjudication system to process payments of paper and electronic claims in accordance with the PDD; and
- (h) Be solely responsible for payment to the Participating Pharmacies of the charge for Prescriptions dispensed (exclusive of Cost Shares), provided that the foregoing shall not release Participating Group from any payment obligation to Caremark under this Agreement.

2.3 Participating Pharmacy Audit.

- (a) Periodic Audit. Caremark will conduct periodic on-site and off-site audits of Caremark selected Participating Pharmacies to verify the Participating Pharmacy's compliance with its retail pharmacy network agreement with Caremark ("Periodic Audits"). Caremark will have the sole right to audit Participating Pharmacies.
- (b) Audit Discrepancies. To the extent Caremark determines, as the result of its Periodic Audits, that amounts have not been billed in accordance with Caremark's retail pharmacy network agreement ("Audit Discrepancies"), Caremark will make reasonable attempts to reconcile such Audit Discrepancies. In the event the Audit Discrepancy has a financial impact to Participating Group, Caremark will reconcile Participating Group's invoice based upon recovered Audit Discrepancies. Caremark will retain twenty percent (20%) of all recovered Audit Discrepancies to help cover its collection and audit costs. Caremark will notify Participating Group of any Audit Discrepancy that has impacted Participating Group's financial obligation to Caremark by greater than \$1,000 that Caremark determines to be reasonably uncollectible by Caremark. Participating Group acknowledges and agrees that Caremark may, but is not required to, initiate any collection action to collect any Audit Discrepancies. In the event Caremark does initiate a collection action against a Participating Pharmacy for any Audit Discrepancy, Caremark may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action. Caremark's obligation to conduct Periodic Audits and to attempt collection and reconciliation, as described, will be Caremark's sole obligation with respect to remedying Audit Discrepancies.

2.4 Implementation.

- (a) Participating Group or Participating Group's designee has provided or shall provide to Caremark prior to the Effective Date: (i) the governing Plan documents, a summary plan description, and an executed PDD. Any delays by Participating Group or its designee in providing this information may delay the implementation of Services by Caremark
- (b) Caremark will provide Participating Group with implementation kits for distribution to new Plan Participants. The implementation kits will include the following materials: (a) introductory cover letter; (b) standard identification cards for use within the retail network which shall include Caremark's name and toll free number; (c) a standard client benefit

- brochure; (d) mail service order form; (e) paper claim reimbursement form, if applicable; and (f) PDL brochure, if applicable. If Participating Group chooses to have Caremark prepare envelopes for mailing kits to Plan Participants, Participating Group must provide at least one data tape containing Plan Participant address information in a mutually acceptable format. Individual Plan Participant mailings will be at Participating Group's expense.
- (c) Any customized material requested by Participating Group shall be subject to an additional charge.

2.5 Eligibility. Participating Group, or Participating Group's designee, at Participating Group's sole expense, will provide Caremark all information concerning its Plan and Plan Participants needed to perform the Services, including any updates thereto ("Eligibility Information"). This Eligibility Information must be complete and accurate, provided timely, and in a format and media acceptable to Caremark. Participating Group acknowledges and agrees that Caremark will not use Social Security Numbers on Plan Participants' identification cards and will instead use alternate identification numbers assigned and provided by Participating Group. Participating Group acknowledges that Caremark, Plan Participant's Prescriber or Participating Pharmacy shall be able to rely on the Eligibility Information provided by Participating Group.

2.6 PDL Management.

- (a) Participating Group hereby adopts as part of the Plan design, the PDL and the Prescribing Guide.
- (b) Changes made to the PDL may be based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, new legislation and regulations, and/or new recommendations developed by Caremark based on its experience. Caremark shall make reasonable effort to provide Participating Group with thirty (30) days notice prior to the addition or removal of a drug from the PDL. In the event safety concerns or regulatory action require Caremark to remove a drug sooner, Caremark shall notify Participating Group of the removal of the drug from the PDL within five (5) business days.
- (c) Caremark shall implement a Drug Interchange program(s) as approved by the Pharmacy and Therapeutics Committee under which Caremark's mail service pharmacy shall, upon receipt of a Prescription for a drug that is not on the PDL, contact Prescribers, as appropriate, to obtain approval for substitution of a clinically comparable drug on the PDL, if any. In accordance with its standard policies, Caremark shall credit Participating Group for any Prescription returned to Caremark due to an error made by Caremark in effectuating the Drug Interchange program described in this Section 2.6(c). Participating Group acknowledges that the adoption of therapeutic interventions may result in an increase of Rebates payable by pharmaceutical manufacturers pursuant to their agreements with Caremark.
- (d) Participating Group acknowledges Prescriber shall have final authority over the drug prescribed to a Plan Participant, regardless of benefit coverage.
- (e) Caremark may implement therapeutic intervention programs for Participating Pharmacies to promote the use of the PDL by encouraging Participating Pharmacies to ("PerformanceRx Program") (i) identify appropriate opportunities for converting a Prescription from a non-PDL drug to a drug on the PDL, and (ii) contact the Plan Participant and the Prescriber to request that the Prescription be changed to a PDL drug. If appropriate, Participating Pharmacies may be compensated by Caremark for the services they provide in connection with the PerformanceRx Program.

2.7 Generic Substitution Program.

- (a) Generic substitution may be conducted through Caremark's mail service pharmacies under a program which automatically substitutes brand name drugs with generic equivalents, where available, unless (i) the Prescriber issues the Prescription with a "dispense as written" notation, or (ii) the Plan Participant has notified Caremark to dispense the brand name drug only.
- (b) Generic messaging intended to promote at the point-of-sale generic substitution of multi-source brand drugs. Participating Group acknowledges that a pharmacist may override such messaging if the Prescriber or the Plan Participant has notified the Participating Pharmacy to dispense the brand name drug only.

2.8 Utilization Management/Clinical Programs.

- (a) Concurrent Drug Utilization Review ("DUR") Services. Caremark will provide its automated concurrent DUR Services including but not limited to: (i) drug to drug interactions; (ii) therapeutic duplications; (iii) known drug sensitivity; (iv) over-utilization; (v) insufficient or excessive drug usage; and (vi) early or late refills. Pharmacists are directed to review the messages as they are received and to use their professional judgment as to whether action is required.
- (b) DUR Limitations. The information generated in connection with DUR Services is intended as a supplement to, and not as a substitute for, the knowledge, expertise, skill, and judgment of Prescriber or pharmacists in providing patient care. Prescribers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. In performing DUR Services, Caremark will not, and is not required by this Agreement, to deny Claims or require Prescriber, pharmacist, other health care provider, or Plan Participant compliance with any norm or suggested drug regimen, or in any way substitute Caremark's judgment for the professional judgment or responsibility of the Prescriber, pharmacist, or other health care provider.

The DUR Services are necessarily limited by the amount, type and accuracy of Plan Participant information made available to Caremark. Notwithstanding anything set forth in this Agreement, Caremark will have no obligation to acquire information concerning any Plan Participant beyond the information that is included in Caremark's eligibility file or the Claims submitted by Participating Pharmacies in connection with the Plan.

Caremark will update DUR databases on a reasonable basis to reflect changes in available standards for pharmaceutical prescribing; no database used by Caremark will contain all available information on accepted medical practices or prescribing practices. Caremark shall be entitled to rely upon nationally available reporting services such as First Data Bank or Medi-Span in connection with DUR Services provided to Participating Group. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate or effective for any Plan Participant.

- (c) Clinical Services Programs. Caremark shall provide clinical programs, as mutually agreed to by the parties.

To the extent applicable for DUR services, Participating Group may be asked to sign a Prior Authorization Program Acknowledgment which describes the program parameters and indicates that it is administered by Caremark at the direction of the Participating Group.

- (d) Additional Clinical Service Programs. Caremark shall perform additional clinical programs as described in Exhibit 1.
- 2.9 Plan Participant Services. Caremark shall operate toll-free customer service lines twenty-four (24) hours a day, seven (7) days a week for the purpose of responding to inquiries from Plan Participants. Caremark shall also provide telephonic emergency pharmacist services twenty four (24) hours a day, seven (7) days a week.
- 2.10 Communication Materials. In addition to materials provided under Section 2.4(c), Caremark shall produce and provide the following communication materials:
- (a) PDL Brochures. Caremark shall periodically distribute PDL brochures directly to Prescribers.
 - (b) Website. Caremark will provide an Internet website where Plan Participants can access information with respect to Plan specific drug information, the PDL, Cost Shares, Participating Pharmacy listings and Prescriptions.
 - (c) Drug Recalls. Caremark, in its discretion, may provide communications to Plan Participants and/or Participating Group regarding drug recalls or withdrawals by a pharmaceutical manufacturer and/or the Federal Food and Drug Administration. Participating Group acknowledges that pharmaceutical manufacturer or distributor shall be responsible for any refunds or reimbursements. Caremark shall not have any obligation or provide Participating Group any refund or reimbursement for any drug recall. In the event Caremark receives any reimbursement from a pharmaceutical manufacturer due to a drug recall, Caremark will remit to Participating Group a pro-rata share of such reimbursement as determined by Participating Group's utilization of such drug compared to Caremark's entire book of business.
- 2.11 Reports and Claims Data. Caremark shall provide reports and detailed Claim data to Participating Group as follows:
- (a) Standard Reports. Caremark shall prepare and provide Participating Group with its standard management and utilization reports.
 - (b) Non-Standard Reports. At Participating Group's expense, Caremark may prepare and provide non-standard management and utilization reports, and ad hoc reports within an agreed-upon time and format, and at an agreed upon rate.
 - (c) Claims Tapes. With the issuance of each invoice, Caremark shall provide Participating Group up to two (2) sets of complete Claims data in Caremark's standard format. At Participating Group's expense, request and direction, Caremark may provide detailed electronic files or Claim detail reports to Participating Group's designated third parties. Under no circumstances shall Participating Group release or provide any Claims data including pricing and other Confidential Information, to a third party, without the third party signing a confidentiality agreement with Caremark. The confidentiality agreement will contain commercially reasonable terms.
 - (d) SAS 70. If requested, Caremark shall provide Participating Group with a copy of its most recent Type II SAS 70 report, or equivalent successor report, in accordance with the terms and conditions of such report.

- 2.12 Plan Enhancements for Non-Covered Drugs Caremark may provide to Plan Participants filling Prescriptions at Participating Pharmacies discounts on Prescription drugs that are not covered under the Plan. Claims that process with such discounts are excluded from any and all commitments Caremark may have to Participating Group under this Agreement, including those relating to pricing, rates, and/or Rebates. Participating Group acknowledges that Caremark will retain Rebates, if any, and charge Plan Participant fees that may be part of a Plan Participant's Prescription price for claims processed through this program to assist Caremark in funding this program. Participating Group acknowledges that this program may be considered to be a prescription discount card program under some state laws and Participating Group agrees to comply with all applicable Laws concerning programs involving discounts on Prescription.
- 2.13 Drug Classification. Caremark shall use either the First DataBank National Drug Data File (NDDF) or Medi-Span Master Drug Database (MDDDB), and their associated files, as updated regularly by First DataBank and Medi-Span, or another nationally available reporting services of pharmaceutical drug information as selected by Caremark for the purpose of Claims processing and classifying drugs (e.g. legend vs. over the counter, brand vs. generic) in connection with this Agreement.
- 2.14 Specialty Pharmacy. Notwithstanding specialty drugs that are paid through the Participating Group's medical plan benefits, Caremark shall be the exclusive in-network provider of Specialty Drugs and shall provide the products and services, as follows:
- (a) Dispense new or refill Prescription orders for Specialty Drugs upon receipt from a Plan Participant of (i) a Prescription and a completed order or refill order form and (ii) the applicable Cost Share;
 - (b) Fill Prescriptions for Specialty Drugs subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, product labeling and guidelines;
 - (c) Provide certain utilization management and clinical services as described in this Agreement;
 - (d) Ship all Prescription orders to Plan Participants via U. S. Postal Service or other appropriate carriers to the address provided by Participating Group and/or the Plan Participant. Caremark shall not be liable to either Participating Group or Plan Participant for any delay in delivery resulting from circumstances beyond Caremark's control as set forth in Section 13.3.
 - (e) Bill Participating Group's medical benefits provider when appropriate, and pursuant to instructions from Participating Groups medical benefits provider;
 - (f) Provide routine supplies required for the administration of the Specialty Drug (such as needles, syringes, alcohol swabs) to the extent deemed appropriate by Caremark; and
 - (g) Comply with, and include in its standard retail network agreements that any Participating Pharmacy providing Specialty Drugs to Plan Participants must comply with, Caremark's terms and conditions applicable to specialty pharmacy services in effect from time to time.
- 2.15 Government Agency Submitted Claims. Participating Group acknowledges that government agencies may seek eligibility or similar data from Caremark regarding Plan Participants and may submit to Caremark Claims for, on behalf of and/or in the name of Plan Participants. Participating Group authorizes Caremark to provide such data as requested by government agencies or their authorized agents and further authorizes Caremark to process such Claims in accordance with applicable laws and regulations. The administrative fee for processing paper Claims submitted by government agencies will be invoiced in accordance with Exhibit 1. Participating Group will pay Caremark for amounts paid by Caremark to government agencies in accordance with its payment obligations under this Agreement.

- 2.16 Performance Guarantees. Caremark agrees to provide the performance guarantees described in Exhibit 1.
- 2.17 Appeals. Caremark shall conduct all appeals and grievances in accordance with the terms and conditions described in Exhibit 4.
- 2.18 iBenefit Report. At Participating Group's request and subject to the fees described in Exhibit 1, Caremark shall mail the iBenefit report to Plan Participants with savings opportunities on an annual basis.
- 2.19 ExtraCare Health Discount Card. Caremark shall provide Plan Participants with an ExtraCare Health discount card ("ExtraCare Card"). The ExtraCare Card provides the ability to earn rewards for purchases at CVS/pharmacy store or online at CVS.com and to receive a 20% discount on all CVS-branded health care-related items that are FSA-eligible at CVS/pharmacy stores; provided that no rewards or discounts are available for the purchase of certain items such as prescription drugs (including Cost Shares).

Participating Group has either mailed or authorized Caremark on its behalf to mail a letter to all Plan Participants reflecting that the ExtraCare Card is being provided as a health plan benefit. Participating Group acknowledges that it shall be responsible for amending any applicable ERISA or other plan documents, to the extent Participating Group deems necessary, to reflect the addition of the ExtraCare Card benefit. Participating Group further acknowledges that it is offering the ExtraCare Card to the Plan Participants as a value-added item or service under HIPAA.

3. Maintenance of Records. Caremark shall maintain records with respect to the processing, payment, and denial of Claims by Caremark and shall retain such records for a period of seven (7) years after the transaction occurred or as otherwise required by applicable Law.
4. Use of Deidentified Data. Claims, as well as eligibility information which is deidentified in accordance with HIPAA and other applicable law, and which is not identifiable on a Participating Group or Plan Participant basis, may be used, disclosed, reproduced, adapted or sold by Caremark. Such deidentified data may be provided to nationally recognized data integration firms to support appropriate administration of Caremark's drug management programs. This benchmarking data enables Caremark to compare against other drug population sets and improve programs and Services for clients.

5. Audit Rights.

5.1 Claims Audits.

- (a) During the Term of this Agreement as defined as, upon not less than sixty (60) days prior written notice and subject to Section 5.2, Participating Group, or a mutually acceptable independent third party retained by Participating Group, may conduct an annual Claims audit of Caremark data that directly relates to Claims billings during the twelve (12) months prior to the date of the review. The scope of the Claims audit shall be in accordance with, and shall not exceed, the guidelines set forth in Exhibit 3. Participating Group shall be responsible for all reasonable expenses of the Claims audit, including Caremark's costs related to the provision of records. Participating Group acknowledges that it shall not be entitled to audit: (i) documents that Caremark is barred from disclosing by applicable Law or pursuant to an obligation of confidentiality to a third party; and (ii) agreements with vendors, pharmaceutical manufacturers, or distributors, Participating Pharmacies or other providers of products or

services to Caremark.

- (b) Any independent third party auditor engaged by Participating Group shall execute a confidentiality agreement with Caremark in a form and substance reasonably acceptable to Caremark prior to conducting a Claims audit, ensuring that all information gathered during such audit and all details and terms of this Agreement, including pricing and rebate information, will be treated as confidential to Caremark and will not be revealed in any manner or form by or to any third party.
- (c) Any adjustments, payments and/or reimbursements determined to be necessary as a result of any examination or audit shall be paid by the appropriate party within thirty (30) days of execution by the party receiving payment and/or reimbursement of an appropriate release document covering the audit period.

6. Obligations of Participating Group.

6.1 Implementation.

- (a) Prior to the Effective Date, Participating Group, or Participating Group's designee, has furnished the Plan documents, summary plan descriptions and/or a written description of the Plan design sufficient to enable Caremark to prepare the PDD.
- (b) Participating Group represents and warrants that it has obtained from Plan Participants all consents and/or authorizations required, if any, for Caremark to perform the Services and for the use and disclosure of information including PHI, as permitted under this Agreement.
- (c) Participating Group represents and warrants that the PDD accurately reflects the terms of the Plan and agrees to approve, in writing, any amendments to the PDD.
- (d) Participating Group has and will disclose to Plan Participants any and all matters relating to the Plan and Services as required by Law to be disclosed.

6.2 Payment. Participating Group shall pay Caremark for the Services hereunder in accordance with the terms set forth in Section 7 and Exhibit 1.

6.3 Control of Plan. Participating Group, as Plan Administrator, retains the sole and absolute authority to design, amend, terminate or modify, in whole or in part, all or any portion of the Plan, including the sole authority to control and administer the Plan and Plan assets. Except as expressly stated herein, nothing in this Agreement shall be deemed to confer upon Caremark the status of plan administrator or fiduciary as defined in ERISA, or applicable state law, or any responsibility for the terms or validity of the Plan. Caremark agrees to be a fiduciary solely for the purpose of initial claim adjudication and reviewing appeals relating to the coverage of prescription drug benefits, as further described in Exhibit 4. Participating Group represents and warrants that the Plan is in full compliance with all applicable Laws. Furthermore, because Caremark is not an insurer, plan sponsor, third party administrator or Plan Administrator, Caremark shall have no responsibility for (i) any funding of Plan benefits; (ii) any insurance coverage for, the Plan, Plan Administrators or the Plan Participants; or (iii) the nature or quality of professional health services rendered to Plan Participants (except in Caremark's capacity as a mail service or specialty pharmacy).

6.4 PDD Changes. Participating Group shall provide Caremark with ninety (90) days prior written notice of any requested changes to the PDD, which changes shall be consistent with the scope and nature of the Services to be performed by Caremark under this Agreement. In addition, Participating Group shall notify its Plan Participants of the change prior to its effective date at

Participating Group's expense. Caremark will not be responsible or liable to Participating Group or Plan Participants for Losses resulting from failure to implement Plan design changes which are not communicated in writing to Caremark in accordance with the first sentence of this Section. Participating Group also shall notify Caremark in writing at least thirty (30) days in advance of any change in its third party administrator or insurance carrier that results in a change in any of the Services provided by Caremark under the terms of this Agreement.

- 6.5 Pharmacy Network. Participating Group hereby selects (i) Caremark's national network as the retail pharmacy network of Participating Pharmacies, (ii) Caremark as the exclusive mail service pharmacy to provide mail service prescription drugs to Plan Participants; and (iii) Caremark as the exclusive "in-network" specialty pharmacy to provide Specialty Drugs to Plan Participants. Participating Group shall distribute the mail service information materials and forms to all Plan Participants.
- 6.6 Participating Group's Obligation. Caremark shall not be held responsible to any performance standard or obligation if Participating Group, or Participating Group's designee, fails to provide Caremark with accurate, timely and complete information as needed to meet such performance standard or obligation.
- 6.7 Plan Participant Cost Share. Caremark may, but shall not be obligated to, dispense a prescription even if the prescription is not accompanied by the Cost Share. Caremark will credit any amount submitted by Plan Participant in excess of the Plan Participant's Cost Share. In the event a Plan Participant submits to Caremark an insufficient Cost Share and the Plan Participant fails to remit the balance of the Cost Share amount to Caremark within thirty (30) days of Caremark's request, then Caremark shall have the right to invoice Participating Group for, and Participating Group shall have an obligation to pay Caremark, the amount of the uncollected Cost Share(s). Shipping of prescriptions submitted without the appropriate Cost Share may be delayed and these delayed shipments shall not be included in the measurement of any applicable performance guarantees.
- 6.8 Exclusivity. Participating Group shall make Caremark the exclusive provider of the Services described in this Agreement to the Plan and its Plan Participants. Notwithstanding the foregoing, this Section shall not be construed as to prohibit Participating Group from offering Specialty Drug coverage as a medical benefit under a managed care, HMO, PPO or similar benefit plan.

7. Invoicing and Payment.

- 7.1 Invoicing. Caremark shall invoice Participating Group, which may be via facsimile or electronically, in Caremark's standard format, in accordance with the financial terms set forth in Exhibit 1 according to the following schedule:
- (a) Claims. Caremark shall issue Participating Group an invoice for prescription claims four (4) times monthly.
- (b) Administrative Fees. Caremark shall issue Participating Group an invoice for administrative fees four (4) times monthly.
- 7.2 Payment. Participating Group shall pay Caremark all invoiced amounts for Claims and administrative fees in accordance with the terms of Exhibit 1.
- 7.3 Late Payments. At the option of Caremark, payments not received in accordance with Section 7.2 shall bear a service fee of eighteen percent (18%) per annum (or, if less, the highest rate allowed by Law).

8. Pharmaceutical Contracts and Rebates.

- 8.1 Participating Group's Authorization. Participating Group authorizes Caremark to contract as a group purchasing organization for the Plan with pharmaceutical manufacturers and distributors for Rebates.
- 8.2 Rebate Limitations. Participating Group waives, releases and forever discharges Caremark from any Losses arising from a pharmaceutical company's (i) failure to pay Rebates; (ii) breach of an agreement related to Rebates; or (iii) negligence or misconduct. Participating Group acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Participating Group may depend upon a variety of factors, including the content of the PDL adopted by Participating Group, the Plan's design features, Participating Group meeting criteria for Rebates, and the extent of participation in Caremark's formulary management programs, as well as Caremark receiving sufficient information regarding each Claim for submission to pharmaceutical companies for Rebates. Participating Group acknowledges and agrees that Caremark may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event Caremark does initiate collection action against a pharmaceutical company to collect Rebates, Caremark may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action.
- 8.3 Specialty Drug Rebates. Additional terms regarding Specialty Rebates are contained in Exhibit 1.
- 8.4 Disclosure of Manufacturer Fees. Disclosures regarding pharmaceutical manufacturer fees are contained in Exhibit 1.
- 8.5 Pharmaceutical Manufacturer and Distributor Agreements. Participating Group agrees that during the Term of this Agreement, Participating Group will not negotiate, contract, or agree with any pharmaceutical manufacturer or distributor for the purpose of obtaining rebates or other discounts related to the drug utilization, including the use of over the counter products, of Plan Participants. Participating Group further agrees to cancel any existing agreements, arrangements and/or contracts with any pharmaceutical manufacturer or distributor related to such rebates or discounts as of the Effective Date. In the event of a breach of this Section 8.5 by Participating Group, Caremark may terminate this Agreement or Participating Group's participation in the Rebates and may retain 100% of any and all rebates that have not been remitted to Participating Group as of the date of such termination. The pursuit or award of damages shall in no event preclude the right of Caremark to seek an injunction or other equitable relief to enforce this Section 8.5, or any remedy available at law. Caremark shall have the exclusive right to enter into contracts with any pharmaceutical manufacturer or distributor with respect to rebates or discounts for drug utilization, including the use of over the counter products, of Plan Participants.

9. Term and Termination.

- 9.1 Term. The term of this Agreement shall commence on the Effective Date and expire on December 31, 2013 ("Initial Term") subject to earlier termination as hereinafter set forth. **THE TERM SHALL BE AUTOMATICALLY RENEWED FOR ADDITIONAL ONE (1) YEAR PERIODS (EACH A "RENEWAL TERM") UNLESS EITHER PARTY SENDS NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST NINETY (90) DAYS PRIOR TO THE END OF THE INITIAL TERM OR ANY RENEWAL TERM.** In the event the governing board of Participating Group does not approve a budget including sufficient funding for the provision of pharmacy benefit services to the Plan for the subsequent contract year (October 1

thru September 30), Participating Group may terminate the Agreement by providing Caremark written notice of termination at least ninety (90) days prior to the end of the current contract year.

9.2 Termination for Cause.

- (a) Either party may terminate this Agreement upon written notice to the other party in the event of a material breach of this Agreement by the other party which is not cured within sixty (60) days of notice thereof. The pursuit or award of damages shall not constitute a penalty or liquidated damages, and shall in no event preclude the right of Caremark to such an injunction or other equitable relief, or any remedy available at law or equity.
- (b) Upon notice Caremark may terminate this Agreement upon Participating Group's breach of Section 6.8.
- (c) Participating Group may terminate this Agreement upon a material breach by Caremark of Exhibit 2 (Business Associate Obligations) of this Agreement if Caremark does not cure the breach or if a cure is not possible, end the violation, within thirty (30) days of receipt of written notice by Caremark of such breach.
- (d) Either party may terminate this Agreement if any court, governmental or regulatory agency issues to the other party an order to cease and desist doing business. The party receiving notice of an order or finding must provide the other party written notice within ten (10) business days of receipt.

9.3 Termination for Change in Law.

- (a) Either party may terminate this Agreement upon written notice to the other party if, as a result of any Change in Law, the rights or obligations of the requesting party would be materially adversely affected. Any such termination shall be effective on the day immediately preceding the effective date of such Change in Law, subject to the provisions of Section 9.3(b) below.
- (b) Notwithstanding Section 9.3(a), the parties agree to use prompt, good faith efforts to renegotiate the terms of this Agreement. If the parties successfully conclude such negotiations prior to the effective date of the Change in Law, this Agreement shall not terminate and shall be amended to reflect the negotiated terms. In the event the parties are unable to successfully conclude such negotiations, this Agreement shall terminate as provided above.
- (c) State Fiduciary Laws. Caremark shall not be obligated at any time to provide Services to Participating Group or, if applicable, Plan Participants if Participating Group or, if applicable, Plan Participants are located in a state requiring a prescription benefit manager to be a fiduciary to Participating Group or a Plan Participant in any capacity contrary to the terms and conditions specifically identified in this Agreement. In the event any state law or regulation requires Caremark to be a fiduciary to Participating Group or a Plan Participant contrary to the terms and conditions identified in this Agreement, Caremark may elect not to provide Services to the impacted Plan Participants upon thirty (30) days prior written notice to Participating Group.

9.4 Obligations Upon Termination.

- (a) Upon termination of this Agreement, Caremark will, at Participating Group's request, provide mutually agreed upon post-termination services at Caremark's prevailing rate.
- (b) Except as provided in Section 9.4(c) below, upon termination of this Agreement, for any reason, Caremark shall return or destroy all PHI created or received by Caremark as a business associate of Participating Group in connection with this Agreement.

- (c) In the event that Caremark determines that returning or destroying the PHI is not feasible, Caremark may retain PHI, provided that Caremark shall extend the protections contained in Exhibit 2 to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Caremark maintains such PHI.
- (d) Upon termination of this Agreement, Caremark will not transition claims files and/or history that contains Participating Group's cost and privacy information to Participating Group's new pharmacy benefit manager.
- (e) In the event that Caremark terminates this Agreement due to a material breach of this Agreement by Participating Group, including without limitation, Sections 8.6 (Pharmaceutical Manufacturer and Distributor Agreements), 10 (Confidentiality) and 6.8 (Exclusivity), if applicable, Caremark shall have no further obligation following the date of such material breach to pay Participating Group any Rebates, or any other amount that may be payable by Caremark to Participating Group, and Caremark may apply all such amounts to Participating Group's payment obligations under this Agreement.

9.5 Termination of PEBA Agreement. In the event that the master coalition prescription benefit services agreement between PEBA and Caremark shall terminate prior to the end of the Term of this Agreement, this Agreement shall not terminate automatically, but shall remain in full force and effect, subject to the terms and conditions hereunder, including but not limited to the rights of either party under this Section 9.

10. Confidential and Proprietary Information.

10.1 Confidential Information.

- (a) Neither Caremark, Participating Group, nor any of Participating Group's officers, employees, advisors, agents or representatives shall disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may, inter alia be conditioned upon the execution of a confidentiality agreement prior to any disclosure to a third party. Each party will disclose Confidential Information of the other party only to its officers or employees who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information, and (ii) have agreed not to disclose it to others and to treat it in accordance with the requirements of this Section. Participating Group shall advise its officers, employees, advisors, agents or representatives of the confidentiality provisions set forth in this Agreement and shall be liable for any breach of such confidentiality provisions by its officers, employees, advisors, agents or representatives.
- (b) The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the party who disclosed the information; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; or (v) the information is required to be disclosed pursuant to a non-appealable court order. If either party is required to disclose the Confidential Information of the other party as part of a judicial process, government investigation, legal proceeding, or other similar process, such party, if it is reasonably possible to do so, shall give such prior written notice to the other party to allow the other party to seek an appropriate protective order or modification of any disclosure.

- (c) Any unauthorized disclosure or use of Confidential Information including but not limited to, the sharing of this Agreement any of the financial terms related to this Agreement, or claims tapes with any consulting agents, advisors, brokers, or any other third party, would cause Caremark or Participating Group immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either party fails to comply with this Section 10, the other party will be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for Losses caused by the breach, and to any other remedies provided by Law.

Notwithstanding the foregoing, Confidential Information may be disclosed by Participating Group in response to a request made pursuant to an applicable state Public Records Law, insofar as disclosure is required by that Law. Participating Group shall provide Caremark with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for Caremark to object to such disclosure in accordance with Law. Caremark acknowledges that PEBA and the Participating Groups are subject to the Texas Public Information Act, Chapter 522, Texas Government Code.

- 10.2 Proprietary Information to Caremark. Participating Group acknowledges that the PDL is proprietary to Caremark. Further, all Caremark databases, as well as the software, hard coding, and logic used to generate the compilations of information contained in Caremark’s claims adjudication system and in all other databases developed by Caremark or its designees in connection with performing Services, and the format of all reports, printouts, and copies, and any prior and future versions thereof by any name, are the property of Caremark and are protected by copyright which shall be owned by Caremark.

11. Indemnification.

- 11.1 To the extent permitted by law, Caremark shall defend, indemnify and hold harmless Participating Group and each of its officers, directors, employees, subsidiaries and affiliates (the “Participating Group Parties”) from and against any and all Losses incurred by any Participating Group Parties to the extent arising out of or relating to Caremark’s negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Participating Group Party.
- 11.2 To the extent permitted by law without waiving any rights, defenses or immunities afforded by state or federal law, Participating Group shall defend, indemnify and hold harmless Caremark and each of its officers, directors, employees, subsidiaries and affiliates (the “Caremark Parties”) from and against any and all Losses incurred by any Caremark Parties arising out of or relating to (i) Participating Group’s negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Caremark Party, (ii) any legal defects in the design of the Plan, or (iii) any deficiencies in the PDD.
- 11.3 The party seeking indemnification shall notify the other party in writing within thirty (30) days of the assertion of any claim or the commencement of any action or proceeding for which indemnity may be sought under this Agreement. Failure to notify the other party shall not result in the waiver of indemnity rights with respect to such claim, suit, action or proceeding unless such failure materially prejudices the ability of the indemnifying party to defend such claim, suit, action or proceeding. The parties shall cooperate with each other in the defense and settlement of any such claim, action or proceeding.

