

**AGENDA  
CITY OF ALLEN  
CITY COUNCIL WORKSHOP MEETING  
DECEMBER 9, 2008 – 6:00 P.M.  
COUNCIL CONFERENCE ROOM  
ALLEN CITY HALL  
305 CENTURY PARKWAY**

**Call to Order and Announce a Quorum is Present.**

**Questions on Current Agenda.**

**Items of Interest.**

1. Taping of the Holiday Message —  
Teresa Forsyth Warren, Public and Media Relations Officer
2. Legislative Update —  
Bill Hawley, Fire Chief
3. Committee Updates from City Council Liaisons —
4. Discussion of Regular Agenda Items —

**Adjourn to Regular Meeting.**

*- open to the public -*

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, December 5, 2008, at 5:00 p.m.

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Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. 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 214.509.4105.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Legislative Update

**STAFF RESOURCE:** Bill Hawley, Fire Chief

**BACKGROUND**

The 81st Regular Session of the Texas Legislature will convene on January 13, 2009. The City of Allen will closely monitor and respond to proposed legislation as well as work with our state representatives to insure the interests of Allen are taken into consideration during the legislative process. While the exact content of legislation will not be known until the session is underway, it is certain that items of importance to the City of Allen will be considered. Among the anticipated topics are: appraisal and revenue caps; transportation projects/funding; eminent domain; economic development; air quality; water resources; elections; and, many more.

The workshop will cover important dates for the 81st Regular Session of the Texas Legislature, an overview of anticipated legislation, and details of Collin County Day activities.

**AGENDA  
CITY OF ALLEN  
CITY COUNCIL REGULAR MEETING  
DECEMBER 9, 2008 – 7:00 P.M.  
COUNCIL CHAMBERS  
ALLEN CITY HALL  
305 CENTURY PARKWAY**

**Call to Order and Announce a Quorum is Present.**

**Pledge of Allegiance.**

**Public Recognition.**

1. Citizens' Comments. *[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]*
2. Presentation of a Proclamation by the Office of the Mayor:
  - Presentation of a Proclamation to Representatives of the Lovejoy High School Lady Leopards Volleyball Team for Winning the 3A State Championship and Proclaiming December 2008 as "Lady Leopard's Volleyball Team Month."
3. Recognition of the Accounting Division for Receipt of the *GFOA Certificate of Achievement for Excellence in Financial Reporting Award* for the Fiscal Year Ending September 30, 2007.
4. Recognition of the Purchasing Division for Receipt of the *2008 Achievement of Excellence in Procurement Award*.
5. Recognition of the Purchasing Division for Receipt of the *2008 Minority Enterprise Development Million Dollar Roundtable Award*.

**Consent Agenda.** *[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]*

6. Approve Minutes of the November 25, 2008, Regular Meeting.
7. Authorize the City Manager to Execute a Facilities Agreement for Montgomery Boulevard and Watters Branch Creek Bridge with Wretched Land, L.P. for the Dedication of Right-of-Way.
8. Authorize the City Manager to Approve the Purchase of Traffic Signal Upgrade Equipment in the Amount of \$49,350 with Raptor Controls, a Sole Source Vendor, and \$109,318 with Siemens Energy, a Sole Source Provider.
9. Award Bid and Authorize the City Manager to Execute a Contract with Republic ITS in the Amount of \$532,326.50 for Construction/Integration Services as it Relates to the Traffic Signal Upgrade Project.
10. Award Bid and Authorize the City Manager to Execute a Construction Contract with JDC Construction Company for an Amount of \$192,720 and Amend the Country Meadows Park Improvements Project Budget to \$226,515.

**Regular Agenda.**

11. Conduct a Public Hearing and Adopt an Ordinance Granting a Request for an SUP Specific Use Permit for a Church to be Located on 3± Acres at 1403 Bethany Drive.
12. Conduct a Public Hearing and Adopt an Ordinance Amending Provisions of the Municipal Drainage Utility System and Adopt a Resolution Setting New Drainage Fees.

**Other Business.**

13. Calendar.
  - City Facilities Holiday Closings: December 24-25, 2008 and January 1, 2009
14. Items of Interest. *[Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]*

**Executive Session. (As needed)**



Legal, Section 551.071; Property, Section 551.072; Personnel, Section 551.074.  
*As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.*

(Closed to Public as Provided in the Texas Government Code.)

15. Reconvene and Consider Action on Items Discussed during Executive Session.

**Adjournment.**

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, December 5, 2008, at 5:00 p.m.

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Shelley B. George, City Secretary

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*Office of the Mayor  
City of Allen*

*Proclamation*

**WHEREAS,** the Lovejoy High School Lady Leopards Volleyball Team builds character and develops solid citizens by teaching dedication, responsibility, leadership, teamwork, self-confidence and self-discipline; and,

**WHEREAS,** with the leadership of Head Coach Ryan Mitchell and the stellar play of all team members, the Lady Leopards have demonstrated the kind of character and competitive spirit valued by their school and community; and,

**WHEREAS,** the Lady Leopards Volleyball Team won the 2008 Class 3A State Championship in an exciting three set match and have won two consecutive District Championships; and,

**WHEREAS,** with the Lady Leopards win at State, the team brings home the Lovejoy Independent School District's first State Championship in the District's history; and,

**WHEREAS,** the Allen City Council wishes to recognize the character, talent, and hard work exemplified by the Lovejoy High School Lady Leopards Volleyball Team for their outstanding athletic performance and commitment to teamwork.

**NOW, THEREFORE, I, STEPHEN TERRELL, MAYOR OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, do hereby proclaim December 2008 as:**

**"LADY LEOPARDS VOLLEYBALL TEAM MONTH"**

in Allen, Texas, and I urge all citizens to take cognizance of this event and participate in all the events related thereto in this community.