12. **Business Associate Relationship.** The parties acknowledge and agree that Caremark is a Business Associate, as defined under HIPAA, of the Plan in connection with the provision of certain Services, and is a health care provider and Covered Entity, and not a Business Associate of Participating Group, under HIPAA in connection with its provision of certain other Services. To the extent Caremark acts as a Business Associate of the Plan, and in accordance with HIPAA, Caremark shall adhere to the applicable requirements established for Business Associates as set forth in Exhibit 2.

13. **General Provisions.**

13.1 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, provided such consent will not be unreasonably withheld. However, either party may assign this Agreement or delegate the duties to be performed under this Agreement without the consent of the other party to any of its subsidiaries or affiliates at any time, or as part of a sale of all, or substantially all, of the assets to which this Agreement pertains.

13.2 **Compliance with Law.**

(a) Each party shall comply with the provisions of all applicable Law relating to the performance of its obligations under this Agreement. Neither party has any responsibility to advise the other about such party's compliance with any Law. Participating Group represents that its Plan complies with all applicable Laws. Caremark makes no representation that the Plan is in compliance with any applicable Law.

(b) To the extent applicable, each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

13.3 **Force Majeure.** Except for payment obligations, neither party shall be liable for failure or delay of performance arising from an act of God or other events beyond the reasonable control of such party, such as the acts of a regulatory agency, fires, floods, explosions, strikes, labor stoppages, and acts of terrorism, war or rebellion.

13.4 **Limitation of Liability.**

(a) Except as otherwise expressly set forth in this Agreement, Caremark makes no additional representations or warranties, including without limitation, warranties of merchantability or fitness for a particular purpose.

(b) The parties' respective liability under this Agreement, if any, shall be subject to the limitation stated in Exhibit 1.

(c) Caremark will not be liable for any claim which is asserted by Participating Group more than twelve (12) months after Participating Group is or reasonably should have been aware of such claim, and will in no event be liable for any claim which is asserted by Participating Group more than thirty-six (36) months after the event resulting in damage or loss.

- (d) Caremark does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Participating Pharmacies are independent contractors, not subcontractors or agents of Caremark, and Caremark shall have no liability to Participating Group for a claim arising out of any act or omission of any Participating Pharmacy or its agents or employees.
- (e) Caremark shall be entitled to rely on First Data Bank, Medi-Span or any other nationally available reporting service of pharmaceutical prices selected by Caremark to determine AWP for purposes of establishing the pricing provided to Participating Group under this Agreement. Participating Group acknowledges that Caremark does not establish AWP, and Caremark shall have no liability to Participating Group arising from the use of First DataBank, Medi-Span or any other nationally available reporting service. Participating Group acknowledges that if the reporting source for determining Participating Group's AWP should not continue to support AWP, Participating Group shall cooperate with Caremark to negotiate the pricing hereunder to maintain the parties' respective economic position under this Agreement as of the Effective Date.

13.5 Pricing Assumptions. This Agreement is subject to the pricing assumptions stated in Exhibit 1.

13.6 General. Except as otherwise provided herein, this Agreement may not be modified except in a writing signed by both parties. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. This Agreement attached hereto supersedes all prior or contemporaneous understandings or contracts regarding the subject matter of this Agreement, including, but not limited to, Caremark's response to a request for proposal, a best and final offer document or final offer document or finalist presentation, and any memorandum of understanding, and constitute the entire agreement existing between the parties with respect thereto. No waiver or discharge of any breach of this Agreement shall be effective unless it is in writing and signed by the party granting such waiver or discharge. Any waiver of any breach of any provision of this Agreement shall not be a waiver of any subsequent breach of any provision of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

13.7 Governing Law/Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to its conflict of laws rules. Any suit brought hereunder (including any action to compel arbitration or to enforce any award or judgment reentered thereby) shall be brought in the state or federal courts sitting in Collin County, Texas the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in persona jurisdiction over it and consents to service of process in any manner authorized by Texas law.

13.8 Notices. Any notice given under this Agreement shall be given in writing, and sent by hand delivery, facsimile transmission (receipt confirmed), overnight courier that provides confirmation of delivery, or certified mail, return receipt requested, to the applicable party at its address set forth below:

If to Caremark:

2211 Sanders Road, 10th Floor
Northbrook, Illinois 60062
Attn: Vice President and Senior Counsel, Healthcare Services
Fax No: (847) 559-4879

With a copy to:

445 Great Circle Road
Nashville, Tennessee 37228
Attn: General Counsel
Fax No: (615) 743-6611

If to Participating Group:

1520 Avenue K
Plano, Texas 75074
Attn: Sydney Covey
Fax No.: (972) 941-7239

or to such other address or to the attention of such other person as either party may designate in writing pursuant to this Section 13.8. Written notices shall be deemed received on the date actually delivered to the other party.

- 13.9 Commercially Unavailable Products. This Agreement does not require Caremark to dispense those products to which Caremark has no reasonable access.
- 13.10 Independent Contractors. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating a relationship of employer and employee, principal and agent, or joint venture of the parties hereto; it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to place Caremark in any relationship with Participating Group other than as an independent contractor.
- 13.11 Third Party Beneficiary. This Agreement has been entered into solely for the benefit of Participating Group and Caremark and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance, including but not limited to, Participating Pharmacies or Plan Participants.
- 13.12 Government Programs. To the extent required by applicable law or contractual commitment, Participating Group agrees to fully and accurately disclose and report to Medicare, Medicaid or other government health care programs any discount or rebate or other credit received by Participating Group under this Agreement, whether reflected in the fees for the products and services or otherwise provided hereunder, as discounts against the price of the drugs under all applicable state or federal programs that provide reimbursement to Participating Group for products or services provided by Caremark. It is the intention of the parties, that for purposes of the Federal Anti-kickback Statute, any discount, rebate or other Participating Group credit, shall constitute and be treated as discount against the price of drugs within the meaning of 42 U.S.C. §1320a 7b(b)(3)(A).
- 13.13 Government Program Business. Participating Group represents and warrants that:

- (a) it is not a party to a risk contract under Sections 1876(g) or 1903(m) of the Social Security Act;
- (b) it is not a Medicare Part C health plan that receives a capitated payment from Medicare and has its total Medicare beneficiary cost sharing approved by the Centers for Medicare and Medicaid Services under Section 1854 of the Social Security Act; or
- (c) it does not provide or arrange for items and services for Medicaid enrollees in accordance with a risk-based contract with a state agency subject to the upper payment limits in 42 C.F.R § 447.361 or an equivalent payment cap approved by the U.S. Secretary of Health and Human Services.

13.14 Survival. Sections 4 (Use of Data), 6.2 (Payment), 6.3 (Control of Plan), 9.4 (Obligations Upon Termination), 10 (Confidential and Proprietary Information), 11 (Indemnification), 13.4 (Limitation of Liability) and 13.14 (Survival) shall survive the termination or expiration of this Agreement.

13.15 Use of Name. Each party shall use the other party’s name, logo and trademark only in the manner specified by the other party in writing, or as expressly permitted by this Agreement.

13.16 Attorney Fees. If either party institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys’ fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

13.17 Authority. Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

13.18 Third Party Recoveries. Caremark shall use reasonable commercial efforts to distribute among its clients recoveries received from third parties during the Term to the extent such recoveries may reasonably be allocated to Caremark’s clients based on the utilization of products by Plan Participants. Caremark may offset its reasonable costs arising from collection and distribution of such recovery, including reasonable attorneys’ fees and expenses. Caremark shall have no obligation to initiate or participate in any legal proceeding seeking third party recoveries.

14. Exhibits. The following Exhibits are hereby incorporated into and made a part of this Agreement:

| <u>Exhibit</u> | <u>Description</u> |
|----------------|---|
| 1 | Financial and Confidential and Proprietary Terms |
| 2 | Business Associate Obligations |
| 3 | Audit Guidelines |
| 4 | Appeals |
| 5 | Affidavit of No Prohibited Interest |
| 6 | City of Plano Contractor Insurance Requirements and Agreement |

* * * * *

The parties hereto have caused this Prescription Benefit Services Agreement to be executed by their duly authorized representatives.

CAREMARKPCS HEALTH, L.L.C.:

CITY OF PLANO RISK POOL:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Approved as to Form:

By: _____
City Attorney

Exhibit 1

Financial and Confidential and Proprietary Terms

[The terms and conditions of Exhibit 1, which constitute the confidential and proprietary trade secrets of Caremark, have been redacted from this copy of the Agreement so that this copy may be reproduced and disclosed generally.]

Caremark claims the terms of Exhibit 1 of the Agreement to be Confidential Information as described in the Section 10 of the Agreement. The parties acknowledge that the Agreement is subject to disclosure under the Texas Public Information Act ("PIA"). The City of Plano Risk Pool (the "Risk Pool") acknowledges and agrees that Caremark considers certain information included in Exhibit 1 confidential proprietary and exempt from disclosure under § 552.110 of the PIA. In accordance with Section 10 of the Agreement and § 552.305 of the PIA, in the event that the Risk Pool receives a request for disclosure under the PIA, the Risk Pool shall decline to release information Caremark has designated as proprietary and exempt from disclosure for the purpose of requesting an attorney general decision. The Risk Pool shall provide Caremark with (i) prior written notice no later than the 10th business day after the Risk Pool receives the request for the information and (ii) an opportunity for Caremark to object to disclosure of non-public, confidential and proprietary information included in these materials that is exempt from disclosure under applicable law. Caremark acknowledges that the Risk Pool is subject to the Texas Public Information Act, Chapter 522, Texas Government Code.]

Exhibit 2

Business Associate Obligations

In accordance with the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR part 160 and part 164, subparts A and E (“The Privacy Rule”) and the Standards for Security of Electronic PHI, at 45 CFR parts 160 and 164, subpart C (the “Security Rule”), under HIPAA, Caremark shall, to the extent it acts in its capacity as a Business Associate to the Plan, adhere to the applicable requirements established in the Privacy Rule and Security Rules for Business Associates as set forth below.

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this Exhibit or the Agreement shall have the same meaning as those terms in the Privacy Rule or Security Rule or the HITECH Act.

- A. “ARRA” shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009), and specifically, Title XIII, the Health Information Technology for Economic and Clinical Health Act).
- B. “Business Associate” shall mean Caremark.
- C. “Compliance Date” shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA or if specified therein, its implementing regulations, as applicable; provided that, in any case for which that date occurs prior to the Effective Date of this Exhibit, the Compliance Date shall mean the effective date of this Exhibit.
- D. “*HITECH Act*” shall mean the Health Information Technology for Economic and Clinical Health Act, which is at Section 13400, *et. seq.* of ARRA, as implemented in regulations issued by the Secretary and as of the applicable Compliance Date specified in such regulations.
- E. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- F. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR part 160 and part 164, subparts A and E.
- G. “Protected Health Information” (“PHI”) and “Electronic Protected Health Information” (“EPHI”). PHI and EPHI shall have the same meaning given such terms in 45 CFR 160.103, but limited to the information created or received by Caremark in its capacity as a pharmacy benefits manager (and not a mail pharmacy or other health care provider) on behalf of Participating Group and Plan.
- H. “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information, at 45 CFR parts 160 and 164, subpart C.

2. **Obligations and Activities of Caremark.**

- A. Caremark agrees not to use or disclose PHI other than as permitted or required by the Agreement or this Exhibit, or as permitted or required by Law.
- B. Caremark agrees to use commercially reasonable safeguards to protect against any use or disclosure of the PHI not provided for by the Agreement or this Exhibit. Caremark also agrees to (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of Participating Group as required by 45 CFR 164.314(a)(2)(i)(A); and (ii) report to Participating Group any Security Incidents involving EPHI of which it becomes aware.
- C. Caremark agrees to mitigate, to the extent practicable, any harmful effect that is known to Caremark of a use or disclosure of PHI by Caremark in violation of this Exhibit.
- D. Caremark agrees to report to Participating Group any use or disclosure of the PHI not provided for by the Agreement or this Exhibit of which it becomes aware.
- E. Caremark agrees to require that any agent, including a subcontractor, to whom it delegates any function or activity it has undertaken to perform on behalf of Participating Group, and to whom it provides PHI received from or created on behalf of Participating Group, agrees to substantially the same restrictions and conditions on the use or disclosure of PHI as apply through this Exhibit to Caremark.
- F. Upon the Participating Group's written request, and in a reasonable time and manner, Caremark agrees to provide to Participating Group such PHI maintained by Caremark in a Designated Record Set for Participating Group to respond to a request for access under 45 CFR 164.524. Caremark agrees that if it maintains PHI in an Electronic Health Record, as defined in the HITECH Act, it shall provide such access in electronic format if so requested by Participating Group, to the extent required by and in accordance with Section 13405(e) of the HITECH Act.
- G. Upon the Participating Group's written request, and in a reasonable time and manner, Caremark agrees to make such amendments to PHI maintained by it in a Designated Record Set for Participating Group to respond to a request for amendment under 45 CFR 164.526.
- H. Caremark agrees to make its internal practices, policies, procedures, books, and records relating to the use and disclosure of PHI received from, or created or received by Caremark on behalf of Participating Group, available for inspection and copying by the Secretary for purposes of the Secretary determining Participating Group's compliance with the Privacy Rule.
- I. Caremark agrees to document such disclosures of PHI made by it, and information related to such disclosures, as would be required for Participating Group to respond to a request by an Individual for an accounting of disclosures of PHI under 45 CFR 164.528.
- J. Upon written request by Participating Group, and in a reasonable time and manner, Caremark agrees to provide to Participating Group information collected in accordance with Paragraph I of this Section for Participating Group to provide an accounting under 45 CFR 164.528. In addition, upon Participating Group's written request on behalf of an Individual, Caremark agrees to provide an accounting of such disclosures of PHI

maintained in an Electronic Health Record as required by and in accordance with Section 13405(c) of the HITECH Act.

K. **Breach Notification.** Following the discovery by Caremark of any Breach of Unsecured PHI, Caremark agrees to notify Participating Group of such Breach without unreasonable delay. Such notification shall include, to the extent available, the identity of each Individual whose Unsecured PHI has been, or is reasonably believed by Caremark to have been, accessed, acquired, used, or disclosed during the Breach. At the time of notification or promptly thereafter as such information becomes available, Caremark shall also provide Participating Group with such other information as is required for Participating Group to notify an Individual of the Breach as required by 45 CFR 164.404(c). Except for notifications to the Secretary, which must be done by Participating Group, Caremark agrees that to the extent the Breach is solely as a result of Caremark's failure to implement reasonable and appropriate safeguards as required by this Exhibit, and not due in whole or in part to the acts or omissions of Participating Group, Caremark shall provide the notifications required under 45 CFR 164.404 and 45 CFR 164.406, subject to any delay required by law enforcement pursuant to 45 CFR 164.412.

L. **Security and Privacy Requirements of HITECH Act.** Caremark agrees to comply with Sections 164.308, 164.310, 164.312, and 164.316 of the Security Rule and the additional requirements of the HITECH Act that apply to security and privacy that are made applicable to Covered Entities as required by sections 13401 and 13404(a) respectively of the HITECH Act. Caremark may use and disclose PHI only if such use or disclosure, respectively, is in compliance with the applicable provisions of section 164.504(e) of the Privacy Rule. The parties acknowledge and agree that section 164.504(e)(1)(ii) of the Privacy Rule shall apply to Caremark in the same manner that such section applies to Participating Group with respect to compliance with the standards in section 164.502(e) and 164.504(e) of the Privacy Rule, as required by section 13404(b) of the HITECH Act.

3. **Permitted Uses and Disclosures by Caremark.**

Caremark may use or disclose PHI to perform its Services (including analyzing PHI to recommend changes or improvements in such Services) for or on behalf of, Participating Group as provided in the Agreement. Except as provided in this Exhibit, such uses and disclosures shall be limited to those that would not violate the Privacy Rule if done by Participating Group. In addition, Caremark may use and disclose PHI:

- A. for the proper management and administration of Caremark or to carry out its legal responsibilities; provided that, in the case of any disclosures for this purpose, the disclosure is Required by Law or Caremark obtains reasonable assurances from the person to whom the information is disclosed, that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and that the person will notify Caremark of any instances of which it is aware in which the confidentiality of the information has been breached;
- B. to provide Data Aggregation services to Participating Group as permitted by 45 CFR 164.504(e)(2)(i)(B);
- C. to de-identify the information or create a limited data set in accordance with 45 CFR

§164.514, which de-identified information or limited data set may be used and disclosed by Caremark as permitted by law, including HIPAA;

- D. pursuant to an individual authorization in accordance with 45 CFR §164.508;
- E. to report violations of law to appropriate federal and state authorities, consistent with 45 CFR §164.502(j)(1);
- F. for treatment, payment and health care operations of health care providers and other Covered Entities as permitted by 45 CFR 164.506(c); and
- G. as otherwise authorized in writing by Participating Group.

4. **Obligations of Participating Group**

Participating Group shall provide to Caremark a written list of the names of those individuals in its Workforce that are authorized to receive or access PHI on its behalf, and to provide reasonable prior written notice to Caremark of any changes to such list. In the absence of Participating Group providing such list, Caremark may assume that those individuals that are member of the Workforce of Plan Sponsor/Participating Group who request or receive PHI are performing plan administration activities for Participating Group, and are authorized to receive or access PHI on its behalf.

5. **Miscellaneous.**

- A. Regulatory References. A reference in this Exhibit to a section in the Privacy Rule means the section as in effect or as amended, and as of its applicable Compliance Date.
- B. Changes to this Exhibit. The parties agree to negotiate in good faith to amend this Exhibit or the Agreement as necessary to comply with any changes in the Privacy Rule or Security Rule.
- C. Interpretation. Any ambiguity in this Exhibit shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule and HITECH Act.

Exhibit 3 **Audit Guidelines**

An audit of the Services is intended to enable Participating Group to confirm that Caremark has complied with its obligations under the Agreement related to administration of the PDD. To accomplish the review in an efficient and timely manner, the following guidelines will apply to the audit process:

Audit Notification Letter

A Participating Group request for an audit of Caremark will be directed to the Participating Group Contract Audit Manager either in writing on Participating Group's letterhead, or by e-mail.

Teleconference

Upon Caremark's receipt of a request for an audit, Caremark will organize and conduct an initial teleconference between Participating Group and Caremark. This teleconference will address the following:

- Individual audit participants
- Requirement and purpose of an approved confidentiality agreement (for use with outside audit firms or other Participating Group representatives, as applicable)
- Onsite requirements
- Mutually established timelines
- Claims tape needs and costs
- Prescription copies: timelines, availability and cost
- Guidelines for acceptable verification of audit questions
- Caremark's right to respond within a reasonable time after questions arise and before audit results are disseminated by the auditor to Participating Group
- Audit Process Confirmation Letter
- Other appropriate issues.

Mutually Agreed Timelines

Participating Group and Caremark will mutually agree upon an audit timeline, taking into consideration individual circumstances and constraints. An example of a standard timeline is as follows (from the time a signed confidentiality agreement is secured):

- Claim tape request – two (2) weeks
- Standard screen prints – two (2) weeks
- Mail service prescription copies – six (6) weeks
- Audit Report Reply – one (1) month.

1.1. Response to Sampling Questions

The Participating Group can submit to Caremark questions related to provided claim samples. Answers to sampling questions are normally provided within two (2) weeks after the questions have been presented.

1.2. Claims Tape Requests

Claims tape specifications shall be clarified during the initial teleconference and processed in the order of receipt of a signed Confidentiality Agreement. Delivery to the specified party normally takes place within two (2) weeks.

1.3. Audit Report

In the event of an audit by a third party, Caremark and Participating Group will be provided a copy of any proposed audit report and Caremark will have a reasonable opportunity to comment on any such report before it is finalized.

1.4. Close of Audit

Upon finalization of audit results and agreement between Participating Group and Caremark on any identified financial discrepancies, the period under review will be considered closed.

Exhibit 4
APPEALS

APPEALS PROGRAM

1. Participating Group represents that its Plan is NOT governed by ERISA.
2. Participating Group represents and warrants to Caremark that the Appeals Program, as defined in Section 5 below, satisfies any and all laws applicable to the Plan with respect to appeals from denials of Claims for prescription drug benefits. Participating Group shall promptly notify Caremark in writing in the event a change in law causes the Appeals Program to be in non-compliance with applicable laws. Upon such notice, Caremark shall have the option of revising its Appeals Program to be in compliance with such change in law or terminating this Appeals Program.
3. Caremark may from time to time modify the Appeals Program. In the event of any such modification, Caremark shall provide Participating Group with written notice of such modification at least thirty (30) days prior its implementation. If Participating Group determines that any such modification would cause the Appeals Program to be in non-compliance with applicable laws, Participating Group shall so notify Caremark prior to the end of the thirty (30) day period. Caremark shall then have the option of further modifying its Appeals Program to be in compliance with applicable laws or terminating this Appeals Program. If Participating Group does not so notify Caremark, then Caremark shall implement the modification and shall continue to rely on the representation and warranty set forth in Section 2 above.
4. Participating Group represents that it will provide Caremark with a current and accurate copy of the Plan Document, as defined herein. The “Plan Document” shall be the written document, which sets forth the Plan design and all other information concerning Participating Group’s prescription drug benefit plan including, but not limited to, eligibility for such benefits, the benefits to be provided, limitations on such benefits and the Plan’s claims and review procedures. Throughout the Term of this Agreement, Participating Group, at its expense, will provide Caremark with sufficient advance notice of any proposed amendments to the Plan Document.
5. Caremark will provide Participating Group with the appeals program described in Sections 5.a. and 5.b. below (“Appeals Program”).
 - a. *Review of Benefit Coverage.* Caremark shall conduct appeals relating to eligibility and coverage of prescription drug benefit determinations. Such reviews will be based on the Plan Document provisions and criteria approved by the Plan, with respect to coverage of prescription drug benefits only, and shall not include a review of medical necessity as may be defined under the terms of the Plan Document. With respect to such review of benefit coverage, Caremark shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. The decision of Caremark shall be final, subject to judicial review only for abuse of discretion. Caremark may, in its sole discretion, consider the opinions of additional medical and/or legal experts with respect to interpretation of the Plan Document. Under the Appeals Program, Caremark agrees to be a fiduciary solely for the purpose of reviewing appeals relating to the coverage of

- prescription drug benefits. Caremark will review appeals in accordance with the rules and procedures established by Caremark to govern appeals from the denials of claims, as may be amended from time to time.
- b. *Review of Medical Necessity.* Caremark has contracted with an independent vendor or vendors for the processing of appeals resulting from a denial of authorization of prescription benefits where the Plan beneficiary is entitled to obtain a review of the denial by an independent physician specialist. Caremark has entered or will enter into an agreement with the independent vendor(s), which provides for an appeals process consistent with the Appeals Program. With respect to such reviews, the independent vendor shall act as a fiduciary and shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. The decision of the independent vendor shall be final, subject to judicial review only for abuse of discretion.
6. As consideration for the services provided hereunder, Participating Group shall pay Caremark the fees set forth in Exhibit 1 of the Agreement.

Exhibit 5
Affidavit of No Prohibited Interest

I, the undersigned declare that I am authorized to make this statement on behalf of CaremarkPCS Health, L.L.C. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of CaremarkPCS Health, L.L.C. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

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

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

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

CAREMARKPCS HEALTH, L.L.C.

By: _____
Signature

Print Name

Title

Date

STATE OF ILLINOIS §
 §
COUNTY OF COOK §

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

Notary Public, State of _____

Exhibit 6
City of Plano Contractor Insurance Requirements and Agreement

Contractors providing professional services to the City or performing work on City property for the City of Plano shall provide the City a certificate of insurance evidencing the coverages and coverage provisions identified herein. Contractors shall, upon request, provide the City evidence that all subcontractors providing services directly to the City have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor’s policy.

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

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

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

Additional Requirements:

- **All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City of Plano.**
- **All insurance coverage required by this section must be evidenced by a certificate of insurance submitted by the contractor’s insurer or broker. Certificates of insurance received from any other source will be rejected.**

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

A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|---|--|-------------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | Public Works Administration / David Falls | | |
| Department Head | | Alan Upchurch | | |
| Agenda Coordinator (include phone #): Kim McFarland (972-769-4109) | | | | |
| CAPTION | | | | |
| <i>To Hencie International, Inc., increasing the contract by \$104,283 for the 2009-2010 Pavement Maintenance Project- Phase I, Project No. 6020, Change Order No. 1, Original Bid No. 2010 - 69 - B.</i> | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 750,646 | 2,345,354 | 1,000,000 | 4,096,000 |
| Encumbered/Expended Amount | -750,646 | -275,301 | 0 | -1,025,947 |
| This Item | 0 | -104,283 | 0 | -104,283 |
| BALANCE | 0 | 1,965,770 | 1,000,000 | 2,965,770 |
| FUND(S): CAPITAL RESERVE | | | | |
| COMMENTS: Funds are included in the 2010-11 Capital Reserve Fund. This item, in the amount of \$104,283, will leave a current year balance of \$1,965,770 for the Pavement Maintenance project. STRATEGIC PLAN GOAL: Pavement repairs relate to the City's Goal of Financially Strong City with Service Excellence. | | | | |
| SUMMARY OF ITEM | | | | |
| This change order is for additional concrete street repairs on Wythe Drive between Coit Road and Artist Drive and Park Boulevard between Ohio Drive and Preston Road. As the project progressed additional areas of pavement breakdown were found and repaired while working on these streets. | | | | |
| Staff recommends approval of Change Order No. 1. The total Contract will be \$530,649, which is a 24.46% increase of the original contract amount of \$426,366. | | | | |
| List of Supporting Documents: Change Order No. 1 | | | Other Departments, Boards, Commissions or Agencies | |

CHANGE ORDER NO.1

2009-2010 PAVEMENT MAINTENANCE PROJECT – PHASE 1

PROJECT NO. 6020

PURCHASE ORDER NO. 103796

CIP NO. 35-51130

BID NO. 2010-69-B

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **HENCIE INTERNATIONAL, INC.** for the **2009-2010 PAVEMENT MAINTENANCE PROJECT- PHASE 1**, dated March 22, 2010.

B. DESCRIPTION OF CHANGE

The change order is for additional quantities of work. As the project progressed additional areas were identified that needed to be repaired and identified repair areas grew in size.

C. EFFECT OF CHANGE

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

| <i>ITEM NO.</i> | <i>ITEM DESCRIPTION</i> | <i>ORIGINAL QUANTITY</i> | <i>REVISED QUANTITY</i> | <i>UNIT</i> | <i>UNIT PRICE</i> | <i>AMOUNT OF CHANGE</i> |
|-----------------|----------------------------------|--------------------------|-------------------------|-------------|-------------------|-------------------------|
| 100 | Full Depth Saw Cut | 15,719 | 16,100 | LF | \$1.15 | \$438.15 |
| 101 | F/I Long & Transvers Butt Joint | 15,719 | 16,100 | LF | \$1.75 | \$666.75 |
| 102 | R/D/R Existing Conc. Paving | 1,912 | 3274 | SY | \$5.90 | \$8,035.80 |
| 103 | R/D/R Exist Conc. Paving & Base | 3971 | 3984 | SY | \$5.90 | \$76.70 |
| 104 | F/I 8" Concrete Paving 4200 PSI | 3804 | 2233 | SY | \$39.00 | -\$61,269.00 |
| 105 | F/I 10" Concrete Paving 4200 PSI | 2079 | 5026 | SY | \$41.05 | \$120,974.35 |
| 108 | Reinforced Concrete Sidewalk | 264 | 0 | SF | \$3.40 | -\$897.60 |
| 109 | Monolithic Median Nose | 1 | 0 | Each | \$250.00 | -\$250.00 |
| 110 | Brick Median Paving | 315 | 0 | SF | \$2.00 | -\$630.00 |
| 111 | Barrier Free Ramp Type A | 7 | 4 | Each | \$500.00 | -\$1,500.00 |
| 121 | F/I Full Depth Saw Cut | 1,882 | 3,495 | LF | \$1.15 | \$1,854.95 |
| 122 | F/I Long & Transvers Butt Joint | 1,882 | 3,495 | LF | \$1.75 | \$2,822.75 |
| 123 | R/D/R Existing Conc. Paving | 943 | 1,740 | SY | \$5.50 | \$4,383.50 |
| 124 | F/I 8" Concrete Paving 4200 PSI | 943 | 1,740 | SY | \$40.05 | \$31,919.85 |
| 125 | F/I 6" Monolithic Curb | 528 | 677 | LF | \$1.00 | \$149.00 |
| 126 | R/F/R Existing Concrete Sidewalk | 1,868 | 1,409 | SF | \$3.25 | -\$1,491.75 |
| 127 | F/I Barrier Free Ramp Type A | 10 | 8 | Each | \$500.00 | -\$1,000.00 |
| | TOTAL: | | | | | \$104,283.45 |

| | | |
|--|-----------|--------------------------|
| Original Contract Amount | \$ | <u>426,365.80</u> |
| Contract Amount (Including Previous Change Orders) | \$ | <u>426,365.80</u> |
| Amount, Change Order No. 1 | \$ | <u>104,283.45</u> |
| Revised Contract Amount | \$ | <u>530,649.25</u> |
| Total Percent Increase Including Previous Change Orders | | <u>24.46%</u> |

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 0 day(s) to this project:

| | |
|--|--------------------------------|
| Original Contract Time | <u>160 working days</u> |
| Amount (Including Previous Change Orders) | <u>160 working days</u> |
| Amount, Change Order No. _____ | <u>0 working days</u> |
| Revised Contract Time | <u>160 working days</u> |
| Total Percent Increase Including Previous Change Orders | <u>0.00%</u> |

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **HENCIE INTERNATIONAL, INC**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated March 22, 2010.

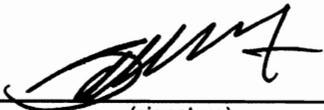
F. AUTHORITY TO SIGN

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

OWNER: CITY OF PLANO

CONTRACTOR: HENCIE INTERNATIONAL

By: _____
(signature)

By:  _____
(signature)

Print Name: _____

Print Name: Sabeeh Fatehdin

Print Title: _____

Print Title: V.P.

Date: _____

Date: 11/3/10

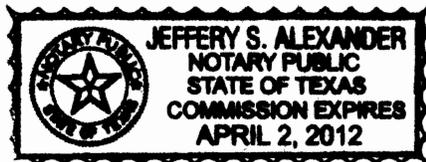
APPROVED AS TO FORM:

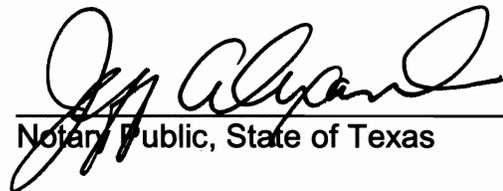
By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 3rd day of November, 2010, by **SABEEL FATEHDIN, VICE PRESIDENT** of **HENCIE INTERNATIONAL, INC.**, a **TEXAS** corporation, on behalf of said corporation.





Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|---|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | Parks and Recreation | | |
| Department Head | | Amy Fortenberry | | |
| Agenda Coordinator (include phone #): Susan Berger (7255) | | | | |
| CAPTION | | | | |
| A Resolution of the City Council of the City of Plano, Texas approving the action of the Arts of Collin County Commission, Inc. to dedicate and convey a portion of land to the City of Allen, Texas to maintain the Six City Trail; and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): N/A | | | | |
| <p>COMMENTS: This item has no fiscal impact. As an owner city of the Arts of Collin County, this item will approve the action of Arts of Collin County to dedicate flood plain land valued at an amount greater than \$50,000 to the City of Allen.</p> <p>STRATEGIC PLAN GOAL: Approving this action of the Arts of Collin County relates to the City's Goal of Partnering for Community Benefit.</p> | | | | |
| SUMMARY OF ITEM | | | | |
| The City of Plano, as an owner city of The Arts of Collin County Commission, Inc. (ACC) will dedicate flood plain land to the City of Allen for the purpose of constructing and maintaining a hike and bike trail in accordance with the Six Cities Trail Plan. This dedication will satisfy the ACC requirement for a land match equal to the value of the open space grants received from Collin County for this purpose (\$850,000). The owner cities are required to approve any disposition of assets exceeding \$50,000 in value. | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| Resolution | | | | |

A Resolution of the City Council of the City of Plano, Texas approving the action of the Arts of Collin County Commission, Inc. to dedicate and convey a portion of land to the City of Allen, Texas to maintain the Six City Trail; and providing an effective date.

WHEREAS, the Arts of Collin County Commission, Inc. (hereafter "ACC") is the owner of the property identified in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the ACC has approved the dedication to the City of Allen of approximately 19.51 acres of property for the purpose of the maintenance of the floodplain and a hike and bike trail; and

WHEREAS, the value of the dedication of the property is deemed to be in excess of \$50,000 as represented by the attached Resolution of the ACC; and

WHEREAS, the City of Plano is one of the Owner Cities of the ACC, and as an Owner is required to approve any disposition of assets in excess of \$50,000; and

WHEREAS, the City of Plano as an Owner City supports the action of the ACC to dedicate the specified portion of the property for the purpose of the maintenance of the flood plain and for a hike and bike trail.

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

Section I. The City Council of the City of Plano hereby approves of the ACC's dedication and conveyance of the 19.51 acres of property shown on Exhibit "A" to the City of Allen.

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

DULY PASSED AND APPROVED this the 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

RESOLUTION NO. 59-10-10

A RESOLUTION OF THE ARTS OF COLLIN COUNTY COMMISSION, INC., TO DEDICATE AND CONVEY A PORTION OF LAND TO THE CITY OF ALLEN, COLLIN COUNTY, TEXAS TO CONSTRUCT AND MAINTAIN HIKE AND BIKE TRAILS AND TO FULFILL MATCHING GRANT REQUIRED BY COLLIN COUNTY OPEN SPACE GRANT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Arts of Collin County Commission, Inc., (hereafter ACC) is the owner of the property identified in Exhibit A attached; and,

WHEREAS, the Collin County Open Space Grant Program requires the recipient of the grant funds to provide a match equal in value to the grant funds, and the property identified in Exhibit A encompasses the hike and bike trail and the valuation of the identified property fulfills the required value of matching funds in the amount of \$850,000; and,

WHEREAS, the City of Allen requires the dedication of the specified portion of the property for the purpose of the maintenance of hike and bike trails; and;

WHEREAS, the ACC finds that the dedication is necessary to fulfill the required grant match and needed for future access to the property for public maintenance;

WHEREAS, in February of 2004, the Cities of Allen, Frisco and Plano entered into an interlocal agreement (hereinafter "ILA") regarding the creation of a performing arts center in Collin County, Texas;

WHEREAS, Article III (f) of the ILA states: "The Corporation shall have all powers provided by law except those that are reserved by the Cities. The following rights are specifically reserved by the Cities: ... (f) Sale or disposal of an asset whose value exceeds \$50,000."; and,

WHEREAS, the dedication and conveyance of the property identified in Exhibit A involves the disposal of an asset whose value exceeds \$50,000; and,

WHEREAS, it is anticipated that the Cities of Allen, Frisco and Plano will approve of the proposed dedication and conveyance;

NOW, THEREFORE, BE IT RESOLVED BY THE ARTS OF COLLIN COUNTY COMMISSION, INC., THAT:

SECTION 1. Subject to any easements or other interests already existing in the 19.51 acre property identified in Exhibit A, the ACC hereby approves dedication and conveyance to the City of Allen of the 19.51 acre property identified in Exhibit A.

SECTION 2. The dedication follows the proposed boundaries of the hike and bike trail and related flood plain is important to provide the required grant match and to provide public maintenance access to the property.

SECTION 3. There is no feasible or prudent alternative to the taking of a portion of the ACC property for the grant match and maintenance of a public hike and bike trail and that all reasonable planning to minimize harm to the future use of the property has been taken in determining the scope of this taking.

SECTION 4. Should any sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this resolution as a whole, or any part of provisions thereof other than the part so decided to be invalid, illegal or unconstitutional.

SECTION 5. This Resolution shall become effective immediately from and after its passage and the formal approval by the cities of Allen, Frisco and Plano.

DULY PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE ARTS OF COLLIN COUNTY COMMISSION, INC., ON THIS THE 21st DAY OF October 2010.

APPROVED:


BOBBY J. BAGGETT PRESIDENT

ATTEST:

CHARLES NIES, SECRETARY



VICINITY MAP
N.T.S.



SCALE IN FEET
1" = 200'

| LINE TABLE | | |
|------------------|---------|--|
| BEARING | LENGTH | |
| L1 S 41°10'47" W | 100.00' | |
| L2 N 28°40'04" W | 86.51' | |
| L3 S 83°18'29" W | 202.81' | |
| L4 N 27°47'09" W | 40.81' | |
| L5 N 47°16'35" E | 62.10' | |
| L6 N 05°32'42" W | 107.48' | |
| L7 N 41°41'28" W | 110.72' | |
| L8 N 51°46'13" W | 77.56' | |

| CURVE TABLE | | | | |
|--------------|----------|---------|---------------|---------|
| DELTA | RADIUS | LENGTH | CHORD | |
| C1 09°04'07" | 1140.00' | 180.44' | S 45°42'51" W | 180.25' |
| C2 05°41'53" | 980.00' | 97.46' | S 44°01'44" W | 97.42' |
| C3 07°02'11" | 490.00' | 60.18' | S 43°21'35" W | 60.14' |
| C4 13°20'53" | 210.00' | 48.92' | S 46°30'55" W | 48.81' |
| C5 11°35'21" | 110.19' | 219.00' | N 03°55'43" E | 184.70' |

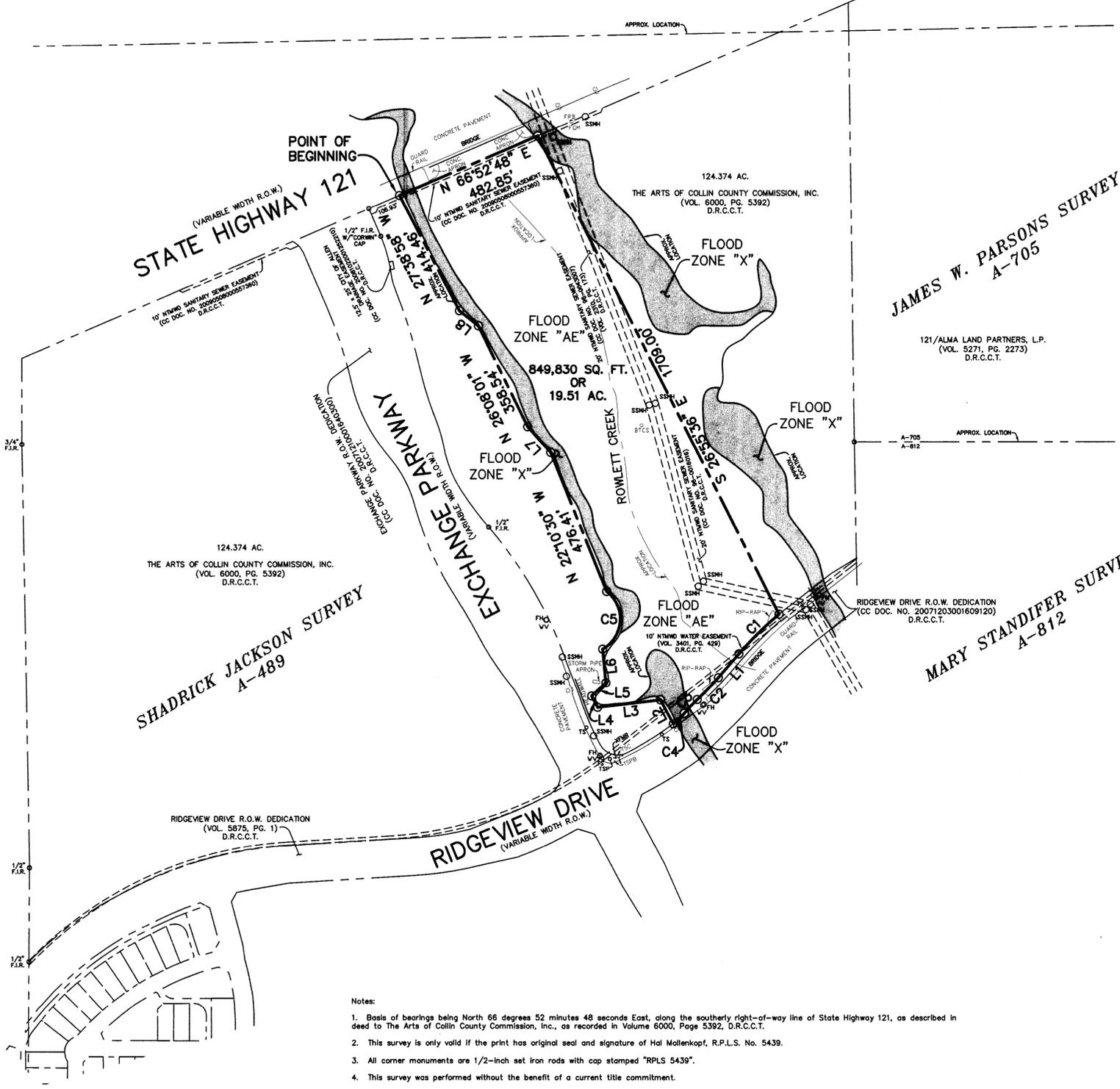
| LEGEND | |
|-------------|----------------------------------|
| F.I.R. | FOUND IRON ROD |
| 1/2" S.I.R. | 1/2" SET IRON ROD |
| W/CAP | WITH CAP STAMPED "RPLS 5439" |
| BTCS | BURIED TELEPHONE CABLE SIGN |
| CI | CURB INLET |
| FH | FIRE HYDRANT |
| FOB | FIBER OPTIC PULL BOX |
| FOM | FIBER OPTIC MARKER |
| SSMH | SANITARY SEWER MANHOLE |
| TS | TRAFFIC SIGN |
| TSC | TRAFFIC SIGNAL CABINET |
| TSPB | TRAFFIC SIGNAL PULL BOX |
| TSP | TRAFFIC SIGNAL POLE |
| WV | WATER VALVE |
| XMR | ELECTRIC TRANSFORMER |
| D.R.C.C.T. | DEED RECORDS COLLIN COUNTY TEXAS |

JOHN J. DRIGGERS SURVEY
A-274

JAMES W. PARSONS SURVEY
A-705

MARY STANDIFER SURVEY
A-812

SHADRICK JACKSON SURVEY
A-489



LEGAL DESCRIPTION

BEING a 19.51 acre tract of land situated in the Shadrick Jackson Survey, Abstract No. 489, Collin County, Texas, said tract being a part of a tract of land described in deed to The Arts of Collin County Commission, Inc., as recorded in Volume 6000, Page 5392, Deed Records Collin County, Texas, (D.R.C.C.T.), said tract being more particularly described as follows:

BEGINNING at a 1/2-inch set iron rod with a cap stamped "RPLS 5439" (hereinafter referred to as "with cap") for corner on the southerly right-of-way line of State Highway 121 (variable width), said corner being North 66 degrees 52 minutes 48 seconds East, a distance of 106.93 feet from the intersection of said southerly right-of-way and the east right-of-way line of Exchange Parkway (variable width);

THENCE North 66 degrees 52 minutes 48 seconds East, along said southerly right-of-way line, a distance of 482.85 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 26 degrees 55 minutes 36 seconds East, departing said southerly right-of-way line and across said Arts of Collin County tract, a distance of 1709.00 feet to a 1/2-inch set iron rod with cap for corner on the north right-of-way line Ridgeview Drive (variable width), said corner being on a circular curve to the left, having a radius of 1140.00 feet and whose chord bears South 45 degrees 42 minutes 51 seconds West, a distance of 180.25 feet;

THENCE Southwest, along said curve to the left and said north right-of-way line, through a central angle of 09 degrees 04 minutes 07 seconds, an arc distance of 180.44 feet to a 1/2-inch set iron rod with cap for the point of tangency;

THENCE South 41 degrees 10 minutes 47 seconds West, along said north right-of-way line, a distance of 100.00 feet to a 1/2-inch set iron rod with cap for the point of curvature of a circular curve to the right, having a radius of 980.00 feet and whose chord bears South 44 degrees 01 minutes 44 seconds West, a distance of 97.42 feet;

THENCE Southwest, along said curve to the right and said north right-of-way line, through a central angle of 05 degrees 41 minutes 53 seconds, an arc distance of 97.46 feet to a 1/2-inch set iron rod with cap for the point of reverse curvature of a circular curve to the left, having a radius of 490.00 feet and whose chord bears South 43 degrees 21 minutes 35 seconds West, a distance of 60.14 feet;

THENCE Southwest, along said curve to the left and said north right-of-way line, through a central angle of 07 degrees 02 minutes 11 seconds, an arc distance of 60.18 feet to a 1/2-inch set iron rod with cap for the point of curvature of a circular curve to the right, having a radius of 210.00 feet and whose chord bears South 46 degrees 30 minutes 55 seconds West, a distance of 48.81 feet;

THENCE Southwest, along said curve to the right and said north right-of-way line, through a central angle of 13 degrees 20 minutes 53 seconds, an arc distance of 48.92 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 28 degrees 40 minutes 04 seconds West, departing said north right-of-way line, and across said Arts of Collin County tract, a distance of 86.51 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 83 degrees 18 minutes 29 seconds West, a distance of 202.81 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 27 degrees 47 minutes 09 seconds West, a distance of 40.81 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 47 degrees 16 minutes 35 seconds East, a distance of 62.10 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 05 degrees 32 minutes 42 seconds West, a distance of 107.48 feet to a 1/2-inch set iron rod with cap for the beginning of a non-langent circular curve to the left, having a radius of 110.19 feet and whose chord bears North 03 degrees 55 minutes 43 seconds East, a distance of 184.70 feet;

THENCE Northeast, along said curve to the left, through a central angle of 113 degrees 52 minutes 16 seconds, an arc distance of 219.00 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 22 degrees 10 minutes 30 seconds West, a distance of 476.41 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 41 degrees 41 minutes 28 seconds West, a distance of 110.72 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 26 degrees 08 minutes 01 seconds West, a distance of 358.54 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 51 degrees 46 minutes 13 seconds West, a distance of 77.56 feet to a 1/2-inch set iron rod with cap for corner;

THENCE North 27 degrees 38 minutes 58 seconds West, a distance of 414.46 feet to the POINT OF BEGINNING AND CONTAINING 849,830 square feet or 19.51 acres of land more or less.

SURVEYOR'S CERTIFICATE

The undersigned Registered Professional Land Surveyor (the "Surveyor") hereby certifies to THE ARTS OF COLLIN COUNTY COMMISSION, INC.; CITY OF ALLEN; FIRST AMERICAN TITLE INSURANCE COMPANY; and REUNION TITLE that (a) this plot of survey and the property description set forth hereon were prepared from an actual on-the-ground survey of the real property (the "Property") described in the field notes on this plot of survey; (b) such survey was conducted by the Surveyor, or under his direction; (c) all monuments shown hereon actually existed on the date of survey, and the location, size and type of material thereof are correctly shown; (d) except as shown hereon there are no observable encroachments on to the Property or observable protrusions therefrom, there are no observable improvements on the Property, there are no observable easements or rights-of-way either burdening or benefiting the Property, and there are no observable discrepancies, conflicts, shortages in area or boundary line conflicts; (e) the Property has apparent access to and from a public roadway; (f) the boundaries, dimensions and other details shown hereon are shown to the appropriate accuracy standards of the Manual of Practice for Land Surveying in Texas (1999) for a Category 1A, Condition II, Urban Survey; (g) by graphical platting, the parcel described hereon lies within Zone "AE" and Zone "X" (shaded) as delineated on the Collin County, Texas and Incorporated Areas, Flood Insurance Rate Map, Map Number 48085C0265J and Map Number 48085C0380J, dated June 2, 2009 as published by the Federal Emergency Management Agency. Zone "AE" is defined as "Special Flood Hazard Areas (SFHAs) subject to inundation by 1% annual chance flood. The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled in any given year. The Special Flood Hazard Area is the area subject to flooding by 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood. Base flood elevations determined. Zone "X" (shaded) is defined as "Areas of 0.2% annual chance floodplain; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood." The Surveyor does not certify that revised floodplain information has or has not been published by the Federal Emergency Management Agency or some other source.

Hal Mollenkopf 10/27/2010
HAL MOLLENKOPF
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS NO. 5439



BOUNDARY SURVEY
OF
19.51 ACRES
SITUATED IN THE
SHADRICK JACKSON SURVEY, ABST. NO. 489
CITY OF ALLEN
COLLIN COUNTY, TEXAS
FOR
ARTS OF COLLIN COUNTY
BY
MOLLENKOPF LAND SURVEYING
SURVEYING & MAPPING
1216 N. CENTRAL EXPRESSWAY, SUITE 203B
MCKINNEY, TEXAS 75070
(214) 544-3334 (214) 544-3335 FAX

- Notes:
1. Basis of bearings being North 66 degrees 52 minutes 48 seconds East, along the southerly right-of-way line of State Highway 121, as described in deed to The Arts of Collin County Commission, Inc., as recorded in Volume 6000, Page 5392, D.R.C.C.T.
 2. This survey is only valid if the print has original seal and signature of Hal Mollenkopf, R.P.L.S. No. 5439.
 3. All corner monuments are 1/2-inch set iron rods with cap stamped "RPLS 5439".
 4. This survey was performed without the benefit of a current title commitment.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---|-------------------------|------------------------------|--|---------------------|----------------|
| CITY SECRETARY'S USE ONLY | | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | | |
| Council Meeting Date: | | 11/22/2010 | | | |
| Department: | | Police | | | |
| Department Head | | Gregory W. Rushin | | | |
| Agenda Coordinator (include phone #): Pam Haines, ext 2538 | | | | | |
| CAPTION | | | | | |
| A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a grant awarded by the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) to the City of Plano, Texas for Child Sexual Predator Program (CSPP); authorizing the execution of any and all documents in connection therewith by the City Manager or his authorized designee; and providing an effective date. | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: | 2010-11, 2011-12 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | | 0 | 0 | 0 | 0 |
| This Item | | 0 | 289,828 | 199,502 | 489,330 |
| BALANCE | | 0 | 289,828 | 199,502 | 489,330 |
| FUND(S): GRANT FUND (13.523) | | | | | |
| COMMENTS: This grant, if approved, provides \$489,330 in revenue for the Plano Police Department to provide funding for expenditures related to the Child Sexual Predator Program (CSPP) over 2 fiscal years. No City funds are required for this grant. | | | | | |
| STRATEGIC PLAN GOAL: Acceptance of Federal Grant funds relates to the City's Goal of "Financially Strong City with Service Excellence". | | | | | |
| SUMMARY OF ITEM | | | | | |
| The U.S. Department of Justice, Office of Community Oriented Policing Services, pursuant to the Child Sexual Predator Program has offered the City of Plano a grant totaling \$489,330.00 for the purpose of establishing and/or enhancing strategies to locate, arrest, and prosecute child sexual predators and exploiters and to enforce state sex offender registration laws. This grant does not require matching funds from the City. The effective grant period will be for two years from the grant's effective date. | | | | | |
| List of Supporting Documents: Resolution, Memo, Exhibit "A" | | | Other Departments, Boards, Commissions or Agencies | | |



P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099

MEMORANDUM

DATE: *November 5, 2010*

TO: *Bruce D. Glasscock, Deputy City Manager*

FROM: *Gregory W. Rushin, Chief of Police*

SUBJECT: *Acceptance of funds from the U.S. Department of Justice, Office of Community Oriented Policing Services for the Child Sexual Predator Program Grant (#2010CSWX0013)*

In June 2010, an application was made by the Plano Police Department for the above referenced grant in the amount of \$489,330 to establish and/or enhance strategies to locate, arrest, and prosecute child sexual predators and exploiters and to enforce state sex offender registration laws.

The Plano Police Department is responsible for registering, tracking and monitoring sexual offenders. The department has 129 registered sex offenders and approximately 83% of the offenders were convicted of offenses involving children. The department is currently conducts only one annual check of each offender. The department with this grant will be able to conduct regular routine checks of each registered sex offender to ensure their personal information and photograph is current, and that the offender is maintaining compliance as directed by the courts. The information on each registered sex offender is made available to the public through a county-wide registered sex offender data base that is a partnership between the County Sheriff and five Municipal Police Agencies. State Law requires the convicted sex offender on probation or parole to stay away from "Child Safety Zones", such as schools, parks, and other venues known to be frequented by offenders seeking to commit sex offenses against children. The technology requested will provide the department the ability to monitor these locations. In addition, the requested technology will allow the department to conduct more proactive investigations related to sex offenses committed using technology better enabling us to protect the Community's children from these predators.

On September 29, 2010, we received an award letter from the U.S. Department of Justice, Office of Community Oriented Policing Services, advising that the Plano Police Department has been selected as a recipient of the requested funds for the Child Sexual Predator Program grant, with the grant period being September 1, 2010 through August 31, 2012. This is a two year grant with no City match. We are hereby seeking approval to accept this award and begin the proposed project.

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a grant awarded by the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) to the City of Plano, Texas for Child Sexual Predator Program (CSPP); authorizing the execution of any and all documents in connection therewith by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented documents evidencing award of a grant provided by the U.S. Department of Justice, Office of Community Oriented Policing Services in the amount of \$489,330.00 for the Child Sexual Predator Program, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called the "Grant Documents"); and

WHEREAS, upon full review and consideration of the Grant Documents and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute any and all documents in connection therewith 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 Grant Documents, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

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

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

DULY PASSED AND APPROVED this the 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



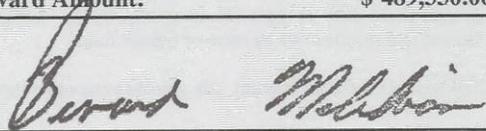
U. S. Department of Justice
Community Oriented Policing Services
Grants Administration Division
Child Sexual Predator Program
Treasury Account Symbol (TAS) 15X0406

Grant #: 2010CSWX0013
 ORI #: TX04306
 Applicant Organization's Legal Name: Plano Police Department
 OJP Vendor #: 756000640
 DUNS#: 784723231

Law Enforcement Executive: Chief of Police Gregory W. Rushin
 Address: P.O. Box 860358
 City, State, Zip Code: Plano, TX 75086
 Telephone: (972) 941-2114
 Fax: (972) 941-2177

Government Executive: Municipal Manager Thomas H. Muehlenbeck
 Address: P.O. Box 860358
 City, State, Zip Code: Plano, TX 75086
 Telephone: (972) 941-7121
 Fax: (972) 423-9587

Award Start Date: 9/1/2010 Award End Date: 8/31/2012
 Award Amount: \$ 489,330.00



SEP 1 0 2010

Bernard Melekian
 Director

Date

By signing this award, the signatory officials are agreeing to abide by the 18 Conditions of Grant Award found on the reverse side of this document and the attached page:

| | | |
|---|--|-------|
| _____ | _____ | _____ |
| Signature of Law Enforcement Official with the Authority to Accept this Grant Award | Typed Name and Title of Law Enforcement Official | Date |
| _____ | _____ | _____ |
| Signature of Government Official with the Authority to Accept this Grant Award | Typed Name and Title of Government Official | Date |

False statements or claims made in connection with COPS grants may result in fines, imprisonment, debarment from participating in federal grants or contracts, and/or any remedy available by law to the Federal Government.

Award ID:
102228

U.S. Department of Justice
Office of Community Oriented Policing Services
2010 Child Sexual Predator Program (CSPP) Grant Terms and Conditions

By signing the Award Document to accept this CSPP grant, your agency agrees to abide by the following grant conditions:

1. **Grant Owner's Manual.** The grantee agrees to comply with the terms, conditions and regulations as found in the 2010 COPS Child Sexual Predator Program Grant Owner's Manual; COPS statute (42 U.S.C. §. 3796dd, et seq.); 28 C.F.R. Part 66 or 28 C.F.R. Part 70 as applicable (governing administrative requirements for grants and cooperative agreements); 2 C.F.R. Part 225 (OMB Circular A-87), 2 C.F.R. Part 220 (OMB Circular A-21), 2 C.F.R. Part 230 (OMB Circular A-122) and 48 C.F.R. Part 31.000, et seq. (FAR 31.2) as applicable (governing cost principles); OMB Circular A-133 (governing audits); representations made in the COPS Child Sexual Predator Program grant application; and a other applicable program requirements, laws, orders, regulations, or circulars.

2. **Assurances and Certifications.** The grantee acknowledges its agreement to comply with the Assurances and Certifications forms that were submitted as part of its Child Sexual Predator Program application.

3. **Allowable Costs.** The funding under this project is for the payment of approved costs for activities related to the establishment and enhancement of a variety of problem-solving strategies to reduce child endangerment. The allowable costs for which your agency's grant has been approved are limited to those listed on the Financial Clearance Memorandum and Final Funding Memorandum, which are included in your agency's award package.

The Financial Clearance Memorandum specifies the exact items/services that your agency is allowed to fund with your Child Sexual Predator Program grant. The Final Funding Memorandum specifies the overall amount approved for each budget request category. It also describes any costs which have been disallowed after review of your proposed budget. **Your agency may not use Child Sexual Predator Program grant funds for any costs that are not identified as allowable in the Financial Clearance Memorandum and Final Funding Memorandum.**

4. **Travel Costs.** Travel costs for transportation, lodging and subsistence, and related items are allowable under the Child Sexual Predator Program with prior approval from the COPS Office. Payment for allowable travel costs will be in accordance with 2 C.F.R. Part 225 (OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments), 2 C.F.R. Part 220 (OMB Circular A-21, Cost Principles for Educational Institutions), 2 C.F.R. Part 230 (OMB Circular A-122, Cost Principles for Non-Profit Organizations), and 48 C.F.R. Part 31.000, et seq. (FAR-31.2, Cost Principles for Commercial Organizations), as applicable.

5. **Supplementing, Not Supplanting.** State, local, and tribal governments must use Child Sexual Predator Program grant funds to supplement, and not supplant, state, local, or Bureau of Indian Affairs funds that are already committed or otherwise would have been committed for grant purposes (hiring, training, purchases, and/or activities) during the grant period. In other words, grantees may not use COPS funds to supplant (replace) state, local, or Bureau of Indian Affairs funds that would have been dedicated to the COPS-funded item(s) in the absence of the COPS grant.

6. **Extensions.** Your agency may request an extension of the grant award period to receive additional time to implement your grant program. Such extensions do not provide additional funding. Only those grantees that can provide a reasonable justification for delays will be granted no-cost extensions. **Extension requests must be received prior to the end date of the award. Any extension requests received after an award has expired will be approved only under very limited circumstances.**

7. **Modifications.** Occasionally, a change in an agency's fiscal or law enforcement situation necessitates a change in its Child Sexual Predator Program award. Grant modifications under CSPP are evaluated on a case-by-case basis. All modification requests involving the purchase of new budget items must be approved, in writing, by the COPS Office prior to their implementation. In addition, please be aware that the COPS Office will not approve any modification request that results in an increase of federal funds.

8. **Evaluations.** The COPS Office may conduct monitoring or sponsor national evaluations of the COPS Child Sexual Predator Program. The grantee agrees to cooperate with the monitors and evaluators.

9. **Reports.** To assist the COPS Office in the monitoring of your award, your agency will be responsible for submitting periodic programmatic progress reports and quarterly financial reports.

10. **Grant Monitoring Activities.** Federal law requires that law enforcement agencies receiving federal funding from the COPS Office must be monitored to ensure compliance with their grant conditions and other applicable statutory regulations. The COPS Office is also interested in tracking the progress of our programs and the advancement of community policing. Both aspects of grant implementation—compliance and programmatic benefits—are part of the monitoring process coordinated by the U.S. Department of Justice. Grant monitoring activities conducted by the COPS Office include site visits, office-based grant reviews, alleged noncompliance reviews, financial and programmatic reporting, and audit resolution. As a COPS CSPP grantee, you agree to cooperate with and respond to any requests for information pertaining to your grant.

11. **Equal Employment Opportunity Plan (EEO).** All recipients of funding from the COPS Office must comply with the federal regulations pertaining to the development and implementation of an Equal Employment Opportunity Plan (28 C.F.R. Part 42 subpart E).

12. **Criminal Intelligence Systems.** Grantees using Child Sexual Predator Program funds to operate an interjurisdictional criminal intelligence system must comply with operating principles of 28 C.F.R. Part 23. The grantee acknowledges that it has completed, signed and submitted with its grant application the relevant Special Condition certifying its compliance with 28 C.F.R. Part 23.

13. **Sole Source Justification.** Grantees who have been awarded funding for the procurement of an item (or group of items) or service in excess of \$100,000 and who plan to seek approval for use of a noncompetitive procurement process must provide a written sole source justification to the COPS Office for approval prior to obligating, expending, or drawin down grant funds for that item.

14. **Training and Technical Assistance.** To support the development of partnerships and the sharing of information and strategies, all Child Sexual Predator Program grantees will be required to attend a COPS-sponsored technical assistance "kickoff" conference (date and time to be determined).

15. **Employment Eligibility.** The grantee agrees to complete and keep on file, as appropriate, a Bureau of Citizenship and Immigration Services Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

16. **Sex Offender Registration and Notification Act Compliance.** If applicable to the grantee's project, the grantee agrees to comply with the requirements and guidelines established by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the SMART Office), a component of the DOJ Office of Justice Programs. The SMART Office is authorized by law to administer the standards for sex offender registration and notification that are set forth in the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109). [Please note that SORNA applies only to projects involving sex offender registration and notification, and does not apply to projects that fund costs associated only with investigations or prosecutions.]

U.S. Department of Justice
Office of Community Oriented Policing Services
2010 Child Sexual Predator Program (CSPP) Grant Terms and Conditions

17. **False Statements.** False statements or claims made in connection with COPS grants may result in fines, imprisonment, or debarment from participating in federal grants or contracts, and/or any other remedy available by law.

18. **Additional High-Risk Grantee Requirements.** The recipient agrees to comply with any additional requirements that may be imposed during the grant performance period if the awarding agency determines that the recipient is a high-risk grantee (28 C.F.R. Parts 66 and 70).



U. S. Department of Justice
Community Oriented Policing Services

Grants Administration Division
Child Sexual Predator Program

1100 Vermont Avenue, NW
Washington, DC 20530

Memorandum

To: Chief of Police Gregory W. Rushin
Plano Police Department

From: Andrew A. Dorr, Assistant Director for Grants Administration
Lynette Chambliss, Grant Program Specialist
Budget Prepared By: Denise Lee, Grant Program Specialist

Re: Child Sexual Predator Program Financial Clearance Memo
A financial analysis of budgeted costs has been completed. Costs under this award appear reasonable, allowable, and consistent with existing guidelines. Exceptions / Adjustments are noted below.