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Stephen Terrell, MAYOR

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Recognition of the Accounting Division  
for Receipt of the GFOA Certificate of  
Achievement for Excellence in Financial  
Reporting Award for the Fiscal Year Ending  
September 30, 2007

**STAFF RESOURCE:** Joanne Stoehr, Assistant Finance Director  
Dana Murray, Accounting Manager

**PREVIOUS COUNCIL ACTION:** None

**ACTION PROPOSED:** Information Item

**BACKGROUND**

The Certificate of Achievement for Excellence in Financial Reporting has been awarded to the City of Allen by the Government Finance Officers Association of the United States and Canada (GFOA) for the Comprehensive Annual Financial Report (CAFR) for fiscal year ending September 30, 2007. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

The CAFR was judged by an impartial panel to meet the high standards of the program including demonstrating full disclosure and clear communication of the City's financial condition in a easily readable format.

This is the tenth consecutive year that the City has received this award. Upon completion of the current audit, staff plans to submit the FY 2007-2008 CAFR to the GFOA for award consideration again.

The Certificate of Achievement plaque will be presented to the City Council with a brief presentation and recognition of the Accounting Division staff that were involved in the CAFR preparation.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Recognition of the Purchasing Division for  
Receipt of the 2008 Achievement of  
Excellence in Procurement Award

**STAFF RESOURCE:** Debra Morris, CPPO, Purchasing Manager

**ACTION PROPOSED:** Informational Item

**BACKGROUND**

The 2008 Achievement of Excellence in Procurement has been awarded to the City of Allen Purchasing Division by the National Purchasing Institute (NPI). This is the eighth consecutive year that the City has received this award.

The Achievement of Excellence in Procurement Program is an award designed to recognize organizational excellence in public procurement. The annual award is earned by those organizations, public or nonprofit, that demonstrate excellence by obtaining a high score based on standardized criteria. The criteria are designed to measure innovation, professionalism, productivity, and leadership attributes of the procurement organization.

The program was created in 1995 by the NPI's board of directors to:

- 1 Recognize organizational excellence in public and nonprofit procurement
- 1 Encourage development of excellence
- 1 Provide benchmarks for continued excellence
- 1 Increase awareness of public procurement as a profession.

In addition to NPI, the Achievement of Excellence in Procurement Award is sponsored by the National Institute of Governmental Purchasers (NIGP), the California Associations of Public Purchasing Officers (CAPPO), the Florida Association of Public Purchasing Officers (FAPPO) and the Institute for Supply Management (ISM).

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Recognition of the Purchasing Division for Receipt of the 2008 Minority Enterprise Development Million Dollar Roundtable Award

**STAFF RESOURCE:** Debra Morris, CPPO, Purchasing Manager

**ACTION PROPOSED:** Informational Item

**BACKGROUND**

The Minority Business Development Agency, a part of the U.S. Department of Commerce, initiated Minority Enterprise Development (MED) Week to celebrate and inspire minority entrepreneurial business success. MED Week conferences occur across the United States in five regions with each region's focus on the achievements of minority business. Throughout MED's history, Dallas/Fort Worth has been a national leader in recognizing and supporting deserving businesses.

Recently, at the Dallas MED Week Conference, the "Million Dollar Buyer" Award was presented to the City of Allen Purchasing Division. The Million Dollar Roundtable Awards recognize public and private sector buyers and procurement contractors who purchased \$1, \$5, \$10 and \$15-plus million in goods and services from minority-and women-owned companies. The City of Allen was recognized for purchasing a total of \$7,565,876 represented by: \$3,956 – disadvantaged; \$228,973 – minority; \$6,794,776 – small; and \$538,171 – women-owned businesses.

**ALLEN CITY COUNCIL**

**REGULAR MEETING**

**NOVEMBER 25, 2008**

**Present:**

Stephen Terrell, Mayor

**Councilmembers:**

Debbie Stout, Mayor Pro Tem

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Gary L. Caplinger

Jeff McGregor (absent)

**City Staff:**

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Shelley B. George, City Secretary

Pete Smith, City Attorney

**Workshop Session**

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With a quorum of the Councilmembers present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:15 p.m. on Tuesday, November 25, 2008, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas:

- Briefing Regarding the Long Term Electric Contract
- Committee Updates from City Council Liaisons
- Discussion of Regular Agenda Items

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 6:45 p.m. on Tuesday, November 25, 2008.

**Call to Order and Announce a Quorum is Present**

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With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:00 p.m. on Tuesday, November 25, 2008, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

**Pledge of Allegiance**

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**Public Recognition**

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**1. Citizens' Comments.**

**ALLEN CITY COUNCIL  
REGULAR MEETING  
NOVEMBER 25, 2008**

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2. **Presentation of Texas Amateur Athletic Federation Athlete of the Year Awards.**
  - Local TAAF Female Athlete of the Year and Regional Female Athlete of the Year, Region 7: Amber Bassett
  - Local TAAF Male Athlete of the Year: Nathan Pantalion

**Consent Agenda**

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**MOTION:** Upon a motion made by Councilmember Herald and a second by Councilmember Obermeyer, the Council voted six (6) for and none (0) opposed to adopt the items on the Consent Agenda as follows:

3. **Approve Minutes of the November 11, 2008, Regular Meeting.**
4. **Adopt a Resolution Extending the Date in the Capital Funding Agreements to October 1, 2010, for the Owner Cities to Receive Credit for Advancing Capital Funds for the Proposed Project upon the Cities Entering into a Contribution Agreement for an Approved Project Related to the Arts of Collin County Commission.**

**RESOLUTION NO. 2788-11-08(R):** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING RESOLUTION NO. 2629-6-07(R) AND RESOLUTION NO. 2729-4-08(R) TO EXTEND THE DATE IN THE CAPITAL FUNDING AGREEMENTS APPROVED BY THOSE RESOLUTIONS TO OCTOBER 1, 2010, FOR THE CITIES TO RECEIVE CREDIT FOR ADVANCING CAPITAL FUNDS FOR THE PROPOSED PROJECT UPON THE CITIES ENTERING INTO A CONTRIBUTION AGREEMENT FOR AN APPROVED PROJECT; AUTHORIZING THE CITY MANAGER OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR TO EXECUTE ALL DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.
5. **Authorize the City Manager to Execute a Contract with David McCall of Gay, McCall, Isaacks, Gordon, May & Roberts, P.C. for the Collection of Delinquent Property Taxes for a Term Beginning January 1, 2009, through December 31, 2012.**
6. **Authorize the City Manager to Ratify the Change Order for the Contract with Jim Bowman Construction Co., Inc., in the Amount of \$10,363.50, for Construction Services as it Relates to the Waterline Improvements Project at Beacon Hill Drive and McDermott Drive and Amend the Project Budget to \$60,117.**
7. **Authorize the City Manager to Approve Contracts with Motorola, CDWG, Paradigm Traffic Systems, Inc., Texas Highway Products, Inc., and Gen-Tran Corporation to Purchase Signal Upgrade Equipment in the Amount of \$491,538 and Amend the Project Budget to \$1,517,055.**
8. **Receive the Summary of Property Tax Collections as of October 2008.**
9. **Receive the Capital Improvement Program Status Report.**

The motion carried.