OJP Vendor #: 756000640 ORI #: TX04306 DUNS #: 784723231 Grant #: 2010CSWX0013

| <u>Budget Category</u> | <u>Proposed Budget</u> | <u>Approved Budget</u> | <u>Adjustments</u> | <u>Disallowed/Adjusted - Reasons/Comments</u> |
|------------------------|-------------------------|------------------------|--------------------|---|
| Travel/Training | \$40,500.00 | \$40,500.00 | \$0.00 | |
| Equipment | \$343,690.00 | \$343,690.00 | \$0.00 | |
| Other | \$105,140.00 | \$105,140.00 | \$0.00 | |
| Direct Costs: | \$489,330.00 | \$489,330.00 | \$0.00 | |
| Grand Total | \$489,330.00 | \$489,330.00 | \$0.00 | |
| Grand Total: | Federal Share: | \$ 489,330.00 | | |
| | Applicant Share: | \$ 0.00 | | |

Cleared Date: 8/24/2010

Overall Comments:



Child Sexual Predator Program
Final Funding Memo
U.S. Department of Justice, Office of Community Oriented Policing Services

Legal Name: Plano Police Department
Grant Number: 2010CSWX0013

ORI: TX04306
Date: September 23, 2010

| <u>Equipment</u> | <u>Quantity</u> | <u>Cost/Item</u> | <u>Total Item Cost</u> | <u>Amount Disallowed</u> | <u>Total Allowed</u> | <u>Reason Disallowed/Adjusted</u> |
|---|-----------------|------------------|------------------------|--------------------------|----------------------|-----------------------------------|
| AccessData Forensic Tool Kit | 2 | \$ 3,835.00 | \$ 7,670.00 | \$ 0.00 | \$ 7,670.00 | |
| Apple 13" MacBook Pro Laptop Computer | 2 | \$ 2,298.00 | \$ 4,596.00 | \$ 0.00 | \$ 4,596.00 | |
| Cellebrite Ruggedized Cell Phone Extraction Device | 3 | \$ 6,999.00 | \$ 20,997.00 | \$ 0.00 | \$ 20,997.00 | |
| Command 19mm FLIR Camera | 2 | \$ 11,910.00 | \$ 23,820.00 | \$ 0.00 | \$ 23,820.00 | |
| Desktop Workstations | 2 | \$ 2,500.00 | \$ 5,000.00 | \$ 0.00 | \$ 5,000.00 | |
| Digital Intelligence/Forensic Recovery of Evidence Device | 2 | \$ 5,999.00 | \$ 11,998.00 | \$ 0.00 | \$ 11,998.00 | |
| Military/Police Binoculars | 8 | \$ 549.00 | \$ 4,392.00 | \$ 0.00 | \$ 4,392.00 | |
| Paraben Device Seizure Field Kit | 3 | \$ 3,395.00 | \$ 10,185.00 | \$ 0.00 | \$ 10,185.00 | |
| Paraben Project-A-Phone/CD 5200 Devices | 3 | \$ 495.00 | \$ 1,485.00 | \$ 0.00 | \$ 1,485.00 | |
| Portable License Plate Recognition System | 3 | \$ 10,000.00 | \$ 30,000.00 | \$ 0.00 | \$ 30,000.00 | |
| Portable Network Surveillance Camera System | 2 | \$ 33,980.00 | \$ 67,960.00 | \$ 0.00 | \$ 67,960.00 | |
| Ruggedized Laptop Computers | 5 | \$ 6,100.00 | \$ 30,500.00 | \$ 0.00 | \$ 30,500.00 | |
| Service Plan for Forensic Recovery Evidence Device | 2 | \$ 1,800.00 | \$ 3,600.00 | \$ 0.00 | \$ 3,600.00 | |
| Software for Desktop Workstations | 2 | \$ 1,000.00 | \$ 2,000.00 | \$ 0.00 | \$ 2,000.00 | |
| Software for Forensic Workstations | 1 | \$ 10,600.00 | \$ 10,600.00 | \$ 0.00 | \$ 10,600.00 | |
| ViewCommander NVR IP Recording Software | 1 | \$ 1,350.00 | \$ 1,350.00 | \$ 0.00 | \$ 1,350.00 | |
| Wanco Surveillance Camera Tower | 1 | \$ 50,037.00 | \$ 50,037.00 | \$ 0.00 | \$ 50,037.00 | |
| Battery Operated Portable Printers | 2 | \$ 350.00 | \$ 700.00 | \$ 0.00 | \$ 700.00 | |
| Color Laser Printer | 1 | \$ 900.00 | \$ 900.00 | \$ 0.00 | \$ 900.00 | |
| Compact Digital Camera | 9 | \$ 300.00 | \$ 2,700.00 | \$ 0.00 | \$ 2,700.00 | |
| Digital Camcorders | 2 | \$ 600.00 | \$ 1,200.00 | \$ 0.00 | \$ 1,200.00 | |
| Automatic License Plate Recognition System | 2 | \$ 26,000.00 | \$ 52,000.00 | \$ 0.00 | \$ 52,000.00 | |
| Total: | | | | \$ 0.00 | \$ 343,690.00 | |



Child Sexual Predator Program
Final Funding Memo
U.S. Department of Justice, Office of Community Oriented Policing Services

Legal Name: Plano Police Department
Grant Number: 2010CSWX0013

ORI: TX04306
Date: September 23, 2010

| | <u>Quantity</u> | <u>Cost/Item</u> | <u>Total Item Cost</u> | <u>Amount</u> | | <u>Reason Disallowed/Adjusted</u> |
|---|-----------------|------------------|------------------------|-------------------|----------------------|-----------------------------------|
| | | | | <u>Disallowed</u> | <u>Total Allowed</u> | |
| Other | | | | | | |
| Dallas Crimes Against Children/ICAC Conference | 12 | \$ 495.00 | \$ 5,940.00 | \$ 0.00 | \$ 5,940.00 | |
| Overtime for 4 Sworn Officers | 1,600 | \$ 62.00 | \$ 99,200.00 | \$ 0.00 | \$ 99,200.00 | |
| Total: | | | | \$ 0.00 | \$ 105,140.00 | |
| Travel/Training | | | | | | |
| 2011 National Project Safe Childhood Conference | 2 | \$ 1,900.00 | \$ 3,800.00 | \$ 0.00 | \$ 3,800.00 | |
| 2012 National Project Safe Childhood Conference | 2 | \$ 1,900.00 | \$ 3,800.00 | \$ 0.00 | \$ 3,800.00 | |
| COPS Orientation Training | 4 | \$ 1,700.00 | \$ 6,800.00 | \$ 0.00 | \$ 6,800.00 | |
| EnCase 1 Year Annual Training Passport | 2 | \$ 9,000.00 | \$ 18,000.00 | \$ 0.00 | \$ 18,000.00 | |
| Paraben Handheld Forensic Course Level One | 3 | \$ 2,700.00 | \$ 8,100.00 | \$ 0.00 | \$ 8,100.00 | |
| Total: | | | | \$ 0.00 | \$ 40,500.00 | |
| Grand Total: | | | | | | |
| Total Federal Share: | | | \$ 489,330.00 | | | |
| Total Local Share: | | | \$ 0.00 | | | |
| Total Project Costs: | | | \$ 489,330.00 | | | |
| Total Disallowed Costs: | | | \$ 0.00 | | | |

Cleared Date: 8/24/2010

Overall Comments:



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|--|-------------------------|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/10 | | |
| Department: | | Public Works & Engineering | | |
| Department Head: | | Alan L. Upchurch | | |
| | | | | |
| Agenda Coordinator (include phone #): | | Irene Pegues (7198) | | |
| CAPTION | | | | |
| A Resolution of the City of Plano, Texas, supporting a study of US75 regarding necessary improvements to accommodate the increasing traffic volume; authorizing the City Manager or his authorized designee to effectuate such study; and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | | | |
| Encumbered/Expended Amount | | | | |
| This Item | | | | |
| BALANCE | | | | |
| FUND(S): | | | | |
| COMMENTS: This item has no fiscal impact. | | | | |
| SUMMARY OF ITEM | | | | |
| Collin County Judge Self has requested that Plano adopt a resolution supporting a study of US75 that would identify the necessary improvements needed to carry the increasing traffic volume on US75. | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
| Collin County Letter dated 10/22/10 | | N/A | | |



COLLIN COUNTY

Office of the County Judge
Jack Hatchell Admin Building
2300 Bloomdale Rd., Suite 4192
McKinney, Texas 75071
Office 972-548-4631
Fax 972-548-4699
www.collincountytx.gov

October 22, 2010

Honorable Phil Dyer
City of Plano
P.O. Box 860358
Plano, Texas 75086

RECEIVED

OCT 26 2010

CITY MANAGER'S OFFICE

Dear Mayor Dyer: *Phil*

US75 carries more traffic than any other major highway into/out of the DFW metroplex. In fact, US75 carries 35% more traffic than the next highest traffic count on the highways that radiate from the metroplex.

Enclosed is a TXDOT-produced map that shows the average daily traffic volumes at 31 different points on highways. Each traffic count was taken just outside the highway intersections with the "ring roads" or loops around the metroplex (I-635, I-820, and I-20).

As you can see, US75 just north of I-635 carries 275,000 vehicles every day. The second highest traffic count is I-35 just north of I-635 with 204,000 vehicles. The third highest is I-30 just to the east of I-635 with 160,000 vehicles. Including the Dallas North Tollway at sixth highest with 130,000 vehicles, four of the top six traffic counts are in the northeast quadrant of the metroplex. Although US75 is certainly important to Collin County, the entire region depends on US75 to carry the heaviest traffic load and should support major improvements to US75 for decades of future traffic growth.

I serve on the I-35 Corridor Segment 1 Committee, which is responsible for studying I-35 north of I-20. Our committee is finalizing our report to the full I-35 Corridor Advisory Committee. One of our strong recommendations will be to conduct a separate study on necessary improvements on US75 in order to carry this already tremendous and ever-increasing volume of traffic. This traffic count map is key evidence in support of this recommendation. US75 carries 71,000 more vehicles daily than I-35, and 115,000 more vehicles than I-30.

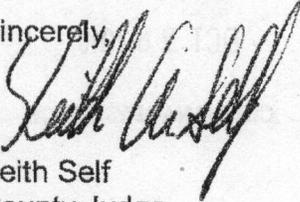
US75 not only sits astride the DFW population growth corridor, it also carries major truck traffic to the midwest and northeast United States. US75 traffic will only grow, both in number and in percentage of vehicles to/from the metroplex.

I ask for your help as we start the process to gain support for a US75 study. The I-35 corridor study will take another several months before it is finalized and presented to the Transportation Commission, but we can start now to let our legislators and transportation

COLLIN COUNTY

officials know how vitally important US75 is to transportation into and out of the DFW metroplex. I also ask that you pass resolutions now in support of a separate US75 study, even before the I-35 corridor study is complete. And lastly, I ask that when the I-35 report is briefed to the Transportation Commission, a delegation of local elected officials be on hand to support a separate US75 study.

Sincerely,



Keith Self
County Judge

Horizontal File Type
City of Plano
P.O. Box 680835
Plano, Texas 75083
Dear Mr. Self:

US75 carries more traffic than any other major highway through the DFW metroplex. In fact, US75 carries 32% more traffic than the next highest traffic count on the highway that is visible from the north. As you can see, US75 just north of I-35 carries 215,000 vehicles every day. The second highest traffic count is on I-35 just north of I-35 with 204,000 vehicles. The third highest is I-35 just west of I-35 with 180,000 vehicles. In fact, the Dallas North Tollway, which carries 180,000 vehicles, is not even in the top six. Although US75 carries 32% more traffic than the next highest highway, the state has not spent a dime on US75 to carry the heaviest traffic load and should support more improvements to US75 for decades of future traffic growth. I serve on the I-35 Corridor Section 1 Committee, which is responsible for studying I-35 north of I-35. Our committee is final and our report to the full I-35 Corridor Advisory Committee. One of our study recommendations will be to conduct a separate study on necessary improvements on US75 in order to carry the heavy traffic load and even from your volume of traffic. This traffic count study is key to our study in support of this recommendation. US75 carries 1,000 more vehicles daily than I-35 and 115,000 more vehicles than I-35. US75 not only sits beside the DFW population growth corridor, it also carries more truck traffic to the northwest and northeast United States. US75 traffic will only grow both in number and in percentage of vehicles within the metroplex. I ask for your help as we start the process to gain support for a US75 study. The I-35 corridor study will take another six months before it is finalized and presented to the Transportation Commission, but we can start now to let our legislators and transportation

A Resolution of the City of Plano, Texas, supporting a study of US75 regarding necessary improvements to accommodate the increasing traffic volume; authorizing the City Manager or his authorized designee to effectuate such study; and providing an effective date.

WHEREAS, US75 is the Dallas/Fort Worth metroplex's most trafficked highway, carrying 35% more traffic in and out of the area than DFW's next busiest highway; and

WHEREAS, US75 serves the DFW's major population growth corridor while also carrying major commercial traffic to and from the midwestern and northeastern United States; and

WHEREAS, US75 is critical to the entire DFW area, and major improvements necessary to meet present and future traffic needs throughout the metroplex must be supported by all who rely on US75 to carry its significant intercontinental traffic load; and

WHEREAS, because four of DFW's six highest traffic counts are in the northeast quadrant, wherein lies Collin County, it is recommended that a study be conducted regarding necessary improvements to US75 to accommodate its ever-increasing volume of traffic, and that the undertaking of such a study be forthcoming in order to effectively address present and future needs in a timely and proactive manner.

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

Section 1. The City Council believes that, because of the preeminence of US75 as a major commercial and residential transportation artery for the DFW metroplex, it is imperative to promote and support the commencement of a US75 study as a priority for this region.

Section II. The City Manager or his authorized designee is hereby authorized to execute any documents necessary to effectuate this position.

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

DULY PASSED AND APPROVED this 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|--|-------------------------|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/10 | | |
| Department: | | Public Works & Engineering | | |
| Department Head: | | Alan L. Upchurch | | |
| Agenda Coordinator (include phone #): Irene Pegues (7198) | | | | |
| CAPTION | | | | |
| A Resolution of the City Council of the City of Plano, Texas, approving the issuance of a letter in support of the North Texas Municipal Water District's request for a two-year extension of time to comply with the Federal Stage 2, Disinfection Byproduct Rule; authorizing its execution by the Mayor and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | | | |
| Encumbered/Expended Amount | | | | |
| This Item | | | | |
| BALANCE | | | | |
| FUND(S): | | | | |
| COMMENTS: This item has no fiscal impact. | | | | |
| SUMMARY OF ITEM | | | | |
| Attached is a Resolution that authorizes the Mayor to execute a letter to the TCEQ requesting a two-year extension for the NTMWD to comply with the Federal Stage 2, Disinfection Byproduct Rule. The NTMWD has requested that each member and customer city send the letter on their behalf. The rule goes into effect in April 2012, but the NTMWD will not complete the required improvements until April 2014. | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
| Letter to TCEQ | | N/A | | |

A Resolution of the City Council of the City of Plano, Texas, approving the issuance of a letter in support of the North Texas Municipal Water District's request for a two-year extension of time to comply with the Federal Stage 2, Disinfection Byproduct Rule; authorizing its execution by the Mayor and providing an effective date.

WHEREAS, the North Texas Municipal Water District ("NTMWD") is the wholesale supplier of water to the City of Plano; and

WHEREAS, the City of Plano is largely dependent on the NTMWD for compliance with its water quality requirements; and

WHEREAS, the NTMWD must construct capital improvements at its Wylie Water Treatment Plant to comply with the Federal Stage 2, Disinfection Byproduct Rule; and

WHEREAS, the deadline to complete the improvements is April 1, 2012, but the NTMWD will not be able to complete these improvements until April 2014; and

WHEREAS, Title 42, Section 300g-1(b)(1) of the United States Code permits the State to "allow up to two (2) additional years to comply with a maximum contaminant level or treatment technique if the ... state (in the case of an individual system) determines that additional time is necessary for capital improvements."; and

WHEREAS, the City Council has been presented with a letter to the Texas Commission on Environmental Quality to grant a two-year extension for the NTMWD to comply with the Stage 2, Disinfection Byproduct Rule, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Letter"); and

WHEREAS, upon full review and consideration of the Letter, and all matters attendant and related thereto, the City Council is of the opinion that the Letter should be approved and that the Mayor should be authorized to execute it on behalf of the City of Plano.

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

Section I. The Letter, 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 Mayor is hereby authorized to execute the Letter in connection therewith on behalf of the City of Plano.

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

DULY PASSED AND APPROVED this 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



November 22, 2010

Phil Dyer
Mayor

Lee Dunlap
Mayor Pro Tem

Pat Miner
Deputy Mayor Pro Tem

Ben Harris
Place 2

André Davidson
Place 3

Lissa Smith
Place 4

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Thomas H. Muehlenbeck
City Manager

Ms. Alicia Diehl (MC 155)
Texas Commission on Environmental Quality
P.O. Box 13087
Bldg. F, 3rd Floor
Austin, Texas 78711-3087

**Re: Extension Request for Stage 2, Disinfection Byproduct Rule
The City of Plano: PWSID No. 0430007**

Dear Ms. Diehl:

This letter is submitted on behalf of the City of Plano, in conjunction with North Texas Municipal Water District (the "District"), to request an additional two (2) years to comply with the Stage 2 Disinfection Byproducts Requirements, Title 40, Part 141, Subpart V (The "DBP2 Rule"). The City of Plano is a wholesale potable water supply customer of the District and has an existing contract under which the District supplies potable water to the City of Plano.

Because the City of Plano is a customer of the District, the City of Plano's compliance with the DBP2 Rule is largely dependent on the District's compliance with same. In order for the District to comply with the DBP2 Rule, and likewise for the City of Plano to comply, the District must construct capital improvements at its Wylie Water Treatment Plant. Given the nature, complexity, and costs associated with the District's capital improvements, the District will not be able to complete these capital improvements until April 2014; and therefore, neither the District nor the City of Plano will be able to comply with the April 1, 2012, deadline for compliance with the DBP2 Rule.

Pursuant to Title 42, Section 300g-1(b)(1) of the United States Code, the state "may allow up to two (2) additional years to comply with a maximum contaminant level or treatment technique if the ... State (in the case of an individual system) determines that additional time is necessary for capital improvements." Based on the District's aforementioned capital improvements, the City of Plano, in conjunction with the District, requests that TCEQ grant two (2) additional years to complete such improvements in order to comply with the DBP2 Rule, thereby extending the City of Plano's compliance deadline with the DBP2 Rule to April 1, 2014.

Ms. Alicia Diehl
TCEQ
November 22, 2010
Page Two

The City of Plano looks forward to working with you to address this request for an extension of the deadline to comply with the DBP2 Rule. If you have any questions regarding this request, please do not hesitate to contact me at your earliest convenience.

Sincerely,

Phil Dyer
Mayor

Is

xc: Mr. Mike Rickman
Mr. Dolan McKnight
Mr. Ted Kilpatrick
Mr. Bob Reeves
Mr. David Timmermann



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|--|----------------|---|--|-------------------------|------------------|
| CITY SECRETARY'S USE ONLY | | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | | |
| Council Meeting Date: | | 11/22/10 | | | |
| Department: | | Sustainability & Environmental Services | | | |
| Department Head | | Nancy Nevil | | | |
| Agenda Coordinator (include phone #): Tiffany Stephens x4264 | | | | | |
| CAPTION | | | | | |
| <p>An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2008-11-28, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date.</p> | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: | 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | | 0 | 5,759,755 | 0 | 5,759,755 |
| Encumbered/Expended Amount | | | 0 | 0 | 0 |
| This Item | | 0 | 112,066 | 0 | 112,066 |
| BALANCE | | 0 | 5,871,821 | 0 | 5,871,821 |
| FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND | | | | | |
| <p>COMMENTS: Approval of the proposed changes to Commercial Container Rates in Plano will generate \$112,066 more revenue than was originally anticipated in the FY 2010-11 Budget. These rate increases are necessary to keep pace with increased disposal costs with the North Texas Municipal Water District.</p> <p>STRATEGIC PLAN GOAL: Updating rates to reflect the increasing expense of providing a service relates to the City's goal of a Financially Strong City with Service Excellence.</p> | | | | | |
| SUMMARY OF ITEM | | | | | |
| <p>On October 25, 2010, City Council approved the Commercial Waste Franchise Agreement with Allied Waste Services of Plano, which included revised rates. The rates were increased to pass through the NTMWD disposal increase (\$39.79 to \$43.35). Zone rates for hauling roll-offs to landfill were increased to account for additional mileage to 121 RDF (loads were previously going to McKinney landfill).</p> | | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | | |
| | | | | | |

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2008-11-28, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date.

WHEREAS, on September 22, 2008, the City Council of the City of Plano enacted Ordinance No. 2008-11-28, which was codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano establishing a schedule of rates and charges for the collection and disposal of solid waste from commercial customers within and outside the City; and

WHEREAS, the schedule of rates and charges for solid waste collection and disposal must be reviewed annually in connection with preparation of the City budget and those rates and charges must be adjusted periodically to address increased operational costs and/or increased services being provided; and

WHEREAS, upon recommendation of staff and upon full review and consideration of all matters thereto, the City Council hereby finds and determines that it is necessary to revise the schedule of rates and charges for solid waste collection and disposal, as hereinafter provided, and that such revised schedule of rates and charges is reasonable and in the best interest of the City of Plano and its citizens.

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

Section I. Ordinance No. 2008-11-28, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, Texas, is hereby repealed in its entirety.

Section II. Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, Texas is enacted to read as follows:

“Sec. 18-34. Commercial container rates.

(a) The collection and disposal of solid waste from commercial accounts in the City of Plano shall only be performed by those commercial contractors authorized by the City Council to conduct such business within the City of Plano.

(b) The following rates and charges as set forth in the schedule below are hereby established as the maximum rates that may be charged by an authorized commercial contractor for collection, transportation and disposal of solid waste pursuant to that commercial contractor's contract with the City:

- (1) Rates for commercial container service for containers with a volume between two (2) cubic yards and eight (8) cubic yards shall be as follows plus a fifty-one dollar and fifty-five cents (\$51.55) one-time delivery charge:

| <u>SIZE OF CONTAINER</u> | <u>SERVICE</u> | <u>MONTHLY CHARGE</u> |
|--------------------------|----------------|-----------------------|
| 2 Cu. Yd. | 1 x Week | \$54.66 |
| | 2 x Week | 85.27 |
| | 3 x Week | 127.88 |
| | Extras | 44.04 |
| 3 Cu. Yd. | 1 x Week | 71.48 |
| | 2 x Week | 131.66 |
| | 3 x Week | 184.34 |
| | Extras | 47.15 |
| 4 Cu. Yd. | 1 x Week | 86.84 |
| | 2 x Week | 153.93 |
| | 3 x Week | 221.03 |
| | Extras | 51.83 |
| 6 Cu. Yd. | 1 x Week | 118.99 |
| | 2 x Week | 216.48 |
| | 3 x Week | 315.54 |
| | 4 x Week | 423.48 |
| | 5 x Week | 537.05 |
| | 6 x Week | 664.66 |
| | Extras | 58.37 |
| 8 Cu. Yd. | 1 x Week | 156.21 |
| | 2 x Week | 275.76 |
| | 3 x Week | 413.02 |
| | 4 x Week | 557.13 |
| | 5 x Week | 667.01 |
| | 6 x Week | 792.57 |
| | Extras | 65.99 |

- (2) Rates for commercial compactors with a volume between six (6) cubic yards and eight (8) cubic yards shall be as follows plus a fifty-one dollar and fifty-five cents (\$51.55) one-time delivery charge:

COMPACTORS

| <u>SIZE OF CONTAINER</u> | <u>SERVICE</u> | <u>MONTHLY CHARGE</u> |
|--------------------------|----------------|-----------------------|
| 6 Cu.Yd., Compactor | 1 x week | 327.05 |
| | 2 x week | 654.06 |
| | 3 x week | 981.11 |
| | 4 x week | 1,308.13 |
| | 5 x week | 1,635.15 |
| | 6 x week | 1,962.17 |
| | Extras | 65.82 |
| 8 Cu.Yd., Compactor | 1 x week | 436.01 |
| | 2 x week | 872.00 |
| | 3 x week | 1,308.01 |
| | 4 x week | 1,743.99 |
| | 5 x week | 2,180.00 |
| | 6 x week | 2,616.01 |
| | Extras | 87.75 |

- (3) Rates for container service for open top containers and compactors with a volume in excess of eight (8) cubic yards will be determined and paid based on haul charges plus a per ton disposal charge that is established annually by the North Texas Municipal Water District (NTMWD). Haul charges are determined based on established zones that reflect the contractor's transportation costs using time/distance from the service location to the disposal site. A minimum haul charge of one hundred sixteen dollars and forty-three cents (\$116.43) will be assessed for disposal at one of NTMWD's three transfer stations or the appropriate Zone Charge associated for disposal at the NTMWD RDF 121 Landfill site. Customers renting containers will be charged a delivery fee and per day rental fee. Haul rates and associated fees shall be as follows:

| Zone 1 | Zone 2 | Zone 3 | Zone 4 | Delivery | Rental |
|----------|----------|----------|----------|----------|--------|
| \$154.85 | \$193.32 | \$232.06 | \$271.31 | \$78.62 | \$5.22 |

Disposal Fee: \$43.35 per ton

- (4) Rates for commercial recycling container service shall be as follows:

| <u>SIZE OF CONTAINER</u> | <u>SERVICE</u> | <u>MONTHLY CHARGE</u> |
|--------------------------|------------------|-----------------------|
| 2 Cu. Yd. | Every Other Week | 37.98 |
| | 1 x Week | 50.64 |
| | 2 x Week | 88.62 |
| | 3 x Week | 126.60 |
| | Extras | 30.00 |
| | | |
| 3 Cu. Yd. | Every Other Week | 38.17 |
| | 1 x Week | 50.89 |
| | 2 x Week | 89.06 |
| | 3 x Week | 127.23 |
| | Extras | 30.00 |
| | | |
| 4 Cu. Yd. | Every Other Week | 38.36 |
| | 1 x Week | 51.14 |
| | 2 x Week | 89.50 |
| | 3 x Week | 127.86 |
| | Extras | 30.00 |
| | | |
| 6 Cu. Yd. | Every Other Week | 38.72 |
| | 1 x Week | 51.63 |
| | 2 x Week | 90.35 |
| | 3 x Week | 129.07 |
| | 4 x Week | 167.79 |
| | 5 x Week | 206.51 |
| | 6 x Week | 245.23 |
| | Extras | 30.00 |
| | | |
| 8 Cu. Yd. | Every Other Week | 39.10 |
| | 1 x Week | 52.13 |
| | 2 x Week | 91.23 |
| | 3 x Week | 130.33 |
| | 4 x Week | 169.43 |
| | 5 x Week | 208.53 |
| | 6 x Week | 247.63 |
| | Extras | 30.00 |

These monthly commercial recycling container service rates are not subject to the City's Commercial Franchise Fee.

- (5) In addition to the rates specified in subsections (b)(1) and (b)(3) above, there will be a delivery charge of seventy eight dollars and

sixty two cents (\$78.62) for each temporary or on-call container delivered. "Temporary service" shall be defined as service of duration of less than one year.

- (6) All rates for solid waste services are subject to the appropriate state taxes.
- (7) Charges for damages to commercial solid waste containers not caused by the authorized commercial contractor, and charges for replacement of such containers at more frequent intervals than approved by the City Council shall be set forth in the performance standards for the authorized commercial contractor as referenced in the Commercial Franchise Agreement.
- (8) In addition to the charges hereinabove specified, the following additional fees and charges are authorized:

| | |
|----------------------|---|
| Casters | \$3.93 per lift |
| Locks | \$1.31 per lift |
| Gates | \$1.31 per lift |
| Return Check Charge | \$35.00 |
| Fee for late payment | 1.5% per month for balance due over 30 days." |

Section II. The rates established in Section 18-34 shall be effective for all billings rendered on and after December 1, 2010.

Section III. 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 IV. 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 V. This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/2010 | | |
| Department: | | Human Resources | | |
| Department Head | | Lashon Ross | | |
| Agenda Coordinator (include phone #): Stacey D. Stagich, ext. 7296 | | | | |
| CAPTION | | | | |
| <p>An Ordinance of the City of Plano, Texas repealing Ordinance No. 2005-12-14; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department in a rank less than Battalion Chief serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date.</p> | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2010-11 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -16,425 | 0 | 0 |
| BALANCE | 0 | -16,425 | 0 | 0 |
| FUND(S): GENERAL FUND | | | | |
| <p>COMMENTS: Funding for the Police and Fire Department Civil Service personnel in accordance with the Civil Service Plan is included in the FY 2010/11 adopted budget. Discontinuing the Shift Personnel Coordinator Pay Plan for members of the Plano Fire Department will save an estimated \$16,425 per year.</p> | | | | |
| <p>STRATEGIC PLAN GOAL: Changes to the Certification Pay Plan for the Plano Police and Fire Departments relate to the City's Goal of "Financially Strong City with Service Excellence".</p> | | | | |
| SUMMARY OF ITEM | | | | |
| <p>The Fire Department is recommending the removal of the Shift Personnel Coordinator Pay Plan for members of the Plano Fire Department.</p> | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| Attachment A | | | | |

Darlene McAndrew

From: Dan Thompson
Sent: Wednesday, October 20, 2010 2:39 PM
To: Darlene McAndrew
Cc: Hugo Esparza; Alan Storck
Subject: Ordinance change

The Fire Department is requesting a change to Ordinance No. 2005-12-14 in an effort to accurately reflect current pay practices. In the past, a Fire Rescue Specialist was assigned the extra duty of scheduling daily staffing assignments to meet minimums identified by Standard Operating Procedure. This extra work included reporting for duty one hour early to ensure each fire station and/or apparatus had the needed staffing or personnel. It also included scheduling vacation and other types of leave throughout the shift.

This practice has been changed in that now the duty is performed by a Fire Apparatus Operator. This is a higher ranking classification and compensated at a higher rate of pay; and subsequently, the decision was made to discontinue the practice of paying extra for this specific duty. This change in practice will save \$16,425.00 per year.

At present, the ordinance states in Section IV. that "Shift Personnel Coordinators" will be paid "\$45.00 per 24 hour shift." The Fire Department is requesting that this wording be removed from the ordinance.

Dan Thompson
Assistant Chief - Resource Division
Plano Fire Rescue
972-941-7163
dant@plano.gov

An Ordinance of the City of Plano, Texas repealing Ordinance No. 2005-12-14; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department in a rank less than Battalion Chief serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date.

Whereas, on December 20, 2005 by Ordinance No. 2005-12-14, the City Council of the City of Plano, Texas, established certification and assignment pay plans for members of the Fire and Police Departments of the City of Plano; and

Whereas, the City Council has since reviewed assignment pay in the amount of \$45.00 per 24 hour shift as it relates to Shift Personnel Coordinators included in Ordinance 2005-12-14 Section IV and is of the opinion that such assignment pay should be eliminated; and

Whereas, in compliance with Chapter 143 of the Texas Local Government Code, V.T.C.A., as amended the City Council desire to adopt the Police and Fire Departments certification pay plan; Police and Fire Departments assignment pay plan; Fire Department preceptor pay plan.

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

Section I. Ordinance No. 2005-12-14 duly passed and approved by the City Council of the City of Plano, Texas on December 20, 2005 is repealed in its entirety effective November 22, 2010.

Section II. In accordance with Section 143.044 of the Texas Local Government Code and the Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes the following certification pay plan for classified members of the Plano Fire and Police Departments:

Fire Department

Texas Commission on Fire Protection Standards and Education

| | | | |
|--------------------------|---------------------|-----------------|---------------|
| <u>Basic Certificate</u> | <u>Intermediate</u> | <u>Advanced</u> | <u>Master</u> |
| -0- | \$60/mo | \$80/mo | \$120/mo |

Police Department

Texas Commission on Law Enforcement Standards and Education

| | | | |
|--------------------------|---------------------|-----------------|---------------|
| <u>Basic Certificate</u> | <u>Intermediate</u> | <u>Advanced</u> | <u>Master</u> |
| -0- | \$60/mo | \$80/mo | \$120/mo |

Section III. Classifications for certification compensation for classified members of the City of Plano Fire and Police Departments are as set forth in Section II above. Advancements within the structure set forth in Section II above shall be allowed as established by the Rules and Regulations formulated by the Texas Commission on Fire Protection Standards and Education (Fire) and the Texas Commission on Law Enforcement Officers' Standards and Education (Police).

Section IV. In accordance with Section 143.042 of the Texas Local Government Code and the Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes an assignment pay plan which shall be applicable to members of the City of Plano Fire Department who are (1) certified as an EMT-Paramedic by the Texas Department of Public Health, (2) authorized to practice as a paramedic in the City of Plano EMS System by the Emergency Medical Director for the City of Plano, (3) are in a rank less than Battalion Chief, and (4) are assigned such duties by the Fire Chief of the City of Plano as follows:

| <u>Years of Service as Assigned Paramedic</u> | <u>Monthly Assignment Pay</u> |
|---|-----------------------------------|
| <48 months | \$149 |
| 48 months | \$297 |
| 96 months | \$446 |
| 144 months | \$594 |

Section V. Paramedic assignment pay shall be initiated at the beginning of the pay period next following receipt of authorization from the Emergency Medical Director to practice as a paramedic in the Plano EMS system and advancement within the structure set forth in Section IV above shall be allowed at the beginning of the pay period immediately following the paramedic's reaching of the service years shown. All prior years of service in which a paramedic was assigned by the Fire Chief of the City of Plano and approved by the Medical Director to practice as a paramedic in the Plano EMS System shall be considered when placing existing paramedics in the structure set forth in Section IV.

Section VI. In accordance with Section 143.042 of the Texas Local Government Code and Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes that members of the Plano Fire Department who are assigned to and perform the following duties shall receive the following additional compensation for the period of assignment:

| | |
|---------------------|---------------------------|
| Paramedic Preceptor | \$45.00 per 24 hour shift |
|---------------------|---------------------------|

Section VII. In accordance with Section 143.043 of the Texas Local Government Code and Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes that members of the Plano Police Department who are assigned to and perform the following duties and responsibilities of the field training officers program shall receive \$19.00 per day for the period of assignment.

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

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

Section X. Upon passage, this Ordinance shall become effective November 22, 2010.

DULY PASSED AND APPROVED, this, the 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------|----------------------------------|--|-------------------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/10 | | |
| Department: | | Purchasing | | |
| Department Head | | Mike Ryan | | |
| Agenda Coordinator (include phone #): Bev Rogers 972-941-7376 | | | | |
| CAPTION | | | | |
| Approval of contract to approve the terms and conditions of a Depository Services Contract with Frost Bank for the Treasury department, and authorizing the City Manager to execute the contract and all other necessary documents for CSP no. 2010-170-C; and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | 2010-15 | Prior Year (CIP Only) | Current Year | Future Years |
| | | TOTALS | | |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): | | | | |
| COMMENTS: This item has no fiscal impact. Revenues generated will depend on investments and rates of interest. STRATEGIC PLAN GOAL: Retaining a Depository Bank relates to the City's goal of "Financially Strong City with Service Excellence." | | | | |
| SUMMARY OF ITEM | | | | |
| The City of Plano requires a Depository bank to receive, hold and release funds in the course of normal business operations. As a result, the City seeks an appropriate financial institution to provide these services. The Treasury staff recommends Bank Depository services from Frost Bank. | | | | |
| List of Supporting Documents: Recommendation Memo CSP Recap Contract | | | Other Departments, Boards, Commissions or Agencies | |



DATE: October 27, 2010
TO: Bev Rogers, Buyer
CC: Diane Palmer, Purchasing Manager
FROM: Myra Conklin, Treasurer
SUBJECT: Award Recommendation and Justification for 2010-170-C CSP for Bank

This memo is being written to describe the process and methodology used in the selection of the Frost Bank as the City's depository bank.

Description of Services

The scope of services include basic services of receiving deposits, paying vendors by checks or other methods, issuing payroll direct deposit (and some checks), wiring funds out, receiving funds wired in, positive pay, ACH, collateralization of deposits, securities clearance and safekeeping, bank statement and other reporting, and other business banking activities.

The objective of this Competitive Sealed Proposal "CSP" is to identify the financial institution that can offer the highest quality services at the lowest cost to the City. More specific objectives of the City are to maximize cash availability and to maximize yield after satisfying the goals of safety and liquidity:

1. To seek a bank that is both capable of providing banking services described within the CSP and willing to be attentive to the City's money matters;
2. To seek a bank that meets the legal qualifications and the terms and conditions specified in the CSP;
3. To maintain a good working relationship with the Depository bank;
4. To adequately compensate the Depository bank for services provided and to allow a reasonable profit to be earned, subject to competitive forces in the market place, and
5. To seek a bank that is financially sound.

Competitive Sealed Proposal (CSP) / Original Respondents

The CSP for these services was issued on September 10, 2010. A pre-bid meeting was held by the City of Plano Purchasing Division on September 20, 2010, where nine (9) companies were represented. Eight (8) respondents submitted proposals by the September 30, 2010 deadline. These included:

1. American National Bank
2. Bank of America
3. BB & T
4. Capital One

5. Frost Bank
6. JP Morgan Chase Bank
7. LegacyTexas
8. Wells Fargo

America National Bank and JPMorgan Chase were deemed non-responsive and were not evaluated.

Evaluation Team

The evaluation team for proposals associated with these services included end users for the services (i.e. the accounting and treasury departments).

Evaluation Criteria

The City of Plano Purchasing Division worked with the Treasurer to develop a set of evaluation criteria, including their scoring weights, for the Competitive Sealed Proposal. The criteria established are as follows:

1. **Cost (40%)**
 - a. Cost of the proposed banking services
 - b. Earning credit on average available funds
2. **Financial Strength (20%)**
 - a. Financial strength of the Financial Institution as evidenced by capital ratios, an unqualified auditor's opinion, Moody's bond rating and Bankrate.com's bank rating.
3. **Scope of Services and effectiveness of plan (30%)**
 - a. A full service institution capable of providing at a minimum the required services identified in this proposal
 - b. Ability to meet the legal qualifications and the terms and conditions specified in the CSP; a qualified public depository as prescribed by Texas statutes and is insured by the FDIC
 - c. Ability to provide an institution Account executive with whom the City can work to expedite various banking issues and contracts
 - d. Ability to provide sufficient collateral for deposits
 - e. Funds availability
 - f. Scope of services offered
4. **Experience (10%)**
 - a. Relevant experience and success managing similar accounts and banking services with municipal governments in Texas

Evaluation Process

Phase I - Evaluation and Scoring

The evaluation team met with the Buyer from the City of Plano Purchasing Division to “kickoff” the evaluation process. Each team member was provided a set of proposals to review the scope of services of each bank. At this point, pricing for each proposal was withheld in order to ensure objectivity in the evaluation and scoring process. Team members were instructed to review all 6 proposals and score each section (as listed above in the “Evaluation Criteria”). The scoring chart that was provided is as follows:

| Proposal Evaluation Scoring | |
|------------------------------------|--|
| Score | Explanation |
| 0 | Non-responsive |
| 1 | Merely Responsive |
| 2 | Fair (Meets Some Needs) |
| 3 | Good (Meets ALL Needs) |
| 4 | Above Average (Meets ALL and EXCEEDS some needs) |
| 5 | Excellent (Innovatively EXCEEDS ALL Needs) |

Evaluation team members then reviewed each proposal and provided a score for each of the sections of the proposal (listed in the Evaluation Criteria above). The scores were submitted to City of Plano Purchasing for compilation. Following the compilation of scores, a series of meetings were held with the Evaluation team members to discuss any major disparity in section scores. The following were the discussions held on each section:

Scope of Services

The evaluation team reviewed each proposal to verify that all services could be provided to the City as requested in the CSP. Areas the team focused on reviewing were payroll processing, deposit processing, controlled disbursement, reporting and sample statements and customer service among other factors.

Experience / References

The City of Plano Treasury and Accounting Departments and the Purchasing Division collaborated and developed a set of questions to ask each of the respondents to the CSP for these services. Treasury and Accounting staff called each reference for each vendor and asked the following questions:

1. Is one person assigned to your account?
2. If so, how long does it take for this person to respond to e-mails and phone calls?

3. Overall, do you find the reports available online to be user friendly, with the information easily discernable, produced timely, and free from errors?
4. Has the depository institution created any reports to meet your needs, should their standard reports not include something you wanted?
5. What, if any, problems have you experienced with the bank's
 - a. Customer Service
 - b. Reporting
 - c. Cost/Fees
 - d. Transactions
 - e. Security
 - f. Website
6. What, if anything, has the bank accomplished for you that you couldn't get at another bank?

Scoring for this section was based on the reference responses to these questions.

Financial Strength

In scoring this section, the Treasurer obtained reports from the Federal Financial Institutions Examination Council to calculate various ratios and obtained information from other outside sources to determine financial strength. The areas reviewed were:

1. Tier 1 Capital Ratio (Required ratio by the FDIC is 4%; Well funded is 6%)
2. Total Capital Ratio (Required ratio by the FDIC is 8%; Well funded is 10%)
3. Leverage Ratio (Required ratio by the FDIC is 5%)
4. Each bank's financial statements were reviewed to ensure that the bank had an unqualified audit opinion
5. Each bank's Moody's bond rating was obtained, and
6. A rating of the bank as a whole was obtained from bankrate.com

The team also took into account newspaper articles and written agreements between any bank and the Federal Reserve Bank.

Scoring for this section was updated based on these factors.

Cost

The cost section was scored by evaluation team members based on the following factors:

- The cost of services as detailed on the cost matrix,
- The earnings credit rate and related allowance, and/or
- Interest to be credited to the City's account after netting out the service fees.

The Purchasing Division assigned points associated with the pricing (lowest price had highest points).

Phase II - Interviews and Evaluation

All scores from Phase I of the evaluation process were tabulated and the evaluation team met to discuss the results. At this point, the Purchasing Division introduced points associated with their pricing. This, combined with the scope of services, financial strength and experience scores (per the process above), gave us a total point score for each vendor. The Purchasing Division made a recommendation that we move forward with the three highest ranked responsive vendors to give them an opportunity to present their online banking software and be interviewed. These vendors included:

1. BB & T
2. Frost Bank
3. Wells Fargo

NOTE: *No actual prices had been shared with the evaluation team at this point – only points associated to the proposed prices, other than the Treasurer who assisted with the cost calculations AFTER submitting the written evaluation.*

Once these 3 semi-finalists were identified, we set up interviews with the evaluation team, employees from the Accounting Department, the Purchasing Division, and the vendors. The City requested that each bank present an overview of their banking software along with verifying the cost matrix developed by the City. Each bank was asked the same questions. These questions were posed in order to clarify information or get answers to questions raised during the Phase I evaluation process.

Interviews

Interviews were set with each vendor. The questions posed to each vendor included the following:

1. Where is the location of the bank's vault and will the City receive same day deposit?
2. The City transmits the payroll direct deposit file (ACH Credit) to the Depository by a direct transmission from the City's Finance Department. This is a required service of the Depository. This file is transmitted to the bank every other Wednesday morning and expected to be in the City's employee accounts no later than 5:00am Thursday morning. Can the bank accommodate this schedule?
3. Can the bank submit the ACH child support addendum that is included in child support payments to the Attorney General?
4. How long are stop payment orders effective? Does the bank offer automated stop-payment including confirmations over an online system?
5. Who will be ultimately responsible for the successful installation of this project?
6. Can an outstanding check list be obtained throughout the month or at month end only?
7. Is there an assigned person to the City or is there a call center to answer the City's banking questions?
8. The City is interested in pursuing electronic payments to vendors. Can your bank help the City with this process?

9. What are the cutoff times for positive pay exceptions?
10. Can the banks scanners scan utility billing remittances along with the customer's check during remote deposit capture?

Once presentations and interviews were complete, the evaluation team compiled all of their answers. From this point, enough information had been gathered to determine who would be requested to submit Best and Final Offers to the City of Plano Purchasing Division.

Elimination From Consideration

The following is a justification for elimination of 2 of the 3 respondents that had been selected to go into Phase II Scoring. All companies are considered good companies. However, after reviews and evaluations were completed in Phase I and Phase II, it was felt that the following companies did not meet the City of Plano's needs for this particular service:

1. BB & T

BB & T, the 10th largest bank in the nation, has excellent capital ratios, appears financially stable and ranked high in the cost area. Furthermore, in BusinessWeek on February 25, 2010, BB & T was ranked 20th in "Standouts in Customer Service" and had excellent references outside of the state of Texas. However, concerns regarding their scope of services included:

- a. BB & T does not have a presence in Texas with municipalities.
- b. It was not certain that the bank could submit the ACH child support addendum that is included in child support payments to the Attorney General.
- c. If the City changes from the current remote deposit capture service and begins to use BB&T's service, remittances from utility billing would have to be manually entered. Due to the volume of remittances received, this is not an option for the City.
- d. The positive pay cutoff time was 2:45pm. If the City issued a check after this time, the City would have to e-mail a branch to let them know that they could accept the check (rather than the check being automatically added to the positive pay file).

These are the evaluation teams concerns, and with other qualified banks in the process, the team feels that there is potential risk in considering them. The preceding were reasons that it was felt to move forth with a different bank for these services.

2. Wells Fargo

Wells Fargo, the 4th largest bank in the nation, has a large municipal presence in the Texas area, appears to have be very financially stable and had very good references from other area cities. Furthermore, Wells Fargo ranked high in the cost area. However, concerns regarding their scope of services included:

- a. The City's courier must go to Wells Fargo cash vault in Irving. In the past, the City has had issues with the courier driving to a vault location outside of Plano to receive same day credit for deposits.
- b. To receive customer service, the City must call a 1-800 number and give a code to talk to the City's team. This team may or may not be in the metroplex area. Furthermore, the majority of the proposal team, which would be the City's contacts also, was not located in the metroplex.

Phase III – Selection of Possible Vendor for Award

As it was determined that two of the three finalists could not meet the City's scope of services to the desired level of service, only one bank remained a finalist.

Based on the above information, the Treasurer sent a recommendation to the Purchasing Division to award the CSP to Frost Bank based on scope of services and quality derived from evaluation and scoring.

Executive Summary

The review process for the bank depository services is felt to have been very thorough and comprehensive. Each section of every proposal was reviewed multiple times by the review team in order to ensure fair and complete reviews were carried out. After review, it is felt that Frost Bank best fits the needs of the City of Plano for this project based on the following findings:

1. Scope of Services

Of the top three banks, the City determined that Frost Bank would provide better service in the areas of vault deposits, remote capture deposits, positive pay, and ACH child support addendums.

2. Cost

Of the top three offers provided to the City of Plano for banking services, Frost Bank provided a viable solution at a reasonable cost.

3. Experience and References

Based on review of references during the review processes, it appears evident that Frost Bank provides a quality banking services with good customer satisfaction per the references.

It is believed that, based on this information, Frost Bank can provide the City of Plano quality banking services at a reasonable cost. Therefore, it is recommended that the contract for these services be awarded to Frost Bank.

Feel free to contact me if you have any questions at (972) 941-7312.

**CITY OF PLANO
CSP RECAP
2010-170-C
CSP FOR BANK DEPOSITORY SERVICES CONTRACT
SEPTEMBER 30, 2010 3:00 P.M. CST**

CSP Submitted By:

American National Bank of Texas

Bank of America

BB&T

Capital One

Frost Bank

JP Morgan Chase

Legacy Texas Bank

Wells Fargo

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

Bev Rogers

Bev Rogers, Buyer

September 30, 2010.

Date

“CSP RECAP STATEMENT”

ALL CSPS SUBMITTED FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS CSP TAB SHEET. **HOWEVER, THE LISTING OF A CSP ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH CSP OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH CSP AS RESPONSIVE.** THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF CSPS 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 CSP SUBMITTER UPON AWARD OF THE CONTRACT AND, ACCORDING TO LAW, ALL CSPS RECEIVED WILL BE AVAILABLE FOR INSPECTION AT THAT TIME.

PURCHASING DIVISION
CITY OF PLANO TEXAS

BANK DEPOSITORY CONTRACT
(Subject to change and final approval by City of Plano legal department)

This BANK DEPOSITORY CONTRACT, hereinafter called "Depository Contract", is made and entered into by and between the CITY OF PLANO, a Texas home rule municipal corporation (hereinafter called "City"), and FROST BANK, organized under the law of the United States and authorized by law to do banking business in the State of Texas (hereinafter called "Bank"), and for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

1. **Designation of Depository.** City, through action of the City Council, its governing body, hereby designates Bank as a depository bank for the period beginning January 1, 2011, and continuing through December 31, 2012, with the option for three one-year extensions under the same terms and conditions herein.
2. **General.** All services rendered to City by Bank under this Depository Contract shall be performed in accordance with accepted commercial banking standards for public fund organizations and under the overall direction and instructions of City pursuant to Bank's standard operations, policies, and procedures.
3. **Scope of Services.** Bank agrees to provide those services as described in the Bank's Response to City's Bank Services CSP, a copy of which is on file in the City Finance Department and incorporated herein by reference as if copied verbatim. Bank acknowledges that all such services shall be performed by Bank subject to the approval of City.
4. **City Representatives.** During the term of this Depository Contract, the City will, through appropriate action of its City Council, designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of the City in any and all matters of every kind arising under this Depository Contract and to (a) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfer on behalf of the City in accordance with the electronic funds or funds transfer agreement and addenda, and (b) make withdrawals or transfer by written instrument.
5. **Entire Agreement.** The Contract documents between Bank and City shall consist of this Depository Contract and City's Bank Services CSP, Bank's Response to City's Bank Services CSP, Depository Pledge Agreement, and Safekeeping Agreement (a copy of each document is on file with the City's Finance Department and incorporated by reference as if copied verbatim) In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the Depository Contract and then to the Contract documents in the order in which they are listed above. The Contract documents make up the entire agreement between the parties and supersede any and all prior representations, statements, and agreements, whether written or oral. The terms and provisions of the Contract documents may not be amended, altered, or waived except by mutual agreement evidenced by a written instrument signed by duly authorized representatives of both parties.
6. **Documents.** The Contract documents, including any additional agreements for specific bank services, are on file as permanent records in the City's Finance Department and available for public inspection during regular business hours.
7. **Interest on Deposits.** City may arrange for time deposits and Bank may accept and shall hold such deposits subject to payment in accordance with the terms of the deposit. Interest shall be calculated at the rates which Bank has proposed for the particular denomination and time period of said deposits, or negotiated at the time of placement of said deposits. Any time deposits that mature beyond the expiration of this Depository Contract will be at the interest rates negotiated at the time of purchase.
8. **Custodian.** City and Bank, by execution of this Depository Contract, hereby designate the Wells Fargo Bank, N.A., hereinafter called the "Custodian Bank", to hold in trust, according to the terms and conditions of this Depository Contract and the Safekeeping Agreement, the collateral described and pledged by the Bank in accordance with the provisions of this Depository Contract.
9. **Custodian Fees.** Any and all fees associated with the Custodian Bank's holding of collateral for the benefit of City will be paid by Bank and the City will have no liability therefore.
10. **Collateralization.** All funds on deposit with the Bank to the credit of the City shall be secured by collateral as provided for the Public Funds Collateral Act (Chapter 2257 of the Texas Government Code), the City's Investment Policy, and the Bank's Response to the City's Bank Depository Competitive Sealed Proposal as accepted by the City. With the

exception of deposits secured with irrevocable letters of credit at 100% of amount, the total market value of the collateral (which includes accrued interest or income to the extent it is not included in the market price) securing such deposits shall be in an amount at least equal to one hundred two percent (102%) of the amount of such deposits, plus the amount of any accrued interest thereon, less the amount that such deposits are insured by an agency or instrumentality of the United States government. The market value with respect to any securities (collateral) as of any date and priced on such date will be obtained from a non-affiliated information source acceptable to the City. The Bank will work with the City to establish an appropriated cushion to cover normal deposit fluctuations and City will notify Bank of significant changes in its balances. Bank will be liable for the monitoring and maintaining the required collateral margins and levels at all times.

Bank has heretofore, or will immediately hereafter, deliver to Custodian Bank collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the funds of City deposited with Bank. Said collateral or substitute collateral, as hereinafter provided for, shall be kept and retained by the Custodian Bank in trust so long as the depository relationship between City and Bank shall exist hereunder, and thereafter so long as deposits made by City and Bank hereunder, or any portion thereof, shall have not been properly paid out by Bank to City or on its order. Bank hereby grants a security interest in such collateral to City.

The Custodian Bank will accept said collateral and hold the same in trust for the purposes herein stated.

11. **Default.** Should Bank fail at any time pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposits and the interest on such deposits or in any manner breach its contract with City, City shall give written notice of such failure or breach to the Bank, and the Bank shall have three (3) business days to cure such failure or breach. In the event Bank shall fail to cure any such failure or breach within three (3) business days or should the Bank be declared insolvent by a Federal banking regulatory agency, it shall be the duty of the Custodian Bank, upon demand of City (supported by proper evidence of any of the above listed circumstances), to surrender the above described collateral, in an amount equal to the current balance of City's deposits and accrued interest less agency or instrumentality of the United States government insurance, to City. City may sell any part of such collateral and out of the proceeds thereof, pay City all damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, and account to Bank for the remainder, if any, of said proceeds or collateral remaining unsold.

12. **Sale of Collateral.** Any sale of such collateral, or any part thereof, made by City hereunder may be either at public or private sale, provided, however, it shall give both the Custodian Bank and Bank two (2) hours notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefore for cash. City and Bank shall have the right to bid at such sale.

13. **Substitution of Collateral.** If Bank shall desire to sell or otherwise dispose of any one or more of said collateral securities so deposited with the Custodian Bank, with the advance written approval of City, it may substitute for any one or more of such securities other securities of the same market value and character of the character authorized herein. Such right of substitution shall remain in full force and may be exercised by Bank as often as it may desire; provided, however, that the aggregate market value of all collateral pledged hereunder, shall be at least equal to the amount of collateral required hereunder and meet the requirements of the law. If at any time, the aggregate market value of such collateral so deposited with the Custodian Bank is less than one hundred two percent (102%) of the City's funds on deposit with the Bank, Bank immediately shall deposit with the Custodian Bank such additional collateral as may be necessary to cause the market value of such collateral to equal the total amount of required collateral. Bank shall be entitled to income on securities held by the Custodian Bank for the collateral required hereunder, and the Custodian Bank may dispose of such income as directed by Bank without approval of City.

14. **Trust Receipts.** Bank shall promptly forward to City copies of safekeeping or trust receipts covering all such collateral held for Bank, including substitute collateral as provided for herein.

15. **Withdrawal of Collateral.** If at any time the collateral in the hands of the Custodian Bank shall have a market value in excess of one hundred two percent (102%) of the balances due City by Bank, City shall authorize the withdrawal of a specific amount of collateral. The Custodian Bank shall deliver this amount of collateral (and no more) to Bank, taking its receipt therefore, and the Custodian Bank shall have no further liability for collateral so redelivered to Bank.

16. **Successors.** This Depository Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

17. **Release of Collateral.** When the relationship of City and Bank shall have ceased to exist between City and Bank, and when Bank shall have properly paid out all deposits of City, it shall be the duty of City to give the Custodian Bank

notice to that effect; whereupon the Custodian Bank shall, with the approval of City, redeliver to Bank all collateral then in its possession belonging to Bank, taking its receipt therefore. An order in writing to the Custodian Bank by City and a receipt for such collateral by Bank shall be a full and final release of the Custodian Bank of all duties and obligations undertaken by it by virtue of these presents.

18. **Governing Law and Venue.** This Depository Contract shall be governed by the laws of the State of Texas. Collin County will be the venue for any lawsuit arising out of this Depository Contract.

19. **Notices.** Except as may otherwise be specified in the applicable service-level agreements and/or set-up forms, any demand, notice, request, instruction, designation, or other communication(s) required in writing under this Depository Contract shall be personally delivered or sent certified mail, return receipt requested, to the other party as follows:

Bank: _____

City: Denise M. Tacke, Finance Director
City of Plano
1520 K Avenue
Plano, TX 75074
972.941.5233

Changes to notice information may be made by either party with written notification to the other party.

20. **Severability.** If any provision of this Depository Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties, shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the illegal, invalid, or unenforceable provision as possible. The remaining portion of the Depository Contract not declared illegal, invalid, or unenforceable shall remain valid and in full force and effect for the term remaining.

21. **Binding Commitment.** Bank hereby acknowledges itself duly and firmly bound for the faithful performance of all the duties and obligations required by applicable law, including the Texas Government Code and Texas Local Government Code, such that all funds deposited with it as depository shall be faithfully kept by it and accounted for according to law.

22. **Continuation.** Unless this Depository Contract is terminated sooner, Bank's designation as the City Depository will remain continuously in effect for a period not to exceed 60 days after December 31, 2012, subject to execution of the extension option.

IN WITNESS Whereof, the duly authorized officers of the parties have this day executed this Depository Contract:

BANK

BY: _____
NAME: _____
TITLE: _____
Date: _____

CITY OF PLANO

BY: _____
NAME: Thomas H. Muehlenbeck
TITLE: City Manager
Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|---|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11/22/10 | | |
| Department: | | Finance | | |
| Department Head | | Denise Tacke | | |
| Agenda Coordinator (include phone #): Katherine Crumbley - x-7479 | | | | |
| CAPTION | | | | |
| A Resolution of the City Council of the City of Plano, Texas, approving the Investment Portfolio Summary for the quarter ending September 30, 2010 and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): | | | | |
| COMMENTS: This item has no fiscal impact | | | | |
| SUMMARY OF ITEM | | | | |
| Quarterly Investment report ending September 30, 2010. | | | | |
| List of Supporting Documents: Investment Portfolio Summary | | | Other Departments, Boards, Commissions or Agencies | |
| | | | | |

A Resolution of the City Council of the City of Plano, Texas, approving the Investment Portfolio Summary for the quarter ending September 30, 2010 and providing an effective date.

WHEREAS, the City Council has been presented the City of Plano's Investment Portfolio Summary for the Quarter Ending September 30, 2010, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Investment Portfolio Summary"); and

WHEREAS, the Public Funds Investment Act at Texas Government Code, Section 2256.005, requires the governing body of an investing entity to review its investment policy and investment strategies not less than annually; and

WHEREAS, upon full review and consideration of the Investment Portfolio Summary, and all matters attendant and related thereto, the City Council is of the opinion that the same should be approved.

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

Section I. The City of Plano's Investment Portfolio Summary for the Quarter Ending September 30, 2010, 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. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

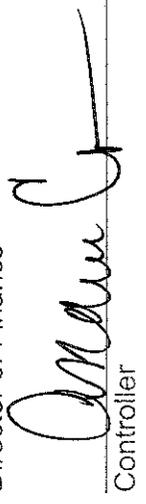
Diane C. Wetherbee, CITY ATTORNEY

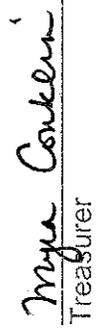
City of Plano
INVESTMENT PORTFOLIO SUMMARY
For the Quarter Ended
September 30, 2010

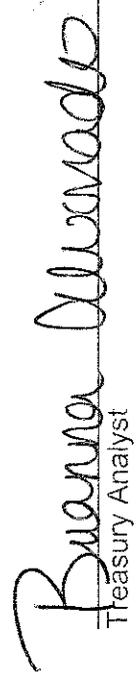
The investment portfolio of the City of Plano is in compliance with the Public Funds Investment Act and the City's Investment Policy and strategies.


City Manager


Director of Finance


Controller


Treasurer


Treasury Analyst

Strategy Summary:

Information received since the Federal Open Market Committee met in September confirms that the pace of recovery in output and employment continues to be slow. Household spending is increasing gradually, but remains constrained by high unemployment, modest income growth, lower housing wealth, and tight credit. Business spending on equipment and software is rising, though less rapidly than earlier in the year, while investment in nonresidential structures continues to be weak. Employers remain reluctant to add to payrolls. Housing starts continue to be depressed. Longer-term inflation expectations have remained stable, but measures of underlying inflation have trended lower in recent quarters.

Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. Currently, the unemployment rate is elevated, and measures of underlying inflation are somewhat low, relative to levels that the Committee judges to be consistent, over the longer run, with its dual mandate. Although the Committee anticipates a gradual return to higher levels of resource utilization in a context of price stability, progress toward its objectives has been disappointingly slow.

To promote a stronger pace of economic recovery and to help ensure that inflation, over time, is at levels consistent with its mandate, the Committee decided today to expand its holdings of securities. The Committee will maintain its existing policy of reinvesting principal payments from its securities holdings. In addition, the Committee intends to purchase a further \$600 billion of longer-term Treasury securities by the end of the second quarter of 2011, a pace of about \$75 billion per month. The Committee will regularly review the pace of its securities purchases and the overall size of the asset-purchase program in light of incoming information and will adjust the program as needed to best foster maximum employment and price stability.

The Committee will maintain the target range for the federal funds rate at 0 to 1/4 percent and continues to anticipate that economic conditions, including low rates of resource utilization, subdued inflation trends, and stable inflation expectations, are likely to warrant exceptionally low levels for the federal funds rate for an extended period.