**Regular Agenda**

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**ALLEN CITY COUNCIL  
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NOVEMBER 25, 2008**

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**10. Conduct a Public Hearing and Adopt a Resolution Approving the 2007-2008 Comprehensive Annual Performance Evaluation Report for the Community Development Block Grant Program.**

Mayor Terrell opened the public hearing and asked anyone wishing to speak for or against this item to do so at this time.

Florence Myers, 512 Hawthorne, Allen, Texas, spoke in support of the program.

With no one else speaking, Mayor Terrell closed the public hearing.

**RESOLUTION NO. 2789-11-08(R):** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE 2007-2008 COMPREHENSIVE ANNUAL PERFORMANCE EVALUATION REPORT (CAPER); AUTHORIZING ITS SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD); REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**MOTION:** Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Sedlacek, the Council voted six (6) for and none (0) opposed to adopt Resolution No. 2789-11-08(R), as previously captioned, approving the 2007-2008 Comprehensive Annual Performance Evaluation Report for the Community Development Block Grant program. The motion carried.

**11. Adopt an Ordinance Amending the Code of Ordinances to Increase the Property Tax Exemptions to \$50,000 of Appraised Valuation for Individuals 65 Years of Age or Older.**

**ORDINANCE NO. 2790-11-08:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING SECTION 2-7 OF THE CODE OF ORDINANCES TO INCREASE THE ANNUAL EXEMPTION FROM AD VALOREM TAXATION FOR INDIVIDUALS WHO ARE SIXTY-FIVE (65) YEARS OF AGE OR OLDER; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**MOTION:** Upon a motion made by Councilmember Caplinger and a second by Councilmember Obermeyer, the Council voted six (6) for and none (0) opposed to adopt Ordinance No. 2790-11-08, as previously captioned, amending the Code of Ordinances to increase the property tax exemptions to \$50,000 of appraised valuation for individuals 65 years of age or older. The motion carried.

**Other Business**

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**12. Calendar.**

- November 27-28 - City Facilities Closed for Thanksgiving Holidays
- December 5 - Christmas Tree Lighting in the Civic Plaza - 7 p.m.
- December 6 - Rudolph Run in Downtown Allen - 8 a.m.

**13. Items of Interest.** [Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]

- December 6 - Pancake Breakfast Sponsored by Allen Kiwanis Club - 7 a.m.
- December 6 - Allen Symphony Chorus at Civic Auditorium - 7 p.m.



**ALLEN CITY COUNCIL  
REGULAR MEETING  
NOVEMBER 25, 2008**

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- December 7 - Christmas Parade Sponsored by Allen Rotary Clubs - 2 p.m.
- Council wished Happy Birthday to Mayor Pro Tem Stout.

**Executive Session**

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The Executive Session was not held.

**14. Reconvene and Consider Action on Items Discussed during Executive Session.**

**Adjourn**

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**MOTION:** Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Herald, the Council voted six (6) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 7:40 p.m. on Tuesday, November 25, 2008. The motion carried.

These minutes approved on the 9<sup>th</sup> day of December, 2008.

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Shelley B. George, TRMC, CITY SECRETARY**

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Montgomery Boulevard and Watters Branch Creek Bridge Facilities Agreement

**STAFF RESOURCE:** John Baumgartner, Director of Engineering

**PREVIOUS COUNCIL ACTION:** On October 9, 2007, Council authorized execution of a Facilities Agreement with Wretched Land, L.P. for Dedication of Right-of-Way

**ACTION PROPOSED:** Authorize the City Manager to Execute a Facilities Agreement with Wretched Land, L.P. for the Dedication of Land and Construction of Montgomery Boulevard and Watters Branch Creek Bridge

**BACKGROUND**

Wretched Land, L.P. owns a 60-foot wide piece of land that crosses between the Trademark Development. It was originally set to be a road that provided access from the Montgomery property to US 75. According to the Subdivision regulations of the City, developers of the Trademark site and the Wretched Land site are each responsible for two lanes of Montgomery Boulevard (the old Bel Air) and two lanes of the bridge along Montgomery Boulevard where it crosses Watters Branch.

Wretched Land is the owner of the property and is not a developer. Consequently, Trademark is willing to construct all four lanes of Montgomery Boulevard – from the bridge to US 75 – in addition to being responsible for two lanes of the bridge once development occurs on the Montgomery land side.

Wretched Land, L.P. will dedicate the 60-foot wide strip of land to the City in return for a cap of \$500,000 on the two lanes of bridge that will be required of the developer of the Montgomery site. The 60-foot strip is not large enough to build all four lanes so Trademark will also have to dedicate more land to get the roadway built. Additionally, the roadway alignment needs to shift slightly which is the purpose of the land being dedicated to the City.

The Council originally considered this request in October of 2007 but it was not executed by Wretched Land. The economic situation has changed and the Montgomery's requested additional time from the original 10 years. We modified the agreement to reflect a time frame

of 20 years, but after year 5 the cap will grow based on the changes in the consumer price index from December of 2013 until the bridge is actually built. The agreement calls for the transfer of the property from Wretched Land to the City of Allen to occur by January 1, 2009.

The City and Trademark will then be able to work together to align the roadway appropriately (we will need another agreement with Trademark to swap a portion of the land and dedicate the new right-of-way for Montgomery Boulevard) and begin construction of the portion of the roadway that affects Trademark. The cap on the construction of the two lanes of the bridge is a reasonable trade for the 60-foot strip of land being dedicated today.

### **STAFF RECOMMENDATION**

Staff recommends that Council authorize the City Manager to execute the facilities agreement with Wretched Land, L.P.

### **BUDGETARY IMPACT**

None at this time.

### **MOTION**

*I make a motion to authorize the City Manager to execute a Facilities Agreement for Montgomery Boulevard and Watters Branch Creek Bridge with Wretched Land, L.P. for the dedication of right-of-way.*

### **ATTACHMENT**

Facilities Agreement and Metes/Bounds  
Location Map

**STATE OF TEXAS           §  
                                     §       **Facilities Agreement for Montgomery Blvd. and**  
                                     §       **Watters Branch Creek Bridge**  
**COUNTY OF COLLIN    §****

This agreement (“Agreement”) is made by and between the City of Allen, Texas (the “City”), and Wretched Land L.P., a Texas limited partnership, (“Owner”), acting by and through their duly authorized representatives.

**RECITALS:**

**WHEREAS**, Owner is the owner of a certain parcel of real property as described in Exhibit “A” and as depicted in Exhibit “B” (the “Property”); and

**WHEREAS**, Owner intends to dedicate the Property to the City for the future construction of Montgomery Boulevard and Watters Creek Bridge; and

**WHEREAS**, at the time that the Property is developed, Owner is required to construct two (2) of the four (4) lanes for the Watters Creek Bridge (the “Project”) pursuant to the Allen Land Development Code’s subdivision regulations; and

**WHEREAS**, City agrees to limit Owner’s cost for the development and construction of the Project at \$500,000 as adjusted by the Consumer Price Index.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged the parties agree as follows:

**Article I  
Definitions**

“City” shall mean the City of Allen, Texas.

“Commencement of Construction” shall mean that: (1) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the respective public infrastructure improvements; (ii) all necessary permits for the construction of the respective public infrastructure improvements pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Property has commenced.

“Effective Date” shall mean the last date of execution of this Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of a party’s property and such appointment is not terminated within one hundred eighty (180) days after such appointment is initially made, any general assignment for the benefit of creditors, or

the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party, and such proceeding is not dismissed within one hundred eighty (180) days after the filing thereof.

“Expiration Date” shall mean December 31, 2039.

“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, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Property or any portion thereof or with respect to any property located thereon or any business conducted thereon.

“Montgomery Boulevard” shall mean the four (4) lane divided roadway depicted in Exhibit “B” and illustrated on the City of Allen Thoroughfare Plan and to include paving, sidewalks, underground storm sewer, water and the bridge(s) across Watters Branch Creek.

“Owner” shall mean Wretched Land L.P, a Texas limited partnership.

“Project” shall mean the development and construction for the two (2) lanes of the future Watters Branch Creek Bridge.

“Property” shall mean the real property described in Exhibit “A” and as depicted in Exhibit “B”.

## **Article II**

### **Term**

The term of this Agreement shall commence on the last date of execution hereof (“Effective Date”) and shall continue until the Expiration Date, unless sooner terminated as provided herein.

## **Article III**

### **Land Dedication/Owner’s Participation**

3.1 **Land Dedication.** Owner agrees to convey the Property as shown to the City without cost to the City, on or before January 1, 2009, for the City to cause the construction, by Trademark Properties Inc., of the four (4) lanes of Montgomery Boulevard from N. Central Expressway to the bridge abutment at Watters Creek.

3.2 **Owner's Participation.** The Owner agrees to pay to the City the actual costs of the Project. Provided the Owner conveys the Property to the City on or before January 1, 2009 the City agrees to limit the Owner's cost of participation in the development and construction of the Project to the lesser of; (i) \$500,000, as adjusted to reflect increases by the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor: All Urban – All Items, Dallas - Fort Worth area using the change in such index from December 2013 and the index at the time of Commencement of Construction of the Project, and (ii) the total cost for the design and construction of the Project, provided Commencement of Construction on Project occurs on or before December 31, 2028. In the event Commencement of Construction on Project occurs between January 1, 2009, and December 2013, Owner's cost of participation shall be the lesser of (i) \$500,000 and (ii) the total cost for the design and construction of the Project. In the event Commencement of Construction on Project does not occur on or before December 31, 2028 the Owner shall be responsible for 100% of the cost of the Project.

#### **Article IV Termination**

4.1 This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) Expiration Date; and
- (c) by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof; and
- (d) by City, if Owner suffers an Event of Bankruptcy or Insolvency.

#### **Article V Miscellaneous**

5.1 **Indemnification.** Owner does hereby release, indemnify and hold harmless the City, its officers, agents, employees, and third party representatives (collectively referred to as "City") from any and all third party claims, damages, causes of action of any kind whatsoever, statutory or otherwise, personal injury (including death), property damage and lawsuits and judgments, including court cost, expenses and attorney's fees, and all other expenses arising directly or indirectly from the Owner's performance of this Agreement.

5.2 **Notice.** All notices required by this Agreement shall be in writing and addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery.

If intended for Wretched, to:

With a copy to

Wretched Land L.P.  
William S. Montgomery  
3500 Maple Avenue, Suite 1470

Carol Stephenson, P.C.  
Busch & Myers, LLP  
100 Crescent Court, Suite 250

Dallas, Texas 75219

Dallas, Texas 75201  
Facsimile No. (214) 855-2871

If intended for City, to: With copy to:

City of Allen, Texas  
Attn: City Manager  
305 Century Parkway  
Allen, Texas 75013  
Facsimile No. (214) 509-4118

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith  
1800 Lincoln Plaza  
500 N. Akard St.  
Dallas, Texas 75201  
Facsimile No. (214) 965-0010

With copy to Engineer:  
City of Allen, Texas  
City Engineer  
305 Century Parkway  
Allen, Texas 75013  
Facsimile No. (214) 509-4590

5.3 **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned without the express written consent of the City, which shall not be unreasonably withheld in connection with the sale of the Property.