The Committee will continue to monitor the economic outlook and financial developments and will employ its policy tools as necessary to support the economic recovery and to help ensure that inflation, over time, is at levels consistent with its mandate. **(1)**

| <u>Asset Type</u> | <u>Ave. Yield</u> | <u>September 30, 2010</u> | | <u>June 30, 2010</u> | |
|-------------------------|-------------------|---------------------------|-------------------------|-----------------------|-------------------------|
| | | <u>End Book Value</u> | <u>End Market Value</u> | <u>End Book Value</u> | <u>End Market Value</u> |
| Pools/NOW Accounts | 0.25% | 99,388,728.26 | 99,388,728.26 | 57,528,683.04 | 57,528,683.04 |
| Certificates of Deposit | 1.09% | 34,932,594.93 | 34,932,594.93 | 48,200,090.37 | 48,200,090.37 |
| FFCB Bonds | 2.50% | 14,438,594.87 | 14,477,761.48 | 32,432,376.94 | 32,590,962.50 |
| FHLB Bonds | 1.24% | 94,294,998.98 | 94,930,756.80 | 187,318,283.61 | 188,037,623.43 |
| FHLMC Bonds | 1.77% | 53,367,770.36 | 53,709,326.00 | 20,056,816.85 | 20,086,849.00 |
| FNMA Bonds | 1.68% | 33,801,418.05 | 33,935,750.60 | 29,057,657.41 | 29,157,015.62 |
| Totals | | 330,224,105.45 | 331,374,918.07 | 374,593,908.22 | 375,601,223.96 |

Average Yield (2):

Total Portfolio 1.11%

Fiscal Year-to-Date Average Yield (3):

Total Portfolio 1.06%

| This Quarter: | |
|------------------------------------|-------|
| Rolling Three Month Treasury Yield | 0.15% |
| Rolling Six Month Treasury Yield | 0.20% |
| TexPool Yield | 0.22% |

| Last 12 Months: | |
|------------------------------------|-------|
| Rolling Three Month Treasury Yield | 0.12% |
| Rolling Six Month Treasury Yield | 0.19% |
| TexPool Yield | 0.20% |

Investment Earnings (4):
 \$ 1,088,403 Quarter
 \$ 3,913,239 Fiscal Year To Date

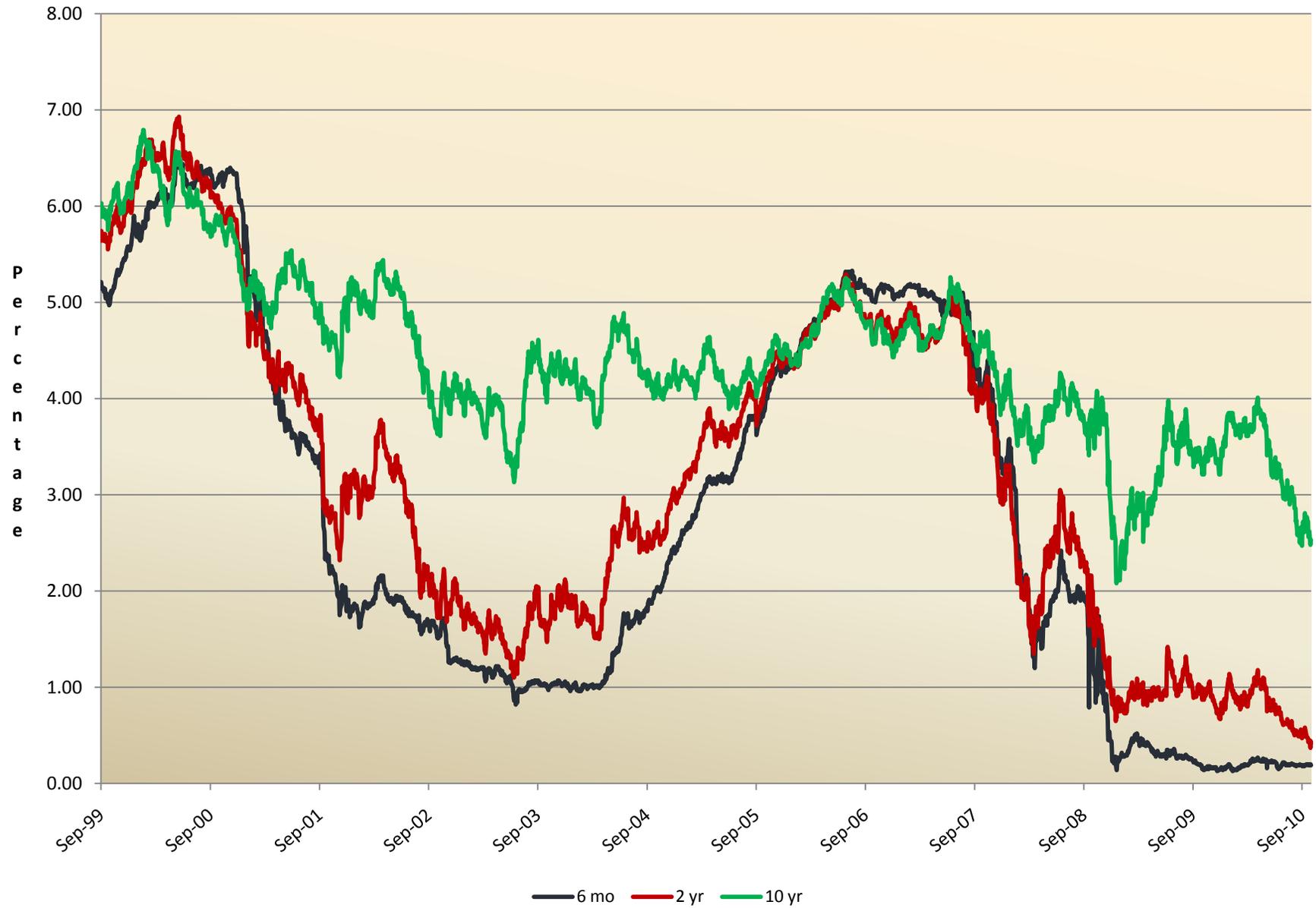
(1) Source: Federal Reserve Press Release.

(2) Average Yield calculated using quarter end report yields and adjusted book values does not reflect a total return analysis or account for advisory fees.

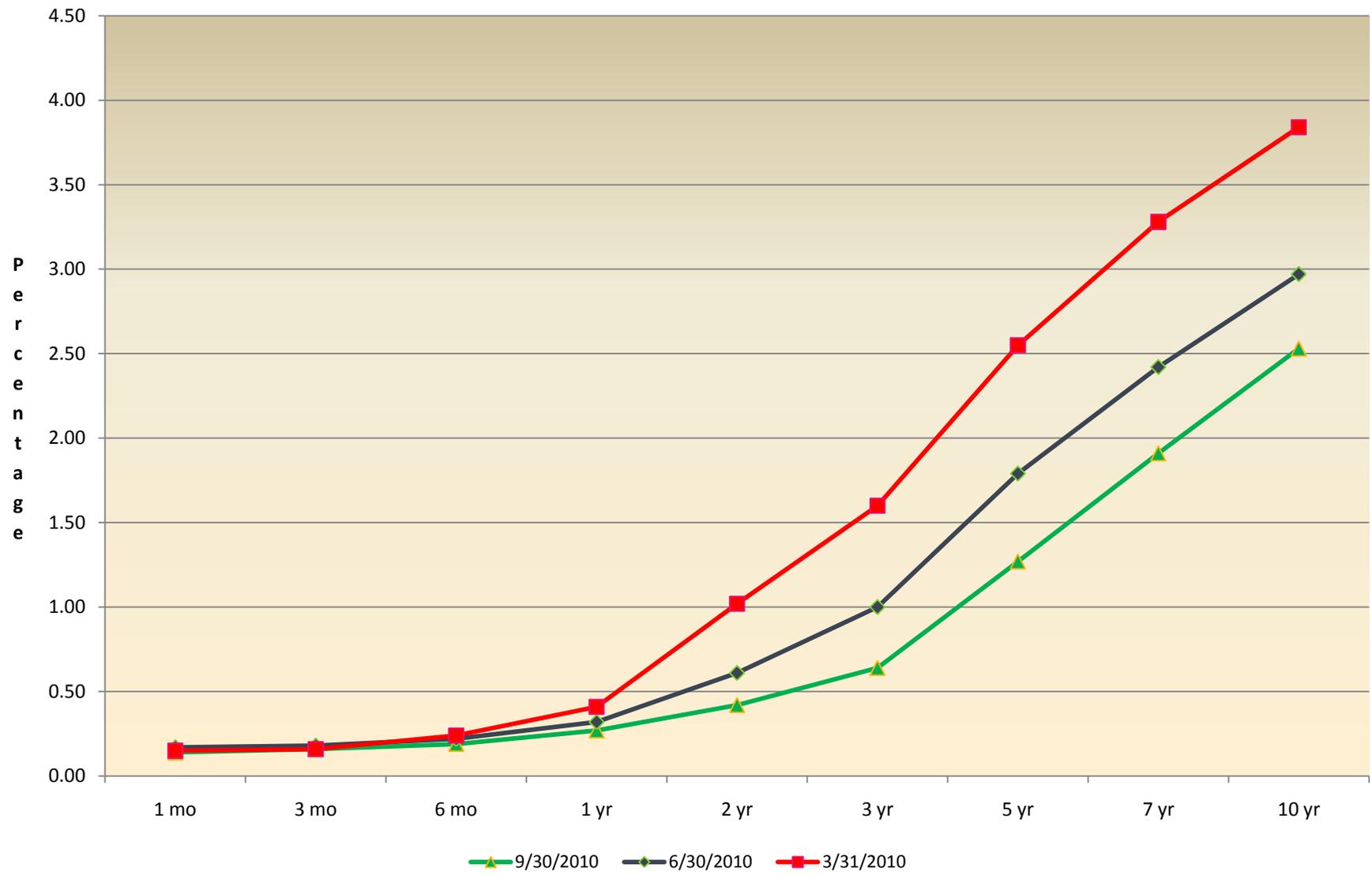
(3) Fiscal Year-to-Date Average Yields calculated using quarter end report yields and adjusted book values and does not reflect a total return analysis or account for advisory fees.

(4) Interest earnings are obtained from the general ledger - Interest plus/minus Gain or Loss on Investments plus/minus Unrealized Gain or Loss.

US Treasury Historical Yields



Treasury Yield Curves



S & P 500



Detail of Security Holdings
September 30, 2010

By Sector

| Security Description | Ratings | Coupon/ YTM | Maturity Date | Settlement Date | Call Date | Par Value | Purchased Value | Adjusted Book Value | Market Price | Market Value | Life (mo) | Yield | Accrued Interest |
|------------------------|---------|-------------|---------------|-----------------|-----------|--------------------------|--------------------------|--------------------------|--------------|--------------------------|--------------|--------------|----------------------|
| Certificate of Deposit | | 1.06% | 08/23/12 | 08/26/10 | | 5,000,000.00 | 5,000,000.00 | 5,000,000.00 | 1.000 | 5,000,000.00 | 22.72 | 1.06% | 5,082.19 |
| Certificate of Deposit | | 1.45% | 08/22/13 | 08/26/10 | | 1,500,000.00 | 1,500,000.00 | 1,500,000.00 | 1.000 | 1,500,000.00 | 34.66 | 1.45% | 2,085.62 |
| Certificate of Deposit | | 1.45% | 08/22/13 | 08/26/10 | | 3,500,000.00 | 3,500,000.00 | 3,500,000.00 | 1.000 | 3,500,000.00 | 34.66 | 1.45% | 4,866.44 |
| FFCB Bonds | AAA | 2.75% | 09/30/14 | 06/15/10 | 03/30/11 | 14,305,000.00 | 14,448,379.02 | 14,438,594.87 | 1.012 | 14,477,761.48 | 47.90 | 2.50% | - |
| FHLB Bonds | AAA | 1.25% | 10/08/10 | 04/08/09 | | 20,000,000.00 | 20,000,000.00 | 20,000,000.00 | 1.000 | 20,004,040.00 | 0.26 | 1.25% | 119,444.44 |
| FHLB Bonds | AAA | 1.05% | 11/15/10 | 06/25/09 | | 6,000,000.00 | 6,010,560.00 | 6,000,956.22 | 1.001 | 6,005,712.00 | 1.51 | 0.92% | 23,625.00 |
| FHLB Bonds | AAA | 6.00% | 05/13/11 | 07/30/09 | | 1,000,000.00 | 1,083,680.00 | 1,028,877.30 | 1.035 | 1,034,681.00 | 7.38 | 1.25% | 22,500.00 |
| FHLB Bonds | AAA | 3.13% | 06/10/11 | 07/31/09 | | 12,000,000.00 | 12,388,355.47 | 12,144,703.88 | 1.018 | 12,210,180.00 | 8.30 | 1.36% | 114,583.33 |
| FHLB Bonds | AAA | 1.13% | 07/18/11 | 08/05/09 | | 5,630,000.00 | 5,605,228.00 | 5,619,875.49 | 1.006 | 5,662,000.92 | 9.54 | 1.35% | 12,667.50 |
| FHLB Bonds | AAA | 1.38% | 08/11/11 | 09/21/09 | | 5,500,000.00 | 5,523,038.71 | 5,510,532.94 | 1.009 | 5,549,687.00 | 10.33 | 1.15% | 10,293.40 |
| FHLB Bonds | AAA | 1.00% | 02/27/12 | 03/09/10 | | 8,000,000.00 | 8,004,824.00 | 8,003,450.50 | 1.008 | 8,063,800.00 | 16.89 | 0.97% | 7,333.33 |
| FHLB Bonds | AAA | 1.30% | 07/26/12 | 03/12/10 | | 8,725,000.00 | 8,734,565.45 | 8,732,336.82 | 1.014 | 8,847,978.88 | 21.80 | 1.25% | 20,164.44 |
| FHLB Bonds | AAA | 2.00% | 09/14/12 | 03/11/10 | | 17,000,000.00 | 17,256,428.00 | 17,199,723.33 | 1.028 | 17,477,887.00 | 23.44 | 1.39% | 15,111.11 |
| FHLB Bonds | AAA | 1.38% | 09/12/14 | 09/30/10 | | 10,000,000.00 | 10,054,542.50 | 10,054,542.50 | 1.007 | 10,074,790.000 | 47.31 | 1.23% | 21,006.94 |
| FHLMC Bonds | AAA | 3.50% | 05/05/11 | 07/30/09 | | 3,000,000.00 | 3,121,266.90 | 3,040,861.67 | 1.019 | 3,056,943.00 | 7.11 | 1.18% | 42,291.67 |
| FHLMC Bonds | AAA | 4.13% | 09/27/13 | 07/12/10 | | 15,000,000.00 | 16,329,150.00 | 16,238,500.38 | 1.097 | 16,452,480.00 | 35.84 | 1.30% | 5,156.25 |
| FHLMC Bonds | AAA | 1.75% | 09/10/15 | 09/27/10 | | 17,000,000.00 | 17,088,555.17 | 17,088,408.31 | 1.010 | 17,168,249.00 | 59.21 | 1.64% | 16,527.78 |
| FHLMC Bonds | AAA | Step | 09/23/15 | 09/27/10 | 03/23/11 | 17,000,000.00 | 17,000,000.00 | 17,000,000.00 | 1.002 | 17,031,654.00 | 59.64 | 2.44% | 3,305.55 |
| FNMA Bonds | AAA | 5.05% | 02/07/11 | 02/07/06 | 08/07/06 | 1,000,000.00 | 994,375.00 | 999,599.53 | 1.017 | 1,016,922.00 | 4.26 | 5.18% | 7,434.72 |
| FNMA Bonds | AAA | 1.00% | 04/04/12 | 03/08/10 | | 6,000,000.00 | 5,986,158.00 | 5,989,919.81 | 1.008 | 6,049,326.00 | 18.10 | 1.11% | 29,333.33 |
| FNMA Bonds | AAA | 1.13% | 04/23/12 | 03/23/10 | 12/23/10 | 2,050,000.00 | 2,047,117.19 | 2,047,839.78 | 1.002 | 2,053,089.35 | 18.72 | 1.19% | 448.44 |
| FNMA Bonds | AAA | 1.40% | 07/26/13 | 07/29/10 | 01/26/11 | 10,000,000.00 | 9,991,500.00 | 9,991,989.94 | 1.002 | 10,023,380.00 | 33.77 | 1.43% | 24,888.89 |
| FNMA Bonds | AAA | 2.10% | 06/30/14 | 06/30/10 | 12/30/10 | 6,000,000.00 | 5,986,200.00 | 5,987,068.99 | 1.004 | 6,025,164.00 | 44.89 | 2.16% | 31,500.00 |
| FNMA Bonds | AAA | Step | 09/30/14 | 09/30/10 | 03/30/11 | 8,785,000.00 | 8,785,000.00 | 8,785,000.00 | 0.998 | 8,767,869.25 | 47.90 | 1.74% | - |
| TOTAL | | | | | | \$ 328,316,323.19 | \$ 330,760,246.60 | \$ 330,224,105.45 | | \$ 331,374,918.07 | 19.11 | 1.11% | \$ 660,216.18 |

(1) (2)

(1) Weighted average life - For purposes of calculating weighted average life bank, pool, and money market investments are assumed to mature the next business day.

(2) Weighted average yield to maturity - The weighted average yield to maturity is based on adjusted book value, realized and unrealized gains/losses and investment advisory fees are not considered. The yield is for this month only.

Detail of Security Holdings
September 30, 2010

By Maturity

| Security Description | Ratings | Coupon/ YTM | Maturity Date | Settlement Date | Call Date | Par Value | Purchased Value | Adjusted Book Value | Market Price | Market Value | Life (mo) | Yield | Accrued Interest |
|------------------------|---------|-------------|---------------|-----------------|-----------|---------------|-----------------|---------------------|--------------|---------------|-----------|-------|------------------|
| Legacy NOW Account | | 0.33% | 10/01/10 | 09/30/10 | | 34,847,686.20 | 34,847,686.20 | 34,847,686.20 | 1.000 | 34,847,686.20 | 0.03 | 0.33% | - |
| TexPool | AAAm | 0.22% | 10/01/10 | 09/30/10 | | 30,162,179.33 | 30,162,179.33 | 30,162,179.33 | 1.000 | 30,162,179.33 | 0.03 | 0.22% | - |
| Texas Daily | AAAm | 0.21% | 10/01/10 | 09/30/10 | | 34,378,862.73 | 34,378,862.73 | 34,378,862.73 | 1.000 | 34,378,862.73 | 0.03 | 0.21% | - |
| FHLB Bonds | AAA | 1.25% | 10/08/10 | 04/08/09 | | 20,000,000.00 | 20,000,000.00 | 20,000,000.00 | 1.000 | 20,004,040.00 | 0.26 | 1.25% | 119,444.44 |
| Certificate of Deposit | | 1.25% | 10/16/10 | 10/16/09 | | 245,000.00 | 245,000.00 | 245,000.00 | 1.000 | 245,000.00 | 0.52 | 1.25% | 1,954.97 |
| FHLB Bonds | AAA | 1.05% | 11/15/10 | 06/25/09 | | 6,000,000.00 | 6,010,560.00 | 6,000,956.22 | 1.001 | 6,005,712.00 | 1.51 | 0.92% | 23,625.00 |
| Certificate of Deposit | | 1.50% | 12/01/10 | 06/01/09 | | 245,000.00 | 245,000.00 | 245,000.00 | 1.000 | 245,000.00 | 2.03 | 1.50% | 4,893.29 |
| Certificate of Deposit | | 0.95% | 01/13/11 | 01/14/10 | | 5,000,000.00 | 5,000,000.00 | 5,000,000.00 | 1.000 | 5,000,000.00 | 3.44 | 0.95% | 33,705.48 |
| FNMA Bonds | AAA | 5.05% | 02/07/11 | 02/07/06 | 08/07/06 | 1,000,000.00 | 994,375.00 | 999,599.53 | 1.017 | 1,016,922.00 | 4.26 | 5.18% | 7,434.72 |
| Certificate of Deposit | | 1.00% | 02/09/11 | 02/09/10 | | 246,000.00 | 246,000.00 | 246,000.00 | 1.000 | 246,000.00 | 4.33 | 1.00% | 1,570.36 |
| Certificate of Deposit | | 0.56% | 03/07/11 | 02/10/10 | | 97,000.00 | 97,000.00 | 97,000.00 | 1.000 | 97,000.00 | 5.18 | 0.56% | 345.27 |
| Certificate of Deposit | | 1.00% | 03/17/11 | 03/18/10 | | 5,000,000.00 | 5,000,000.00 | 5,000,000.00 | 1.000 | 5,000,000.00 | 5.51 | 1.00% | 26,849.32 |
| Certificate of Deposit | | 0.85% | 04/07/11 | 07/07/10 | | 2,000,000.00 | 2,000,000.00 | 2,000,000.00 | 1.000 | 2,000,000.00 | 6.20 | 0.85% | 3,958.90 |
| Certificate of Deposit | | 1.00% | 05/05/11 | 05/06/10 | | 2,000,000.00 | 2,000,000.00 | 2,000,000.00 | 1.000 | 2,000,000.00 | 7.11 | 1.00% | 8,054.79 |
| FHLMC Bonds | AAA | 3.50% | 05/05/11 | 07/30/09 | | 3,000,000.00 | 3,121,266.90 | 3,040,861.67 | 1.019 | 3,056,943.00 | 7.11 | 1.18% | 42,291.67 |
| Certificate of Deposit | | 0.81% | 05/12/11 | 11/13/09 | | 150,000.00 | 150,000.00 | 150,000.00 | 1.000 | 150,000.00 | 7.34 | 0.81% | 1,068.53 |
| FHLB Bonds | AAA | 6.00% | 05/13/11 | 07/30/09 | | 1,000,000.00 | 1,083,680.00 | 1,028,877.30 | 1.035 | 1,034,681.00 | 7.38 | 1.25% | 22,500.00 |
| Certificate of Deposit | | 1.10% | 05/27/11 | 05/27/10 | | 244,090.37 | 244,090.37 | 244,090.37 | 1.000 | 244,090.37 | 7.84 | 1.10% | 926.87 |
| Certificate of Deposit | | 1.40% | 06/02/11 | 06/02/10 | | 240,000.00 | 240,000.00 | 240,000.00 | 1.000 | 240,000.00 | 8.03 | 1.40% | 1,104.66 |
| FHLB Bonds | AAA | 3.13% | 06/10/11 | 07/31/09 | | 12,000,000.00 | 12,388,355.47 | 12,144,703.88 | 1.018 | 12,210,180.00 | 8.30 | 1.36% | 114,583.33 |
| FHLB Bonds | AAA | 1.13% | 07/18/11 | 08/05/09 | | 5,630,000.00 | 5,605,228.00 | 5,619,875.49 | 1.006 | 5,662,000.92 | 9.54 | 1.35% | 12,667.50 |
| Certificate of Deposit | | 0.95% | 07/28/11 | 07/29/10 | | 2,005,492.22 | 2,005,492.22 | 2,005,492.22 | 1.000 | 2,005,492.22 | 9.87 | 0.95% | 3,288.46 |
| Certificate of Deposit | | 0.95% | 07/28/11 | 07/29/10 | | 4,026,012.34 | 4,026,012.34 | 4,026,012.34 | 1.000 | 4,026,012.34 | - | 0.95% | 6,601.56 |
| Certificate of Deposit | | 1.25% | 08/09/11 | 02/09/10 | | 245,000.00 | 245,000.00 | 245,000.00 | 1.000 | 245,000.00 | 10.26 | 1.25% | 2,928.25 |
| FHLB Bonds | AAA | 1.38% | 08/11/11 | 09/21/09 | | 5,500,000.00 | 5,523,038.71 | 5,510,532.94 | 1.009 | 5,549,687.00 | 10.33 | 1.15% | 10,293.40 |
| Certificate of Deposit | | 1.17% | 11/28/11 | 05/27/10 | | 244,000.00 | 244,000.00 | 244,000.00 | 1.000 | 244,000.00 | 13.90 | 1.17% | 985.49 |
| FHLB Bonds | AAA | 1.00% | 02/27/12 | 03/09/10 | | 8,000,000.00 | 8,004,824.00 | 8,003,450.50 | 1.008 | 8,063,800.00 | 16.89 | 0.97% | 7,333.33 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09 | | | | | | | | | |

Detail of Security Holdings
September 30, 2010

By Maturity

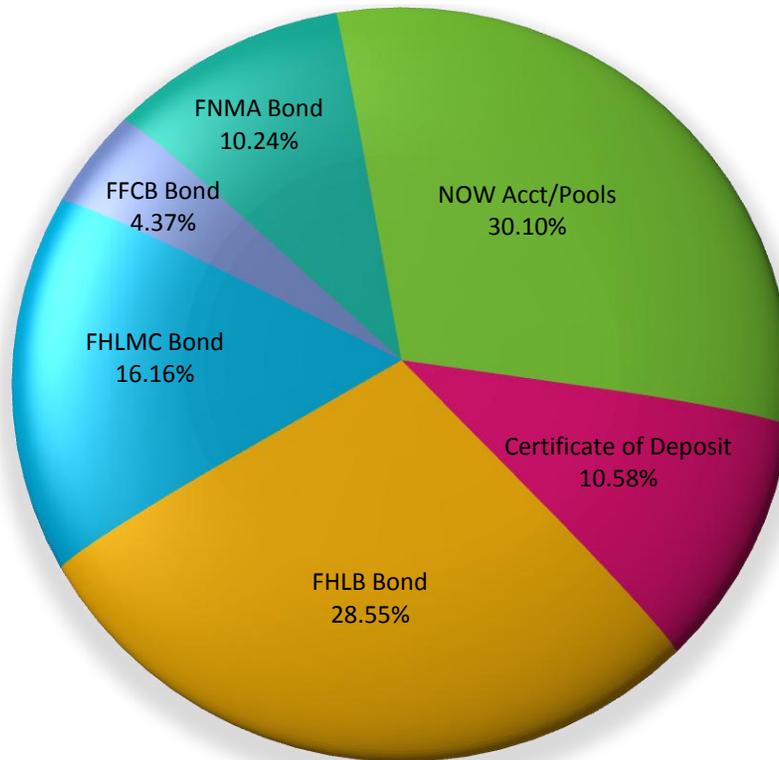
| Security Description | Ratings | Coupon/ YTM | Maturity Date | Settlement Date | Call Date | Par Value | Purchased Value | Adjusted Book Value | Market Price | Market Value | Life (mo) | Yield | Accrued Interest |
|------------------------|---------|-------------|---------------|-----------------|-----------|--------------------------|--------------------------|--------------------------|--------------|--------------------------|--------------|--------------|----------------------|
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| Certificate of Deposit | | 1.35% | 03/09/12 | 03/09/10 | | 95,000.00 | 95,000.00 | 95,000.00 | 1.000 | 95,000.00 | 17.25 | 1.35% | 720.31 |
| FNMA Bonds | AAA | 1.00% | 04/04/12 | 03/08/10 | | 6,000,000.00 | 5,986,158.00 | 5,989,919.81 | 1.008 | 6,049,326.00 | 18.10 | 1.11% | 29,333.33 |
| FNMA Bonds | AAA | 1.13% | 04/23/12 | 03/23/10 | 12/23/10 | 2,050,000.00 | 2,047,117.19 | 2,047,839.78 | 1.002 | 2,053,089.35 | 18.72 | 1.19% | 448.44 |
| FHLB Bonds | AAA | 1.30% | 07/26/12 | 03/12/10 | | 8,725,000.00 | 8,734,565.45 | 8,732,336.82 | 1.014 | 8,847,978.88 | 21.80 | 1.25% | 20,164.44 |
| Certificate of Deposit | | 1.06% | 08/23/12 | 08/26/10 | | 5,000,000.00 | 5,000,000.00 | 5,000,000.00 | 1.000 | 5,000,000.00 | 22.72 | 1.06% | 5,082.19 |
| FHLB Bonds | AAA | 2.00% | 09/14/12 | 03/11/10 | | 17,000,000.00 | 17,256,428.00 | 17,199,723.33 | 1.028 | 17,477,887.00 | 23.44 | 1.39% | 15,111.11 |
| FNMA Bonds | AAA | 1.40% | 07/26/13 | 07/29/10 | 01/26/11 | 10,000,000.00 | 9,991,500.00 | 9,991,989.94 | 1.002 | 10,023,380.00 | 33.77 | 1.43% | 24,888.89 |
| Certificate of Deposit | | 1.45% | 08/22/13 | 08/26/10 | | 1,500,000.00 | 1,500,000.00 | 1,500,000.00 | 1.000 | 1,500,000.00 | 34.66 | 1.45% | 2,085.62 |
| Certificate of Deposit | | 1.45% | 08/22/13 | 08/26/10 | | 3,500,000.00 | 3,500,000.00 | 3,500,000.00 | 1.000 | 3,500,000.00 | 34.66 | 1.45% | 4,866.44 |
| FHLMC Bonds | AAA | 4.13% | 09/27/13 | 07/12/10 | | 15,000,000.00 | 16,329,150.00 | 16,238,500.38 | 1.097 | 16,452,480.00 | 35.84 | 1.30% | 5,156.25 |
| FNMA Bonds | AAA | 2.10% | 06/30/14 | 06/30/10 | 12/30/10 | 6,000,000.00 | 5,986,200.00 | 5,987,068.99 | 1.004 | 6,025,164.00 | 44.89 | 2.16% | 31,500.00 |
| FHLB Bonds | AAA | 1.38% | 09/12/14 | 09/30/10 | | 10,000,000.00 | 10,054,542.50 | 10,054,542.50 | 1.007 | 10,074,790.000 | 47.31 | 1.23% | 21,006.94 |
| FFCB Bonds | AAA | 2.75% | 09/30/14 | 06/15/10 | 03/30/11 | 14,305,000.00 | 14,448,379.02 | 14,438,594.87 | 1.012 | 14,477,761.48 | 47.90 | 2.50% | - |
| FNMA Bonds | AAA | Step | 09/30/14 | 09/30/10 | 03/30/11 | 8,785,000.00 | 8,785,000.00 | 8,785,000.00 | 0.998 | 8,767,869.25 | 47.90 | 1.74% | - |
| FHLMC Bonds | AAA | 1.75% | 09/10/15 | 09/27/10 | | 17,000,000.00 | 17,088,555.17 | 17,088,408.31 | 1.010 | 17,168,249.00 | 59.21 | 1.64% | 16,527.78 |
| FHLMC Bonds | AAA | Step | 09/23/15 | 09/27/10 | 03/23/11 | 17,000,000.00 | 17,000,000.00 | 17,000,000.00 | 1.002 | 17,031,654.00 | 59.64 | 2.44% | 3,305.55 |
| TOTAL | | | | | | \$ 328,316,323.19 | \$ 330,760,246.60 | \$ 330,224,105.45 | | \$ 331,374,918.07 | 19.11 | 1.11% | \$ 660,216.18 |

(1) (2)

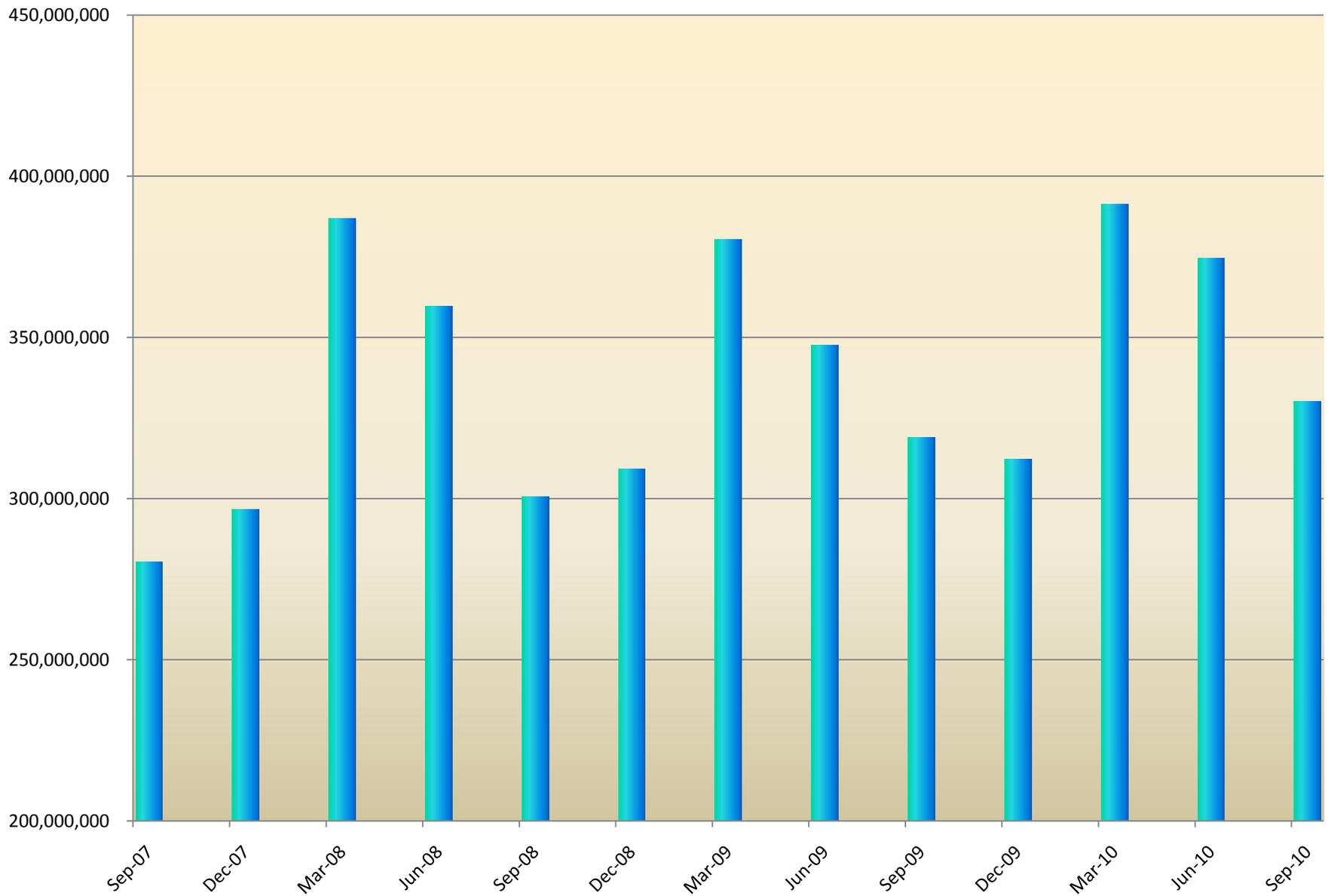
(1) Weighted average life - For purposes of calculating weighted average life bank, pool, and money market investments are assumed to mature the next business day.