5.4 **Severability.** In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

5.5 **Governing Law.** The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

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

5.7 **Recordation of Agreement.** A certified copy of this Agreement shall be recorded in the Deed Records of Collin County, Texas.

5.8 **Recitals.** The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

5.9 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

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

5.11 **Covenants Run With Property.** The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on the Owner and each and every subsequent owner of all or any portion of the Property but only during the term of such party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership) and shall be binding on all successors, heirs, and assigns of the Owner which acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Property. The City agrees to provide a release in recordable form reasonably satisfactory to the Owner upon each party's full and complete satisfaction of the respective obligations herein. A copy of this Agreement shall be recorded in the Collin County deed records.

**Signature Page to Follow**



**EXECUTED** in duplicate originals this the \_\_\_\_ day of \_\_\_\_\_, 2008

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, CITY MANAGER

**ATTEST:**

By: \_\_\_\_\_  
Shelley B. George, CITY SECRETARY

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Peter G. Smith, CITY ATTORNEY  
(32360)

**EXECUTED** in duplicate originals this the 17<sup>th</sup> day of November, 2008.

**Wretched Land , L.P.**  
a Texas limited partnership

By: Monery, Inc. (its General Partner)

By: Marian Miller Montgomery  
Marian Miller Montgomery  
President *president*

### CITY'S ACKNOWLEDGMENT

STATE OF TEXAS                   §  
   §  
COUNTY OF COLLIN           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2008  
by Peter H. Vargas, City Manager of the City of Allen, Texas, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

### OWNER'S ACKNOWLEDGMENT

THE STATE OF TEXAS           §  
   §  
COUNTY OF DALLAS           §

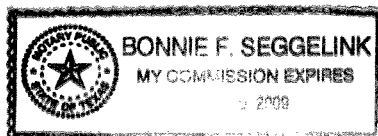
BEFORE ME, a Notary Public, on this day personally appeared Marian M. Miller, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Wretched Land, L.P. a Texas limited partnership, and that he/she has executed the same as the act of such partnership for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19<sup>th</sup> day of November, 2008.

Bonnie F. Seggelink  
Notary Public, State of Texas

My Commission Expires:

July 10, 2009



**EXHIBIT "A"**

**0.824 ACRES  
THOMAS G. KENNEDY SURVEY,  
ABSTRACT NO. 500,  
CITY OF ALLEN, COLLIN COUNTY, TEXAS.**

**BEING** a 0.824 acre tract of land situated in the Thomas G. Kennedy Survey, Abstract No. 500, City of Allen, Collin County, Texas, and being all of that called 0.79 acre tract of land described in the deeds to Wretched Land, L.P., filed for record under the County Clerk's File No's. (C.C. File No.) 20061012001474600 and 20061012001474640, Deed Records, Collin County, Texas (D.R.C.C.T.), said 0.824 acre tract of land being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8 inch iron rod found with a cap stamped "Bury + Partners" on the Westerly right-of-way line of U.S. Highway No. 75 (a variable width public right-of-way), said iron rod being the Northeast corner of said Wretched Land, L.P. tract and the Southeast corner of Watters Creek at Montgomery Farm, Phase 2, an addition to City of Allen, Collin County, Texas, filed for record in Volume 2007, Page 617, Plat Records, Collin County, Texas;

**THENCE** South 14° 04' 17" West along the Westerly right-of-way line of said U.S. Highway No. 75, a distance of 61.37 feet to a 5/8 inch iron rod found for the Southeast corner of said Wretched Land, L.P. tract and being the northeast corner of that certain tract of land described in the deed to Coventry II DDR/Trademark Montgomery Farm, L.P., filed for record in C.C. File No. 20061228001826050, D.R.C.C.T.,

**THENCE** North 88° 02' 48" West along the South line of said Wretched Land, L.P. tract, a distance of 603.52 feet to a point in the center of Watters Creek, being the Southwest corner of said Wretched tract of land and being the Southeast corner of that called 112.579 acre tract of land described in various deeds to Marian Miller Montgomery, et al, in varying percentages, ½ interest being conveyed in Volume 2906, Page 871, D.R.C.C.T., and being in the North line of a called 10.673 acre tract of land described in the deed to the City of Allen, filed for record in Volume 4859, Page 2837, D.R.C.C.T.;

**THENCE** North 23° 26' 45" East along the center of said Watters Creek, a distance of 64.48 feet, to the Northwest corner of said Wretched Land, L.P. tract and being the Southwest corner of a called 2.8633 acre tract of land described in the deed to Coventry II DDR/Trademark Montgomery Farm, L.P., filed for record in C.C. File No. 20061228001826040, D.R.C.C.T.,

**THENCE** South 88° 02' 48" East along the North line of said Wretched Land L.P. tract, a distance of 115.89 feet, passing a aluminum monument stamped "floodway marker", found for the Southwest corner of aforementioned Watters Creek At Montgomery Farm,

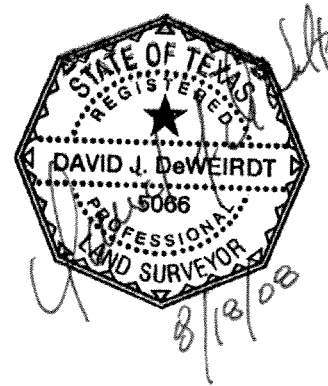
Phase 2 Addition, continuing along the common line of said Wretched Land, L.P. and said Watters Creek At Montgomery Farm, Phase 2 Addition, in all a distance of 592.78 feet to the **POINT OF BEGINNING**;

**CONTAINING** a computed area of 0.824 acres (35,889 square feet), of land;

Notes:

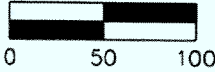
*A sketch was prepared on even date to accompany this description.*

*The bearings shown hereon above are based on the south line of Lot 3, Block A, of Watters Creek At Montgomery Farm, Phase 2, being South 88° 02' 48" East, the same as recorded in Volume 2007, Page 617, PRCCT.*



# U.S. HIGHWAY NO. 75

(A VARIABLE WIDTH RIGHT-OF-WAY)  
ACCESS ROAD (SOUTHBOUND ONLY)



GRAPHIC SCALE: 1" = 100'

20' RIGHT-OF-WAY DEDICATION  
VOL. 2007, PG. 617, P.R.C.C.T.

2295'± TO BETHANY ROAD

POINT OF BEGINNING

APPROX. LOCATION OF  
SURVEY LINE

S14°04'17"W  
61.37' 5/8" IRF  
(CM)

10' ACCESS, UTILITY, PEDESTRIAN  
& LANDSCAPE ESMT.  
VOL. 2007, PG. 617, P.R.C.C.T.

**0.824 AC.**  
(35.889 SQ. FT.)

CALLED 0.79 ACRES  
WRETCHED LAND L.P.  
C.C. FILE NO. 20061012001474600,  
D.R.C.C.T.  
C.C. FILE NO. 20061012001474640,  
D.R.C.C.T.

THOMAS G. KENNEDY SURVEY,  
ABSTRACT NO. 500

LOT 3, BLOCK A  
WATTERS CREEK AT  
MONTGOMERY FARM, PHASE 2  
VOL. 2007, PG. 617,  
P.R.C.C.T.

9.3522 ACRE TRACT  
COVENTRY II DDR/TRADEMARK  
MONTGOMERY FARM, L.P.  
C.C. FILE NO. 20061228001826040,  
D.R.C.C.T.

10' WATER ESMT.  
VOL. 2007, PG. 617,  
P.R.C.C.T.

FIRE LANE ACCESS & UTIL. ESMT.  
VOL. 2007, PG. 617, P.R.C.C.T.

SHADED AREA DENOTES  
TRAIL ESMT.  
VOL. 2007, PG. 617, P.R.C.C.T.

20' UTILITY EASEMENT TO  
CITY OF ALLEN, C.C. FILE  
NO. 96-0107832, D.R.C.C.T.

PARCELS A & B  
COVENTRY II DDR/TRADEMARK  
MONTGOMERY FARM, L.P.,  
C.C. FILE NO. 20061228001826050,  
D.R.C.C.T.

20' EASEMENT FOR R.O.W. TO  
NORTH TEXAS MUNICIPAL WATER  
DISTRICT, VOL. 4100, PG. 1869,  
D.R.C.C.T.

100 YEAR FLOODPLAIN  
PER LOMR CASE NO. 07-06-2335P  
DATED MARCH 3, 2008

REMAINDER OF A CALLED  
2.8633 ACRE TRACT  
COVENTRY II DDR/TRADEMARK  
MONTGOMERY FARM, L.P.  
C.C. FILE NO. 20061228001826040,  
D.R.C.C.T.

100 YEAR FLOODPLAIN  
PER LOMR CASE NO. 07-06-0334P  
DATED MAY 26, 2007

CALLED 10.673 ACRES  
CITY OF ALLEN, TEXAS  
VOL. 4859, PG. 2837,  
D.R.C.C.T.

20' EASEMENT & RIGHT-OF-WAY  
TO NORTH TEXAS MUNICIPAL WATER  
DISTRICT, VOL. 4100, PG. 1869,  
D.R.C.C.T.

## • LEGEND •

AMON	ALUMINUM MONUMENT STAMPED "FLOODWAY MARKER"
IRF	IRON ROD FOUND
CIRF	5/8-INCH IRON ROD WITH CAP STAMPED "BURY + PARTNERS" FOUND
DRDCT	DEED RECORDS DALLAS COUNTY TEXAS
CCFN	COUNTY CLERK FILE NUMBER
NO.	NUMBER
VOL.	VOLUME
PG.	PAGE
(CM)	CONTROL MONUMENT
SQ. FT.	SQUARE FEET
AC.	ACRE

CENTER OF  
WATTERS CREEK

CALLLED: 112.579 ACRES  
MARIAN MILLER MONTGOMERY, ET AL  
C.C.F.N. 20061012001474590  
C.C.F.N. 20061012001474620  
C.C.F.N. 20060908001282350  
C.C.F.N. 20060302000274340  
C.C.F.N. 20060302000274320  
C.C.F.N. 20060302000274310  
C.C.F.N. 2005-0135155  
VOL. 2906, PG. 871,  
D.R.C.C.T.

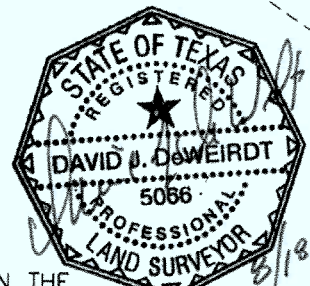
## NOTES:

A FIELD NOTE DESCRIPTION WAS PREPARED  
ON EVEN DATE TO ACCOMPANY THIS  
SKETCH.

THE BEARINGS SHOWN HEREON ARE BASED  
ON THE SOUTH LINE OF LOT 3, BLOCK A OF  
WATTERS CREEK AT MONTGOMERY FARM,  
PHASE 2, BEING S 88°02'48" E, THE SAME  
AS RECORDED IN VOL. 2007, PG. 617,  
PRCCT.