(2) Weighted average yield to maturity - The weighted average yield to maturity is based on adjusted book value, realized and unrealized gains/losses and investment advisory fees are not considered. The yield is for this month only.

Portfolio Composition 9/30/10



Quarter End Book Value



Adjusted Book Value Comparison

| Security Description | Coupon/ Yield | Maturity Date | June 30, 2010 | | | | September 30, 2010 | | | |
|------------------------|------------------|---------------|--------------------------|--------------------------|--------------------------|------------------------------|--------------------------|--------------------------|--|--|
| | | | Par Value | Adjusted Book Value | Purchase/ Adjustment | Maturity/Call/ Adjustment | Par Value | Adjusted Book Value | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | - | 95,000.00 | 95,000.00 | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | - | 95,000.00 | 95,000.00 | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | - | 95,000.00 | 95,000.00 | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | - | 95,000.00 | 95,000.00 | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | - | 95,000.00 | 95,000.00 | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | - | 95,000.00 | 95,000.00 | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | - | 95,000.00 | 95,000.00 | | |
| Certificate of Deposit | 1.35% | 03/09/12 | 55,000.00 | 55,000.00 | - | (55,000.00) | - | - | | |
| Certificate of Deposit | 1.06% | 08/23/12 | - | - | 5,000,000.00 | - | 5,000,000.00 | 5,000,000.00 | | |
| Certificate of Deposit | 1.45% | 08/23/13 | - | - | 1,500,000.00 | - | 1,500,000.00 | 1,500,000.00 | | |
| FFCB Bond | 1.73% | 06/03/13 | 12,000,000.00 | 11,985,369.53 | - | (11,985,369.53) | - | - | | |
| FFCB Bond | 2.24% | 06/16/14 | 6,000,000.00 | 6,000,000.00 | - | (6,000,000.00) | - | - | | |
| FFCB Bond | 2.75% | 09/30/14 | 14,305,000.00 | 14,447,007.41 | - | (8,412.54) | 14,305,000.00 | 14,438,594.87 | | |
| FHLB Bond | 1.30% | 07/30/10 | 21,000,000.00 | 21,000,910.31 | - | (21,000,910.31) | - | - | | |
| FHLB Bond | 1.42% | 09/30/10 | 36,000,000.00 | 36,000,000.00 | - | (36,000,000.00) | - | - | | |
| FHLB Bond | 1.25% | 10/08/10 | 20,000,000.00 | 20,000,000.00 | - | - | 20,000,000.00 | 20,000,000.00 | | |
| FHLB Bond | 1.05% | 11/15/10 | 6,000,000.00 | 6,002,868.66 | - | (1,912.44) | 6,000,000.00 | 6,000,956.22 | | |
| FHLB Bond | 6.00% | 05/13/11 | 1,000,000.00 | 1,040,684.91 | - | (11,807.61) | 1,000,000.00 | 1,028,877.30 | | |
| FHLB Bond | 3.13% | 06/10/11 | 12,000,000.00 | 12,197,323.47 | - | (52,619.59) | 12,000,000.00 | 12,144,703.88 | | |
| FHLB Bond | 1.13% | 07/18/11 | 5,630,000.00 | 5,616,674.61 | 3,200.88 | - | 5,630,000.00 | 5,619,875.49 | | |
| FHLB Bond | 1.38% | 08/11/11 | 5,500,000.00 | 5,513,609.22 | - | (3,076.28) | 5,500,000.00 | 5,510,532.94 | | |
| FHLB Bond | 0.85% | 09/16/11 | 33,000,000.00 | 33,000,000.00 | - | (33,000,000.00) | - | - | | |
| FHLB Bond | 1.00% | 02/27/12 | 8,000,000.00 | 8,004,066.90 | - | (616.40) | 8,000,000.00 | 8,003,450.50 | | |
| FHLB Bond | 1.25% | 06/25/12 | 13,000,000.00 | 12,983,371.69 | - | (12,983,371.69) | - | - | | |
| FHLB Bond | 1.30% | 07/26/12 | 8,725,000.00 | 8,733,351.84 | - | (1,015.02) | 8,725,000.00 | 8,732,336.82 | | |
| FHLB Bond | 2.00% | 09/14/12 | 17,000,000.00 | 17,225,422.00 | - | (25,698.67) | 17,000,000.00 | 17,199,723.33 | | |
| FHLB Bond | 1.38% | 09/12/14 | - | - | 10,054,542.50 | - | 10,000,000.00 | 10,054,542.50 | | |
| FHLMC Bond | 3.50% | 05/05/11 | 3,000,000.00 | 3,058,185.52 | - | (17,323.85) | 3,000,000.00 | 3,040,861.67 | | |
| FHLMC Bond | 0.75% | 09/15/11 | 17,000,000.00 | 16,998,631.33 | - | (16,998,631.33) | - | - | | |
| FHLMC Bond | 4.13% | 09/27/13 | - | - | 16,238,500.38 | - | 15,000,000.00 | 16,238,500.38 | | |
| FHLMC Bond | 1.75% | 09/10/15 | - | - | 17,088,408.31 | - | 17,000,000.00 | 17,088,408.31 | | |
| FHLMC Bond | Step | 09/23/15 | - | - | 17,000,000.00 | - | 17,000,000.00 | 17,000,000.00 | | |
| FNMA Bond | 3.25% | 08/12/10 | 3,000,000.00 | 3,008,757.06 | - | (3,008,757.06) | - | - | | |
| FNMA Bond | 5.05% | 02/07/11 | 1,000,000.00 | 999,316.13 | 283.40 | - | 1,000,000.00 | 999,599.53 | | |
| FNMA Bond | 1.00% | 04/04/12 | 6,000,000.00 | 5,986,000.00 | 3,919.81 | - | 6,000,000.00 | 5,989,919.81 | | |
| FNMA Bond | 1.13% | 04/23/12 | 2,050,000.00 | 2,047,491.73 | 348.05 | - | 2,050,000.00 | 2,047,839.78 | | |
| FNMA Bond | 1.75% | 07/26/12 | 11,000,000.00 | 11,027,852.71 | - | (11,027,852.71) | - | - | | |
| FNMA Bond | 1.40% | 07/26/13 | - | - | 9,991,989.94 | - | 10,000,000.00 | 9,991,989.94 | | |
| FNMA Bond | 2.10% | 06/30/14 | - | - | 5,987,068.99 | - | 6,000,000.00 | 5,987,068.99 | | |
| FNMA Bond | Step | 9/30/2014 | - | - | 8,785,000.00 | - | 8,785,000.00 | 8,785,000.00 | | |
| TOTAL | | | \$ 367,938,773.41 | \$ 368,605,668.44 | \$ 145,044,812.04 | \$ (183,426,375.03) | \$ 328,316,323.19 | \$ 330,224,105.45 | | |

Market Value Comparison

| Security Description | Coupon/ Yield | Maturity Date | June 30, 2010 | | Qtr to Qtr Change (1) | September 30, 2010 | |
|------------------------|------------------|------------------|--------------------------|--------------------------|---------------------------|--------------------------|--------------------------|
| | | | Par Value | Market Value | | Par Value | Market Value |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | 95,000.00 | 95,000.00 |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | 95,000.00 | 95,000.00 |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | 95,000.00 | 95,000.00 |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | 95,000.00 | 95,000.00 |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | 95,000.00 | 95,000.00 |
| Certificate of Deposit | 1.35% | 03/09/12 | 95,000.00 | 95,000.00 | - | 95,000.00 | 95,000.00 |
| Certificate of Deposit | 1.35% | 03/09/12 | 55,000.00 | 55,000.00 | (55,000.00) | - | - |
| Certificate of Deposit | 1.06% | 08/23/12 | - | - | 5,000,000.00 | 5,000,000.00 | 5,000,000.00 |
| Certificate of Deposit | 1.45% | 08/23/12 | - | - | 1,500,000.00 | 1,500,000.00 | 1,500,000.00 |
| FFCB Bond | 1.73% | 06/03/13 | 12,000,000.00 | 12,018,750.00 | (12,018,750.00) | - | - |
| FFCB Bond | 2.24% | 06/16/14 | 6,000,000.00 | 6,016,875.00 | (6,016,875.00) | - | - |
| FFCB Bond | 2.75% | 09/30/14 | 14,305,000.00 | 14,555,337.50 | (77,576.02) | 14,305,000.00 | 14,477,761.48 |
| FHLB Note | 1.30% | 07/30/10 | 21,000,000.00 | 21,013,125.00 | (21,013,125.00) | - | - |
| FHLB Note | 1.42% | 09/30/10 | 36,000,000.00 | 36,101,250.00 | (36,101,250.00) | - | - |
| FHLB Note | 1.25% | 10/08/10 | 20,000,000.00 | 20,056,250.00 | (52,210.00) | 20,000,000.00 | 20,004,040.00 |
| FHLB Note | 1.05% | 11/15/10 | 6,000,000.00 | 6,016,875.00 | (11,163.00) | 6,000,000.00 | 6,005,712.00 |
| FHLB Note | 6.00% | 05/13/11 | 1,000,000.00 | 1,047,500.00 | (12,819.00) | 1,000,000.00 | 1,034,681.00 |
| FHLB Note | 3.13% | 06/10/11 | 12,000,000.00 | 12,270,000.00 | (59,820.00) | 12,000,000.00 | 12,210,180.00 |
| FHLB Note | 1.13% | 07/18/11 | 5,630,000.00 | 5,663,428.12 | (1,427.20) | 5,630,000.00 | 5,662,000.92 |
| FHLB Note | 1.38% | 08/11/11 | 5,500,000.00 | 5,553,281.25 | (3,594.25) | 5,500,000.00 | 5,549,687.00 |
| FHLB Note | 0.85% | 09/16/11 | 33,000,000.00 | 33,030,937.50 | (33,030,937.50) | - | - |
| FHLB Note | 1.00% | 02/27/12 | 8,000,000.00 | 8,045,000.00 | 18,800.00 | 8,000,000.00 | 8,063,800.00 |
| FHLB Note | 1.25% | 06/25/12 | 13,000,000.00 | 13,000,000.00 | (13,000,000.00) | - | - |
| FHLB Note | 1.30% | 07/26/12 | 8,725,000.00 | 8,814,976.56 | 33,002.32 | 8,725,000.00 | 8,847,978.88 |
| FHLB Note | 2.00% | 09/14/12 | 17,000,000.00 | 17,425,000.00 | 52,887.00 | 17,000,000.00 | 17,477,887.00 |
| FHLB Note | 1.38% | 09/12/14 | - | - | 10,074,790.00 | 10,000,000.00 | 10,074,790.00 |
| FHLMC Note | 3.50% | 05/05/11 | 3,000,000.00 | 3,077,499.00 | (20,556.00) | 3,000,000.00 | 3,056,943.00 |
| FHLMC Note | 0.75% | 09/15/11 | 17,000,000.00 | 17,009,350.00 | (17,009,350.00) | - | - |
| FHLMC Note | 4.13% | 09/27/13 | - | - | 16,452,480.00 | 15,000,000.00 | 16,452,480.00 |
| FHLMC Note | 1.75% | 09/10/15 | - | - | 17,168,249.00 | 17,000,000.00 | 17,168,249.00 |
| FHLMC Note | Step | 09/23/15 | - | - | 17,031,654.00 | 17,000,000.00 | 17,031,654.00 |
| FNMA Note | 3.25% | 08/12/10 | 3,000,000.00 | 3,010,312.50 | (3,010,312.50) | - | - |
| FNMA Note | 5.05% | 02/07/11 | 1,000,000.00 | 1,027,812.50 | (10,890.50) | 1,000,000.00 | 1,016,922.00 |
| FNMA Note | 1.00% | 04/04/12 | 6,000,000.00 | 6,031,875.00 | 17,451.00 | 6,000,000.00 | 6,049,326.00 |
| FNMA Note | 1.13% | 04/23/12 | 2,050,000.00 | 2,055,765.62 | (2,676.27) | 2,050,000.00 | 2,053,089.35 |
| FNMA Note | 1.75% | 07/26/12 | 11,000,000.00 | 11,006,875.00 | (11,006,875.00) | - | - |
| FNMA Note | 1.40% | 07/26/13 | - | - | 10,023,380.00 | 10,000,000.00 | 10,023,380.00 |
| FNMA Note | 2.10% | 06/30/14 | 6,000,000.00 | 6,024,375.00 | 789.00 | 6,000,000.00 | 6,025,164.00 |
| FNMA Note | Step | 09/30/14 | - | - | 8,767,869.25 | 8,785,000.00 | 8,767,869.25 |
| TOTAL | | | \$ 373,938,773.41 | \$ 375,601,223.96 | \$ (44,226,305.89) | \$ 328,316,323.19 | \$ 331,374,918.07 |

(1) Does not include interest.

Allocation**September 30, 2010**

| Book Value | % Equity in Treasury Pool | Book Value Fund Allocation |
|------------------------|--------------------------------------|---------------------------------------|
| General Fund | 12.87% | 42,502,363.20 |
| Debt Service Funds | 1.03% | 3,390,760.81 |
| Capital Projects Funds | 44.74% | 147,732,499.96 |
| Enterprise Funds | 12.89% | 42,565,103.70 |
| Special Revenue Funds | 8.10% | 26,750,497.02 |
| Internal Service Funds | 14.63% | 48,311,098.59 |
| Fiduciary Funds | 5.75% | 18,971,782.17 |
| Totals | 100.00% | 330,224,105.45 |

| Market Value | % Equity in Treasury Pool | Market Value Fund Allocation |
|------------------------|--------------------------------------|---|
| General Fund | 12.87% | 42,650,481.57 |
| Debt Service Funds | 1.03% | 3,402,577.42 |
| Capital Projects Funds | 44.74% | 148,247,339.50 |
| Enterprise Funds | 12.89% | 42,713,440.71 |
| Special Revenue Funds | 8.10% | 26,843,721.01 |
| Internal Service Funds | 14.63% | 48,479,460.08 |
| Fiduciary Funds | 5.75% | 19,037,897.78 |
| Totals | 100.00% | 331,374,918.07 |

Allocations are based upon fund equity in the Treasury Pool at the end of the period.



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | |
|---|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11-22-10 | | |
| Department: | | Finance | | |
| Department Head | | Denise Tacke | | |
| Agenda Coordinator (include phone #): Katherine Crumbley x-7479 | | | | |
| CAPTION | | | | |
| <p>An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 124 for tax abatement consisting of two tracts of land totaling 6.837 acres located in the Maria C. Vela Survey, Abstract No. 935 and the Henry Cook Survey, Abstract No. 183, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p> | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): | | | | |
| COMMENTS: Notice of public hearing published on November 14, 2010, to create Reinvestment Zone 124. The real property improvements amount is \$88,000,000. | | | | |
| SUMMARY OF ITEM | | | | |
| <p>This is related to Encana Oil and Gas (USA) Inc., a Delaware corporation, request for tax abatement on Reinvestment Zone 124 and creation of the zone.</p> | | | | |
| List of Supporting Documents: Ordinance | | | Other Departments, Boards, Commissions or Agencies | |
| | | | | |

An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 124 for tax abatement consisting of two tracts of land totaling 6.837 acres located in the Maria C. Vela Survey, Abstract No. 935 and the Henry Cook Survey, Abstract No. 183, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.

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

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 22nd day of November, 2010, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

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

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

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

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

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

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

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

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

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

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

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 124, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2014.

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

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

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

- a) Duration of Exemption – ten (10) consecutive tax years beginning with and including the January 1, 2014 assessment date.
- b) Share of taxes abated – fifty percent (50%) of taxes on total value of appraised Real Property Improvements and on total value of Business Personal Property for the years 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023.

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

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

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

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

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

DULY PASSED AND APPROVED this 22nd day of November, 2010.

Phil Dyer, Mayor

Attested:

Diane Zucco, City Secretary

Approved as to form:

Diane C. Wetherbee, City Attorney

EXHIBIT A

THE LAND

TRACT 1:

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935, and the Henry Cook Survey, Abstract No. 183, City of Plano, Collin County, Texas, being all of Lot 6, Block C, Legacy Town Center (North), an addition to the City of Plano recorded in Cabinet 2006, Page 440, Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a "X" cut in concrete set in the west right-of-way line of Bishop Road (a 109-foot wide right-of-way); said point being the northeast corner of Lot 1R, Block C, Legacy Town Center (North), an addition to the City of Plano, Texas according to the plat recorded in Cabinet 2007, Page 601, Map Records of Collin County, Texas;

THENCE departing said west right-of-way line of Bishop Road, with the north line of said Lot 1R, Block C and the north line of Legacy Circle (a 42-foot wide private street), the following courses and distances:

West, a distance of 32.44 feet to a "X" cut in concrete set at the beginning of a tangent curve to the right with a radius of 20.00 feet, a central angle of $20^{\circ}00'00''$, and a chord bearing and distance of North $80^{\circ}00'00''$ West, 6.95 feet;

In a northwesterly direction with said curve, an arc distance of 6.98 feet to a "X" cut in concrete set for corner;

North $70^{\circ}00'00''$ West, a distance of 84.03 feet to a "X" cut in concrete set at the beginning of a tangent curve to the left with a radius of 44.00 feet, a central angle of $30^{\circ}00'00''$, and a chord bearing and distance of North $85^{\circ}00'00''$ West, 22.78 feet;

In a northwesterly direction with said curve, an arc distance of 23.04 feet to a 5/8" iron rod with "KHA" cap set for corner;

South $80^{\circ}00'00''$ West, a distance of 295.05 feet to a "X" cut in concrete set at the beginning of a tangent curve to the right with a radius of 20.00 feet, a central angle of $72^{\circ}15'22''$, and a chord bearing and distance of North $63^{\circ}52'19''$ West, 23.58 feet;

In a northwesterly direction with said curve, an arc distance of 25.22 feet to a "X" cut in concrete set at the beginning of a curve to the left with a radius of 85.00 feet, a central angle of $98^{\circ}28'31''$, and a chord bearing and distance of North $76^{\circ}58'53''$ West, 128.76 feet;

In a northwesterly direction with said curve, an arc distance of 146.09 feet to a "X" cut in concrete set for corner; said point being the southeast corner of Lot 4, Block C, Legacy Town Center (North), an addition to the City of Plano, Texas according to the plat recorded in Cabinet 2006, Page 516, Map Records of Collin County, Texas;

THENCE departing said north line, with the east line of said Lot 4, Block C and said north line of Legacy Circle, North, a distance of 205.48 feet to a "X" cut in concrete set for corner in the south right-of-way line of Infinity Avenue (a 60-foot wide right-of-way); said point being the northeast corner of said Lot 4, Block C;

THENCE with said south right-of-way line of Infinity Avenue, East, a distance of 578.12 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being an angle point in the said west right-of-way line of Bishop Road;

THENCE with said west right-of-way line of Bishop Road, South, a distance of 225.56 feet to the **POINT OF BEGINNING** and containing 2.838 acres or 123,636 square feet of land.

TRACT 2:

BEING a tract of land out of the Henry Cook Survey, Abstract No. 183, City of Plano, Collin County, Texas, being all of Lot 2, Block C, Legacy Town Center (North), an addition to the City of Plano recorded in Cabinet 2006, Page 148 Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod with cap found at the intersection of the west right-of-way line of Bishop Road (a 60-foot wide right-of-way) and the south right-of-way line of Ashmill Drive (a 60-foot wide right-of-way); said point also being the northeast corner of said Lot 2, Block C;

THENCE with said west right-of-way line of Bishop Road, South, a distance of 464.57 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being the intersection of said west right-of-way line and the north right-of-way line of Infinity Avenue (a 60-foot wide right-of-way);

THENCE with said north right-of-way line of Infinity Avenue, West, a distance of 375.00 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being the intersection of said north right-of-way line and the east right-of-way line of Elijah Drive (a 60-foot wide right-of-way);

THENCE with said east right-of-way line of Elijah Drive, North, a distance of 464.57 feet to a 1/2" iron rod with cap found for corner; said point being the intersection of said east right-of-way line and the said south right-of-way line of Ashmill Drive;

THENCE with said south right-of-way line of Ashmill Drive, East, a distance of 375.00 feet to the **POINT OF BEGINNING** and containing 3.999 acres or 174,213 square feet of land.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|---|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11-22-10 | | |
| Department: | | Finance | | |
| Department Head | | Denise Tacke | | |
| Agenda Coordinator (include phone #): Katherine Crumbley x7479 | | | | |
| CAPTION | | | | |
| <p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, County of Collin, Texas, KDC Legacy North Investments One, LP, and Encana Oil and Gas (USA) Inc.; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p> | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): | | | | |
| COMMENTS: The real property improvement to be maintained is \$70,000,000 and the business property improvements to be maintained is 18,000,000. | | | | |
| SUMMARY OF ITEM | | | | |
| <p>This is related to Encana Oil and Gas (USA), Inc., a Delaware Corporation, request for tax abatement on reinvestment zone 124 and creation of the zone.</p> | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| Tax Abatement Agreement | | | | |

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, County of Collin, Texas, KDC Legacy North Investments One, LP, and Encana Oil and Gas (USA) Inc.; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, County of Collin, Texas, KDC Legacy North Investments One, LP, a Texas limited partnership, and Encana Oil and Gas (USA) Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof. At the time of this Agreement, KDC Legacy North Investments One, LP, is the Owner of the Real Property.

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 124, which shall be hereinafter referred to as the "Personalty." The Personalty is to have an assessed taxable value as determined by the Collin County Appraisal District of not less than Eighteen Million Dollars (\$18,000,000.00) on the Property by December 31, 2013, and is or will be owned by Tenant or its affiliates. Tenant shall timely render its personal property value each year to the Central Appraisal District

3. Tenant may not relocate, for purposes of maintaining taxable situs of the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. Tenant estimates the proposed occupancy of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of 510 full time jobs ("Job Equivalents") at the Development in Plano by the Commencement Date (as defined below in Section 5). "Job Equivalent" shall mean one or more Tenant job positions located at the Development which individually or when combined total 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave).

IMPROVEMENTS

5. The Tenant shall lease not less than 300,000 gross square feet of office space on the Real Property by the Commencement Date. The "Commencement Date" means the date of occupancy of the Real Property by the Tenant but in no event shall be later than December 31, 2013. The Tenant and/or Owner shall make real property improvements to the Real Property with a taxable value of not less than Seventy Million Dollars (\$70,000,000.00) by December 31, 2013 subject to an Event of Force Majeure. The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Tenant's operations in Plano. The term shall not include a downturn in the economy.

DEFAULT

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

(a) Tenant allows its personal property taxes located on the Real Property or Owner allows its real property improvement taxes owed the City or County to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of

any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) Tenant fails to occupy the Improvements on or before the Commencement Date; or

(c) The value of Personalty placed on the Real Property on December 31, 2013 or the value of real property improvements on the Real Property on December 31, 2013 is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(d) The assessed value of the Improvements or Personalty falls below the minimum amounts set forth in paragraph 2 and 5 above as the result of the Tenant or Owner filing a protest or as a result of the removal of Personalty from the Real Property; or

(e) Tenant fails to employ at least 75% of the required Job Equivalents as provided in paragraph 4 above, subject to Event of Force Majeure; or

(f) Tenant or Owner or Owner's duly authorized representative fails to provide annual certification as required in paragraph 9 below; or

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

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

8. Upon the occurrence of an event of default under Paragraph 6(a) above and after the defaulting party fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 6(g), this Agreement shall terminate as to the defaulting party upon delivery of written notice by the City or County to the defaulting party with respect to the tax abatement attributable to the Personalty and Real Property improvements and all taxes, including previously abated taxes which would have been paid to the City and County without the benefit of this Agreement, shall become due and owing to the City and County, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

9. Beginning November 1, 2014 and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Tenant and Owner, or their successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement. Owner, hereby grants to Tenant a power of attorney for the term of this Agreement for the limited purpose of making its annual certification on behalf of Owner and Tenant agrees to perform such duty.

ASSIGNMENT

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

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

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

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

If Tenant or Owner desire to assign this Agreement and the Taxing Units' consent is required to such assignment, and the Taxing Units do not consent to such assignment, then the Tenant or Owner may terminate this Agreement by delivering written notice to the Taxing Units, and upon such termination, the Tenant or Owner and the Taxing Units shall have no further rights, duties or obligations under this Agreement.

ABATEMENT PROVISIONS

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

(a) The tax abatements as to Personalty and Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2014, through December 31, 2023 (the "Term").

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Personalty and Real Property improvements for each tax year from January 1, 2014, through December 31, 2023.

(c) The Tenant or Owner shall have the right to protest and/or contest any assessment of the Personalty or real property improvements, respectively, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those in paragraph 2 and 5 as a result of a Tenant or Owner filed protest and/or contest or removal of property from the Real Property.

NOTICE

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

For City by notice to:

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

With copy to:

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

For County by notice to:

County of Collin, Texas
Attention: The Honorable Keith Self
Collin County Commissioners' Court
Collin County Administration Building
2300 Bloomdale Road, Suite 4192
McKinney, Texas 75071

For Tenant by notice to:

Encana Oil & Gas (USA) Inc.
Attn: Cindie Ward
370 17th Street, Suite 1700
Denver, CO 80202

For Owner by notice to:

KDC Legacy North Investments One, LP
Attn: Scott Ozymy
EVP & CIO
KDC
8115 Preston Road, Suite 700
Dallas, TX 75225

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

MISCELLANEOUS PROVISIONS

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

14. It is understood and agreed between the parties that the Tenant and Owner, in performing their respective obligations hereunder, are acting independently, and the Taxing Units assume no responsibilities or liabilities in connection therewith to third parties and Tenant and Owner agree to indemnify and hold harmless Taxing Units from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of their respective defaults of their obligations hereunder.

15. The Taxing Units represent and warrant that the Personalty or Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

16. (a) This Agreement was authorized by Resolution of the City Council at its Council meeting on the ___ day of _____, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

(b) This Agreement was authorized by the Minutes of the Collin County Commissioners' Court at its meeting on the ___ day of _____, 2010, authorizing the County Judge to execute the Agreement on behalf of Collin County.

17. This Agreement was entered into by Tenant and Owner pursuant to their duly authorized representatives.

18. This instrument shall constitute a valid and binding agreement between the City, County, and the Tenant and the Owner when executed in accordance herewith.

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

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

ATTEST:

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

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

ATTEST:

COMMISSIONERS' COURT OF COLLIN
COUNTY

Keith Self
COUNTY JUDGE

Encana Oil & Gas (USA) Inc., a Delaware corporation

By: _____
Name: _____
Title: _____

KDC Legacy North Investments One, LP,
a Texas limited partnership
By: KDC Legacy North Investments GPI,
LLC, a Texas limited liability company
General Partner

By: _____
Name: _____
Title: _____

EXHIBIT A

THE LAND

TRACT 1:

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935, and the Henry Cook Survey, Abstract No. 183, City of Plano, Collin County, Texas, being all of Lot 6, Block C, Legacy Town Center (North), an addition to the City of Plano recorded in Cabinet 2006, Page 440, Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a "X" cut in concrete set in the west right-of-way line of Bishop Road (a 109-foot wide right-of-way); said point being the northeast corner of Lot 1R, Block C, Legacy Town Center (North), an addition to the City of Plano, Texas according to the plat recorded in Cabinet 2007, Page 601, Map Records of Collin County, Texas;

THENCE departing said west right-of-way line of Bishop Road, with the north line of said Lot 1R, Block C and the north line of Legacy Circle (a 42-foot wide private street), the following courses and distances:

West, a distance of 32.44 feet to a "X" cut in concrete set at the beginning of a tangent curve to the right with a radius of 20.00 feet, a central angle of $20^{\circ}00'00''$, and a chord bearing and distance of North $80^{\circ}00'00''$ West, 6.95 feet;

In a northwesterly direction with said curve, an arc distance of 6.98 feet to a "X" cut in concrete set for corner;

North $70^{\circ}00'00''$ West, a distance of 84.03 feet to a "X" cut in concrete set at the beginning of a tangent curve to the left with a radius of 44.00 feet, a central angle of $30^{\circ}00'00''$, and a chord bearing and distance of North $85^{\circ}00'00''$ West, 22.78 feet;

In a northwesterly direction with said curve, an arc distance of 23.04 feet to a 5/8" iron rod with "KHA" cap set for corner;

South $80^{\circ}00'00''$ West, a distance of 295.05 feet to a "X" cut in concrete set at the beginning of a tangent curve to the right with a radius of 20.00 feet, a central angle of $72^{\circ}15'22''$, and a chord bearing and distance of North $63^{\circ}52'19''$ West, 23.58 feet;

In a northwesterly direction with said curve, an arc distance of 25.22 feet to a "X" cut in concrete set at the beginning of a curve to the left with a radius of 85.00 feet, a central angle of $98^{\circ}28'31''$, and a chord bearing and distance of North $76^{\circ}58'53''$ West, 128.76 feet;

In a northwesterly direction with said curve, an arc distance of 146.09 feet to a "X" cut in concrete set for corner; said point being the southeast corner of Lot 4, Block C, Legacy Town Center (North), an addition to the City of Plano, Texas according to the plat recorded in Cabinet 2006, Page 516, Map Records of Collin County, Texas;

THENCE departing said north line, with the east line of said Lot 4, Block C and said north line of Legacy Circle, North, a distance of 205.48 feet to a "X" cut in concrete set for corner in the south right-of-way line of Infinity Avenue (a 60-foot wide right-of-way); said point being the northeast corner of said Lot 4, Block C;

THENCE with said south right-of-way line of Infinity Avenue, East, a distance of 578.12 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being an angle point in the said west right-of-way line of Bishop Road;

THENCE with said west right-of-way line of Bishop Road, South, a distance of 225.56 feet to the **POINT OF BEGINNING** and containing 2.838 acres or 123,636 square feet of land.