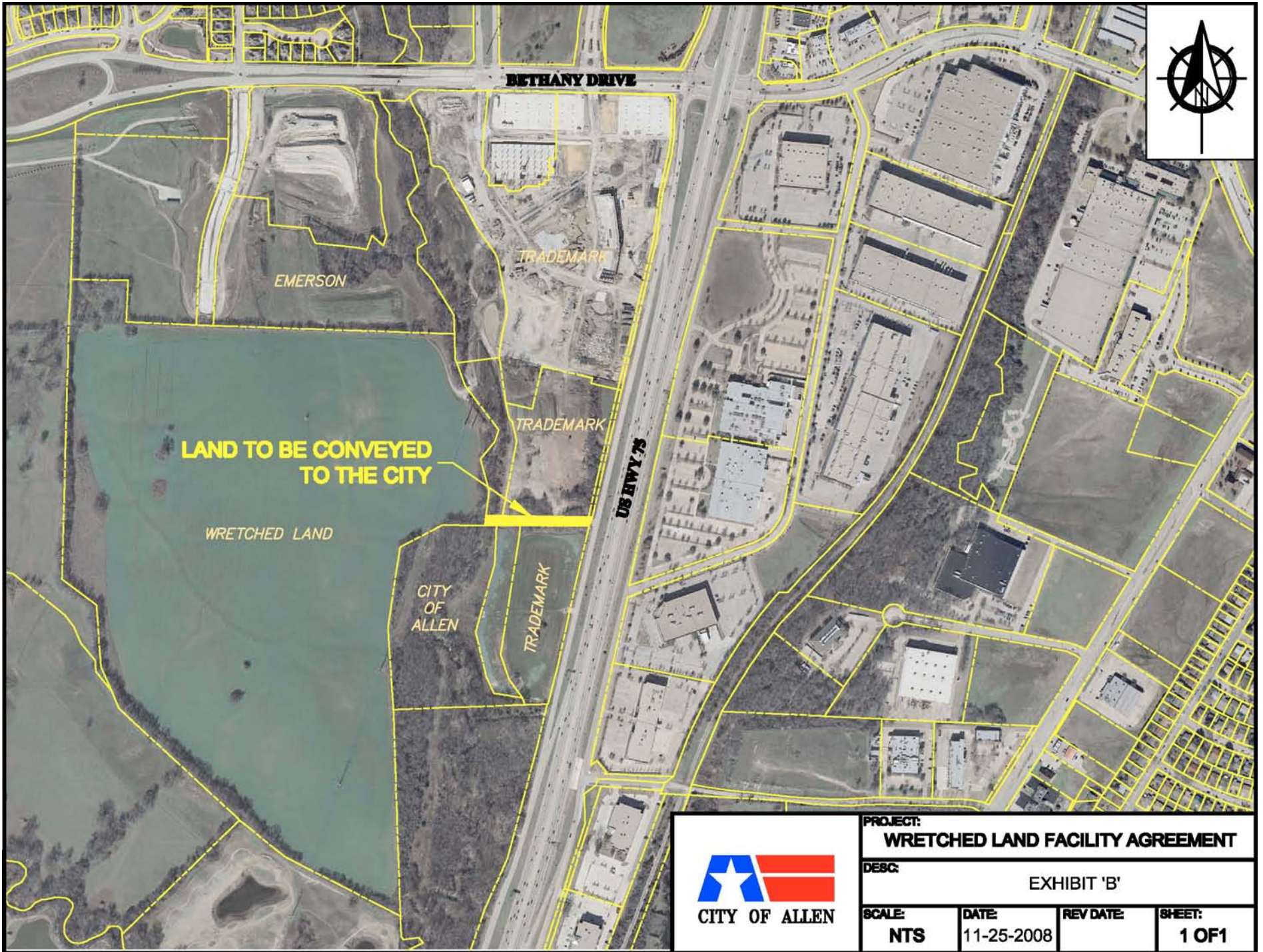
## EXHIBIT "A"

BEING A 0.824 ACRE TRACT OF LAND SITUATED IN THE  
THOMAS G. KENNEDY SURVEY, ABSTRACT NO. 500,  
CITY OF ALLEN, COLLIN COUNTY, TEXAS.



SCALE: 1" = 100'  
DRAWN: RDR  
DATE: 8/18/08  
PAGE: 3 OF 3





PROJECT: <b>WRETCHED LAND FACILITY AGREEMENT</b>			
DESC: EXHIBIT 'B'			
SCALE: NTS	DATE: 11-25-2008	REV DATE:	SHEET: 1 OF 1

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Signal Upgrade Projects  
(CIP# ST0312, ST0810 and ST0811)

**STAFF RESOURCE:** John Baumgartner, Director of Engineering

**PREVIOUS COUNCIL ACTION:**

On November 25, 2008, the City Council authorized the City Manager to approve contracts for the purchase of signal upgrade equipment and amend the project budget.

On March 13, 2007, the City Council authorized the City Manager to execute a professional engineering services contract with Kimley-Horn and Associates for the citywide upgrade of traffic signals and amend the project budget.

On June 28, 2005, the City Council authorized the City Manager to execute a Local Project Advanced Funding Agreement with the Texas Department of Transportation and establish the project budget.

On June 6, 2000, the City Council approved a Master Advanced Funding Agreement with the Texas Department of Transportation. A Local Project Advanced Funding Agreement (LPAFA) is needed to use federal and state funds for traffic signal upgrades and communication system for 32 TxDOT and City of Allen traffic signals.

**ACTION PROPOSED:** Authorize the City Manager to approve contracts for the purchase of signal upgrade equipment

**BACKGROUND**

City staff has been working with the North Central Texas Council of Governments (NCTCOG)

and the Texas Department of Transportation (TxDOT) to determine the eligibility to upgrade various traffic signals belonging to TxDOT or to the City of Allen. The project includes upgrading traffic signal controllers (new equipment), progression timing, video detection, creation of a traffic signal communication system and improvements to intersection signing and striping. The main benefit of the upgrades will standardize our traffic signal system hardware, allow for remote management of the traffic signal operations from a central control center, and update all traffic signal timing plans.

The first phase of this \$1 million project was the engineering contract with Kimley-Horn approved by Council at the meeting on March 13, 2007 which provided engineering services for the upgrade of 32 traffic signals throughout the City. Eight (8) signals were added to this project for continuity along corridors.

The next phase of this project is the purchase and installation of equipment. In order to expedite the project and obtain discounts through existing purchasing agreements certain items have been selected to be purchased by the City. Due to discounts available for quantity orders, the City can purchase additional equipment funded by ongoing operation activities for an additional cost of approximately \$3,000 which provides a savings to the City of approximately \$4,000. In addition to cost savings, these additional components will enhance continuity of service.

This item is a continuing action from the Council Communication item of November 25th. It was not included in that communication to allow additional time for the traffic engineering firm of Kimley-Horn to provide an accurate amount for the equipment required from Raptor Controls.

### **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to approve the purchase of this equipment in the amount of \$49,350 with sole source vendor Raptor Controls and \$109,318 with Siemens Energy as a sole source provider.

### **BUDGETARY IMPACT**

Funds are available in ST0312, ST0810, ST0811 and in the traffic signal operation budget for their portion of the equipment.

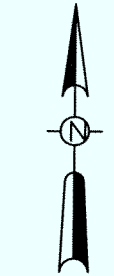
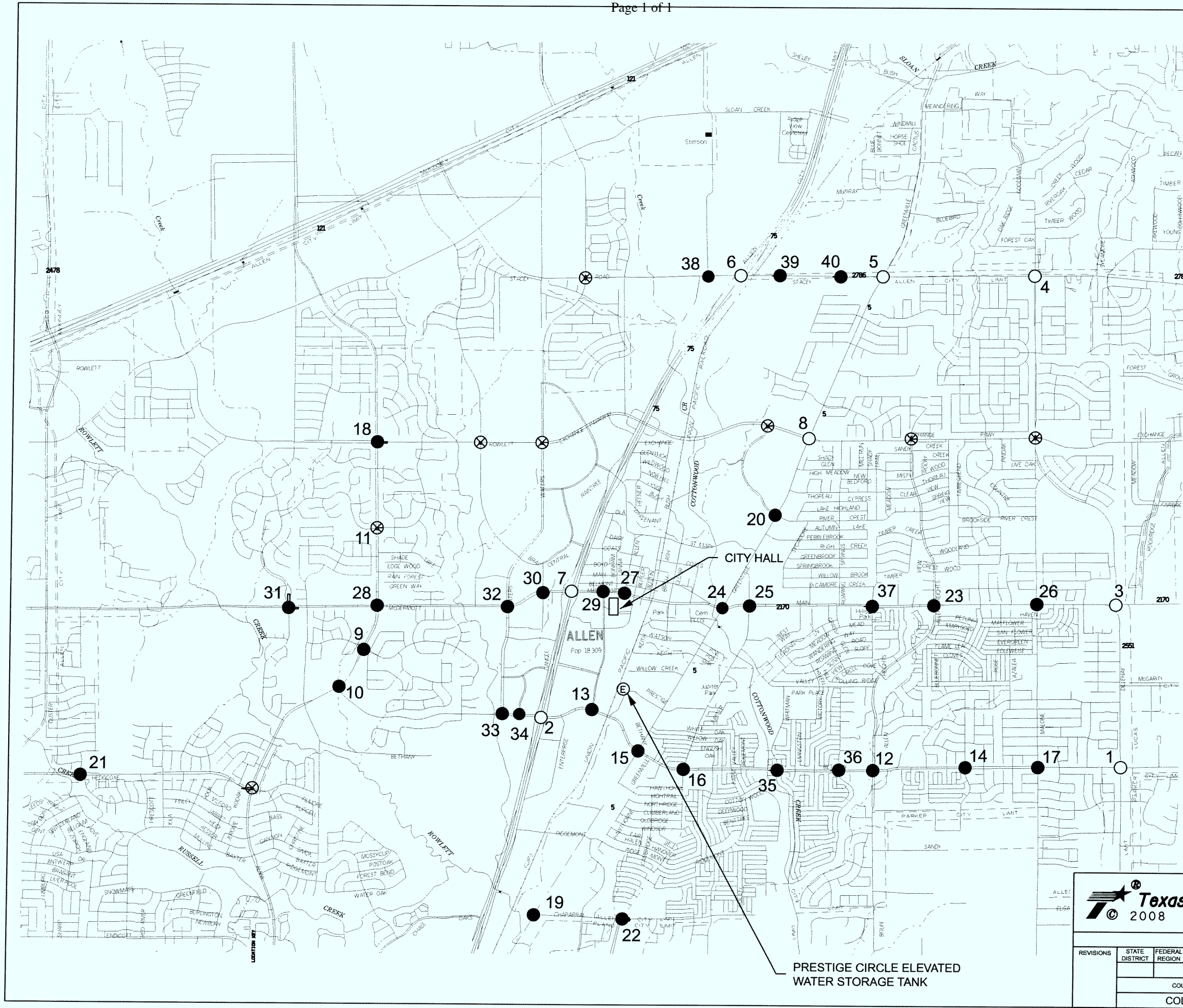
### **MOTION**

***I make a motion to authorize the City Manager to approve sole source contracts with Raptor Controls and Siemens Energy to purchase traffic signal upgrade equipment in the amount of \$158,668.***



**ATTACHMENT**

Location Map



SCALE: N. T. S.

- OFF-SYSTEM PROJECT INTERSECTIONS
- ON-SYSTEM PROJECT INTERSECTION
- ⊗ CITY OF ALLEN NON-PROJECT INTERSECTION
- ⓔ ELEVATED STORAGE TANK
- XX INTERSECTION IDENTIFICATION

Kimley-Horn  
and Associates, Inc.  
12700 Park Central Dr., Suite 1000 Dallas, TX 75251 972-770-1300

No.	Revision	By	Date

CITY OF ALLEN

# Traffic Signal Improvements Communication System

# Systems Location Map



REVISIONS	STATE DISTRICT		FEDERAL REGION				PROJECT NUMBER				SHEET	
							CM 2006 (700)				2	
							COUNTY		CONTROL	SECTION	JOB	HIGHWAY
							COLLIN		0918	24	132, etc.	VARIOUS

DATE: AUGUST 2008  
DESIGNED: DJB, WK  
DRAWN: DJB, KJC  
CHECKED: WK  
KHA NO.: 063445004

SHEET  
**2**  
OF 50 SHEETS

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Signal Upgrade Projects  
(CIP# ST0312 and ST0810)

**STAFF RESOURCE:** John Baumgartner, Director of Engineering

**PREVIOUS COUNCIL ACTION:** On November 25, 2008, the City Council authorized the City Manager to approve contracts for the purchase of signal upgrade equipment and amend the project budget for ST0312.

On March 13, 2007, the City Council authorized the City Manager to execute a professional engineering services contract with Kimley-Horn and Associates for the citywide upgrade of traffic signals and amend the project budget.

On June 28, 2005, the City Council authorized the City Manager to execute a Local Project Advanced Funding Agreement with the Texas Department of Transportation and establish the project budget.

On June 6, 2000, the City Council approved a Master Advanced