TRACT 2:

BEING a tract of land out of the Henry Cook Survey, Abstract No. 183, City of Plano, Collin County, Texas, being all of Lot 2, Block C, Legacy Town Center (North), an addition to the City of Plano recorded in Cabinet 2006, Page 148 Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod with cap found at the intersection of the west right-of-way line of Bishop Road (a 60-foot wide right-of-way) and the south right-of-way line of Ashmill Drive (a 60-foot wide right-of-way); said point also being the northeast corner of said Lot 2, Block C;

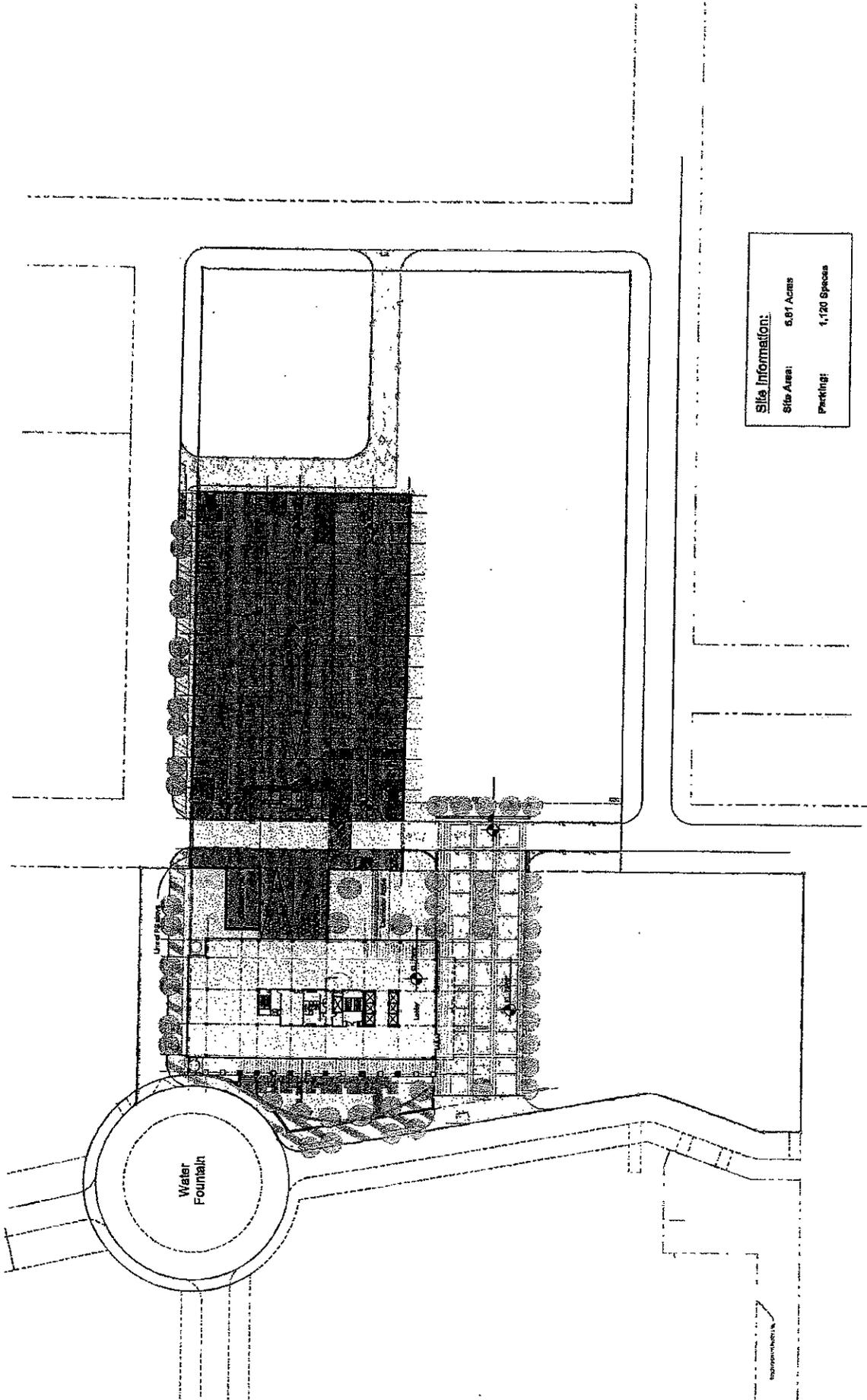
THENCE with said west right-of-way line of Bishop Road, South, a distance of 464.57 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being the intersection of said west right-of-way line and the north right-of-way line of Infinity Avenue (a 60-foot wide right-of-way);

THENCE with said north right-of-way line of Infinity Avenue, West, a distance of 375.00 feet to a 5/8" iron rod with "KHA" cap set for corner; said point being the intersection of said north right-of-way line and the east right-of-way line of Elijah Drive (a 60-foot wide right-of-way);

THENCE with said east right-of-way line of Elijah Drive, North, a distance of 464.57 feet to a 1/2" iron rod with cap found for corner; said point being the intersection of said east right-of-way line and the said south right-of-way line of Ashmill Drive;

THENCE with said south right-of-way line of Ashmill Drive, East, a distance of 375.00 feet to the **POINT OF BEGINNING** and containing 3.999 acres or 174,213 square feet of land.

EXHIBIT B

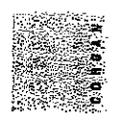


| | |
|--------------------------|--------------|
| Site Information: | |
| Site Area: | 6.67 Acres |
| Parking: | 1,120 Spaces |

SITE PLAN
Legacy in Plano, TX



SCALE: 1/8" = 1'-0"
14 OCTOBER 2010



**EXHIBIT “C”
CERTIFICATION FORM
REINVESTMENT ZONE NO. 124**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 124
Tax Abatement Agreement (the “Agreement”) between Encana Oil & Gas (USA) Inc., (“Tenant”); KDC Legacy North Investments One, LP (“Owner”) and the City of Plano, dated as of _____

This letter certifies that Tenant and Owner are in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2014, through December 31, 2023. This form is due on November 1 of each year the Agreement is in force. Tenant makes this certification on behalf of Owner pursuant to its power of attorney in Section 9 of the Agreement.

Encana Oil & Gas (USA) Inc.,
a Delaware Corporation, as Tenant and on
behalf of KDC Legacy North Investments
One, LP, a Texas limited partnership, as
Owner

By: _____
Name: _____
Title: _____



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--|----------------------------------|-------------------------|--|-------------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 11-22-10 | | |
| Department: | | Finance | | |
| Department Head | | Denise Tacke | | |
| Agenda Coordinator (include phone #): Katherine Crumbley - 7479 | | | | |
| CAPTION | | | | |
| A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Encana Oil & Gas (USA) Inc.; authorizing its execution by the City Manager or his designee; and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 2010 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 12,578,710 | 0 | 12,578,710 |
| Encumbered/Expended Amount | 0 | -4,822,725 | -5,019,650 | -9,842,375 |
| This Item | 0 | -2,312,000 | -103,000 | -2,415,000 |
| BALANCE | 0 | 5,443,985 | -5,122,650 | 321,335 |
| FUND(S): ECONOMIC DEVELOPMENT FUND | | | | |
| COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy | | | | |
| SUMMARY OF ITEM | | | | |
| A request from Encana Oil and Gas (USA), Inc. for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Encana Oil and Gas (USA), Inc. agrees to occupy not less than 300,000 sq. ft of new commercial space and transfer or create 510 jobs on or before 12/31/13. | | | | |
| List of Supporting Documents: Economic Development Incentive Agreement | | | Other Departments, Boards, Commissions or Agencies | |
| | | | | |

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Encana Oil & Gas (USA) Inc.; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between the City of Plano, Texas and Encana Oil & Gas (USA) Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this 22nd day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS §
 § **ECONOMIC DEVELOPMENT INCENTIVE**
 § **AGREEMENT**
COUNTY OF COLLIN §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Encana Oil & Gas (USA) Inc., a Delaware corporation (hereinafter referred to as the “Company”), acting by and through its authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is a producer of natural gas and plans to locate its regional corporate headquarters in Plano, Texas and to construct real property improvements with a taxable value of not less than Seventy Million Dollars (\$70,000,000.00) and add business personal property with a taxable value of not less than Eighteen Million Dollars (\$18,000,000.00); and

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

WHEREAS, Company will construct and occupy not less than 300,000 square feet of office space in facilities located at 5851 Legacy Circle, Plano, Texas (the “Property”); and add not less than 510 Job Equivalent positions to the Property; and

WHEREAS, the occupancy of 300,000 square feet of office space (the “Improvements”) and the creation or transfer of not less than 510 Job Equivalent positions will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

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

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

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

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

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

“Commencement Date” shall mean the completion of construction and occupancy of the Property or December 31, 2013, whichever occurs first.

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

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company’s operations in Plano. The term shall not include a downturn in the economy.

“Job Equivalent” shall mean one or more Company job positions assigned to the Property which individually or when combined total 2080 hours annually.

Article II Term

The term of this Agreement shall begin on the Commencement Date and continue for ten (10) years thereafter.

Article III Obligations of Company

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

- a. construct and occupy new commercial office space of 300,000 square feet on the Property on or before December 31, 2013;
- b. Create or transfer 510 Job Equivalents to the Property on or before December 31, 2013;
- c. Maintain the 510 Job Equivalents on the Property for the remainder of the term of this Agreement; and

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

Article IV

Economic Development Grant

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

- a. A cash grant of up to Four Hundred Eighty Eight Thousand Dollars (\$488,000.00) for the reimbursement of City of Plano permit, building inspection, engineering and planning fees paid to the City by Company for the construction of the Improvements on the Property. Such grant shall be payable by the City within thirty (30) days of request thereof but not later than April 1, 2014.

- b. A cash grant of One Million Three Hundred and Sixty Five Thousand Dollars (\$1,365,000.00) to offset relocation and occupancy costs. Such grant shall be payable upon providing proof of such expenses, the issuance of an occupancy permit by the City of Plano, and filing of the Initial Certification described in subsection c below.

- c. A cash grant of Four Hundred and Fifty Nine Thousand Dollars (\$459,000.00) from the City under this Agreement payable within thirty (30) days after the City's receipt of the Initial Certification substantially in the form attached hereto as Exhibit "A", that the Company has met its obligations as set forth in Article III (a) and (b) above (such payment referred to as the "Initial Grant Payment"). **IN ORDER TO RECEIVE PAYMENT UNDER THIS AGREEMENT, COMPANY'S INITIAL CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE III a AND b ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE APRIL 1, 2014.**

- d. The Company shall be entitled to a second grant payment ("Additional Grant Payment") equal to Nine Hundred Dollars (\$900.00) times the additional Job Equivalents, in excess of 510, assigned to the Property before December 31, 2015 and maintained for the remaining term of the Agreement. Such Additional Grant Payment shall not exceed One Hundred and Three Thousand Five Hundred Dollars (\$103,500.00). Payment shall be made thirty (30) days after receipt of the verification substantially in the form of the Verification attached hereto as Exhibit "A" **IN ORDER TO RECEIVE THE ADDITIONAL GRANT PAYMENT, COMPANY'S CERTIFICATION AS TO THE NUMBER OF JOB EQUIVALENTS CREATED PRIOR TO DECEMBER 31, 2015 MUST BE FILED WITH THE CITY ON OR BEFORE APRIL 1, 2016.**

4.02 **Refunds.**

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

than one hundred eighty (180) consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Nine Hundred Dollars (\$900.00) for each Job Equivalent below the Job Equivalent level for which it received a grant payment. The total repayment required of Company under this section may not exceed Two Million Four Hundred and Fifteen Thousand Five Hundred Dollars (\$2,415,500.00) in the aggregate. For purposes of determining whether the City is due a refund under this section, an officer of the Company shall certify to the City by January 31, 2014 and by January 31st of each year thereafter during the term of this Agreement the actual number of Job Equivalents at the Property for the preceding calendar year, using the Certification form substantially in the form of the attached as Exhibit "B". All refunds under this Agreement shall be due within sixty (60) days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

b. In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01 but without the addition of penalty. Repayment of grant funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Company of the conviction.

Article V Termination

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

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

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations under Section 4.01 above shall survive the termination of this Agreement.

Article VI
Miscellaneous

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

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

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

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

If intended for the City:

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

With a copy to:

City of Plano, Texas
Attn: Diane Wetherbee
City Attorney
1520 Avenue K
Plano, Texas 75086-0358

If intended for the Company prior to relocation:

Encana Oil & Gas (USA) Inc.
Attention: Cindie Ward
370 17th Street, Suite 1700
Denver, CO 80202

If intended for the Company after relocation:
Encana Oil & Gas (USA) Inc.
Attention: Cindie Ward
370 17th Street, Suite 1700
Denver, CO 80202

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

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

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

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

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

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

EXECUTED on this _____ day of _____, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home
rule municipal corporation

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck, CITY
MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

ENCANA OIL & GAS (USA) INC.,
a Delaware corporation

BY: _____
Name:
Title:

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

I hereby certify that ENCANA OIL & GAS (USA) INC., a Delaware corporation, has occupied not less than 300,000 square feet of commercial office space in on the Property and has added 510 new Job Equivalent positions to the Property. ENCANA OIL & GAS (USA) INC. is in compliance with subsections a and b of Article III of the Agreement and is entitled to receive payment under the terms of that Agreement.

ATTEST:

ENCANA OIL & GAS (USA) INC.,
a Delaware corporation

BY: _____

Name:

Title:

NOTE:

This Certificate of Compliance should be mailed to:

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

*This form may be modified as appropriate to certify payment for the Additional Grant Payment.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that ENCANA OIL & GAS (USA) INC., a Delaware corporation, is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is December 31, 2013 through December 30, 2023. The number of new Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below _____ for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance. If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

ENCANA OIL & GAS (USA) INC.,
a Delaware corporation

BY: _____
Name:
Title:

NOTE:

This Certificate of Compliance should be mailed to:

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

DATE: November 2, 2010
TO: Honorable Mayor & City Council
FROM: James Duggan, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of November 1, 2010

**AGENDA ITEM NO. 7A - PUBLIC HEARING
ZONING CASE 2010-18
APPLICANT: RONALD MCCUTCHIN FAMILY PARTNERSHIP, LTD.**

Request to amend Planned Development-434-Retail on 10.5± acres located at the northeast corner of McDermott Road and Coit Road to reduce landscape edge requirements and related sections of the ordinance. Zoned Planned Development-434-Retail.

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

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 1 **OPPOSE:** 0

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

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

STIPULATIONS:

Recommended for approval as follows: (Additions are indicated in underlined text; deletions are indicated in strikethrough text.)

Amend Planned Development-434-Retail as follows:

3. ~~Thirty~~ Fifteen foot landscape edge is required along ~~S.H. 121, Coit Rd. and McDermott Rd. crossing major thoroughfares (Type C or above).~~ A ~~15-foot~~ landscape edge is required along ~~Type E thoroughfares.~~ The ~~buffer~~ landscape edge shall be measured from the property line. ~~The area between the curb and the property line should also be maintained in living condition by the property owner.~~

BM/dw

xc: Ronald Lee McCutchin, Ronald McCutchin Family Partnership, Ltd.
Kevin Wier, Spiars Engineering

CITY OF PLANO
PLANNING & ZONING COMMISSION

November 1, 2010

Agenda Item No. 7A

Public Hearing: Zoning Case 2010-18

Applicant: Ronald McCutchin Family Partnership, Ltd.

DESCRIPTION:

Request to amend Planned Development-434-Retail on 10.5± acres located at the northeast corner of McDermott Road and Coit Road to reduce landscape edge requirements and related sections of the ordinance. Zoned Planned Development-434-Retail.

REMARKS:

This is a vacant property on 10.5± acres located at the northeast corner of McDermott Road and Coit Road, zoned Planned Development-434-Retail (PD-434-R). The Retail district is intended to provide areas for neighborhood, local, and regional shopping facilities for the retail sales of goods and services including convenience stores, shopping centers, and regional malls, but not including wholesaling or warehousing. A planned development district provides the ability to amend use, height, setback, and other development standards at the time of zoning to promote innovative design and better development controls appropriate to both off and on-site conditions.

The applicant is proposing to amend PD-434-R to reduce the required landscape edge along Coit Road and McDermott Road from 30 feet to 15 feet. Currently, PD-434-R requires a 30-foot landscape edge along Coit Road and McDermott Road and the applicant is requesting that the PD be amended to reduce the required landscape edge to 15 feet. Additionally, staff is proposing to clean-up the existing ordinance language as it pertains to landscape edge requirements since this PD is no longer adjacent to S.H. 121 nor does the city anticipate any additional secondary or major thoroughfares through the subject property. Maintenance of the area between the street curb and property line is addressed generally in the city's Code of Ordinance and there is no need to have this addressed in the PD.

A 30-foot landscape edge is the typical landscape edge required along major thoroughfares and highways within the city's overlay districts. This property is not in an overlay district to necessitate a 30-foot landscape edge. For properties such as this outside of overlay, districts a 15-foot landscape edge is required for corner properties

with a 10-foot landscape edge being provided beyond the first drive approach. Properties surrounding this property have a 15-foot landscape edge. For these reasons, staff supports the requested landscape edge reduction.

Surrounding Properties

Adjacent land uses and zoning districts include: Single-Family Residence-6 zoned property with existing single-family residences to the west across Coit Road; Single-Family Residence-7 zoned property with a public middle school to the east; Planned Development-433-Multifamily Residence-2 zoned property with multifamily residences to the north; and Planned Development-261-Retail zoned property with retail uses to the south across McDermott Road.

Conformance to the Comprehensive Plan

Future Land Use Plan - The Future Land Use Plan designates this property as Neighborhood Commercial (NC). Neighborhood Commercial centers are intended to serve adjacent residential neighborhoods and include grocery stores, drugstores, small retail, and services uses. The proposed reduction to the landscape edge does not have any negative impact on the future land use plan designation for this property.

Adequacy of Public Facilities - Water and sanitary sewer services are available to serve this property.

Traffic Impact Analysis (TIA) - A TIA is not required for this zoning request.

Summary

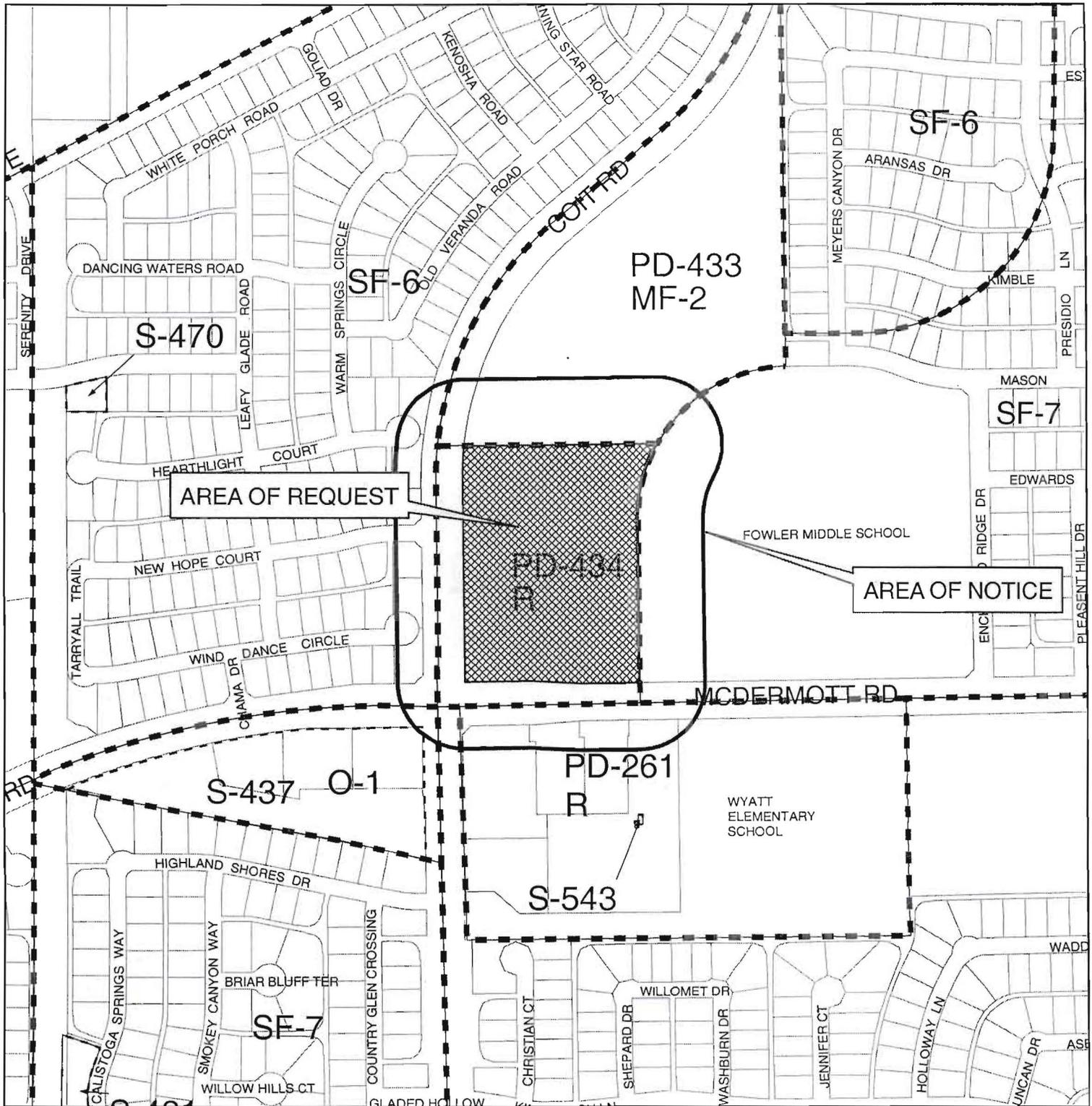
The applicant is requesting to amend PD-434-R to reduce the required landscape edge along Coit Road and McDermott Road from 30 feet to 15 feet and to clean-up the existing ordinance language as it pertains to landscape edge requirements. Staff recommends approval of the requested reduction for the required landscape edge from 30 feet to 15 feet.

RECOMMENDATION:

Recommended for approval as follows: (Additions are indicated in underlined text; deletions are indicated in strikethrough text.)

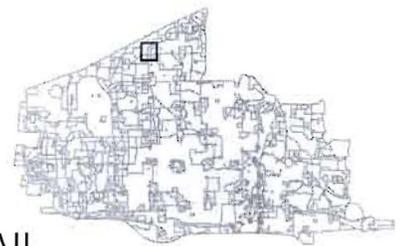
Amend Planned Development-434-Retail as follows:

3. ~~Thirty~~ Fifteen foot landscape edge is required along ~~S.H. 121, Coit Rd. and McDermott Rd. crossing major thoroughfares (Type C or above).~~ A 15-foot landscape edge is required along Type E thoroughfares. The ~~buffer~~ landscape edge shall be measured from the property line. ~~The area between the curb and the property line should also be maintained in living condition by the property owner.~~



Zoning Case #: 2010-18

Existing Zoning: PLANNED DEVELOPMENT-434-RETAIL



○ 200' Notification Buffer

Zoning Case 2010- 18

An Ordinance of the City of Plano amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-434-Retail, on 10.5± acres out of the John Wheeler Survey, Abstract No. 1029, located at the northeast corner of McDermott Road and Coit Road in the City of Plano, Collin County, Texas, to reduce landscape edge requirements and amend related sections of the ordinance; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 22nd day of November, 2010, for the purpose of considering amending Planned Development-434-Retail, on 10.5± acres out of the John Wheeler Survey, Abstract No. 1029, located at the northeast corner of McDermott Road and Coit Road in the City of Plano, Collin County, Texas, to reduce landscape edge requirements and amend related sections of the ordinance; 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 22nd day of November, 2010; and

WHEREAS, the City Council is of the opinion and finds that such amendment would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to amend Planned Development-434-Retail, on 10.5± acres out of the John Wheeler Survey, Abstract No. 1029, located at the northeast corner of McDermott Road and Coit Road in the City of Plano, Collin County, Texas, to reduce landscape edge requirements and amend related sections of the ordinance, 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:

Amend Planned Development-434-Retail as follows:

3. Fifteen foot landscape edge is required along Coit Rd. and McDermott Rd. The landscape edge shall be measured from the property line.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

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

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

Section VI. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

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

PASSED AND APPROVED THIS THE 22ND DAY OF NOVEMBER, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ZC 2010-18

BEING a 10.5 acre tract of land situated in the John Wheeler Survey, Abstract No. 1029, City of Plano, Collin County, Texas, and being all of Lot 1, Block 1 of Silver Fern Addition, an addition to the City of Plano as recorded in Volume 2006, Page 26, Map Records, Collin County, Texas, part of the right-of-way of McDermott Road and Coit Road, and being more particularly described as follows:

BEGINNING at the centerline intersection of McDermott Road (130 foot public right-of-way) and Coit Road (130 foot public right-of-way);

THENCE North $00^{\circ} 29' 31''$ West along said centerline of Coit Road for distance of 675.10 to a point for corner at the beginning of a curve to the right;

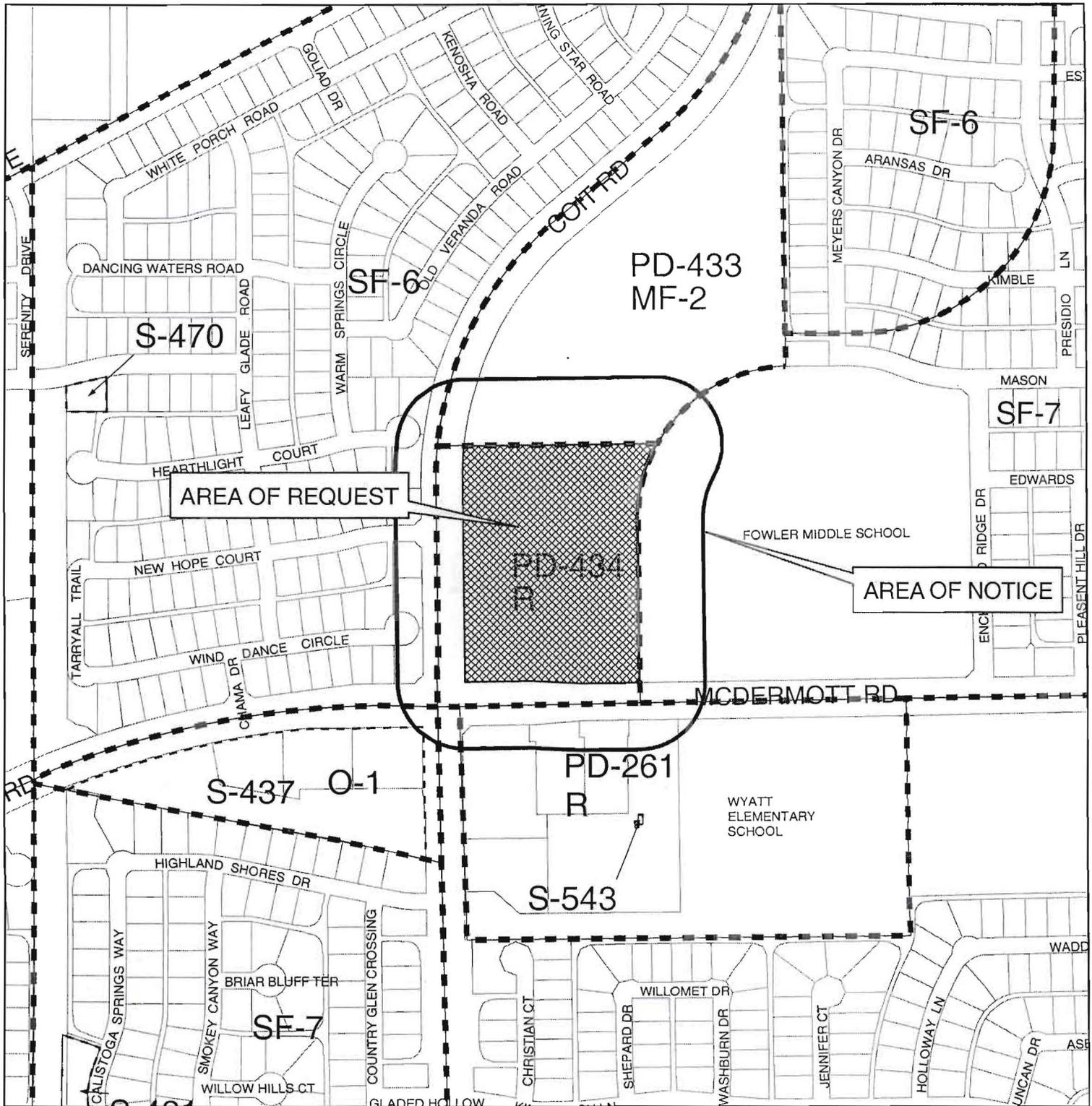
THENCE along said centerline and curve to the right whose chord bears North $02^{\circ} 17' 33''$ East, 97.93 feet and through a central angle of $05^{\circ} 34' 09''$, a radius of 1007.88 feet and an arc length of 97.97 feet to a point for corner;

THENCE North $89^{\circ} 20' 04''$ East departing said centerline of Coit Road passing at a distance 65.35 feet, the common corner of said Lot 1 and Lot 2 of said Silver Fern Addition, continuing for a total distance of 644.57 feet to a 5/8 inch capped iron rod found for common corner of said Lots 1 and 2, and also being in the west line of Fowler Middle School tract as recorded in Volume 4310, Page 2325, Deed Records, Collin County, Texas, and also being the beginning of a curve to the left;

THENCE along said curve to the left whose chord bears South $14^{\circ} 31' 04''$ West, 235.25 feet and through a central angle of $30^{\circ} 02' 01''$, a radius of 453.96 feet and an arc length of 237.96 feet to a 1/2 inch iron rod with plastic cap stamped "SPIARSENG" set for corner in the east line of said Lot 1 and west line of said Fowler Middle School tract;

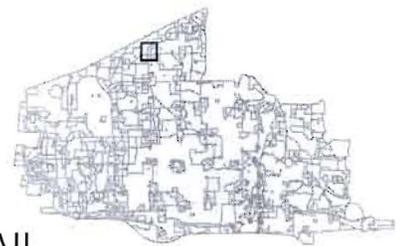
THENCE South $00^{\circ} 29' 56''$ East along the common line of said Lot 1 and Fowler Middle School tract, passing the southeast corner of said Lot 1 at a distance of 489.99 feet and continuing for a total distance of 544.99 to a point for corner in said centerline of McDermott Road;

THENCE South $89^{\circ} 14' 56''$ West, along said centerline of McDermott Road a distance of 588.47 feet to the POINT OF BEGINNING and CONTAINING 458,854 square feet or 10.5 acres of land.



Zoning Case #: 2010-18

Existing Zoning: PLANNED DEVELOPMENT-434-RETAIL



○ 200' Notification Buffer

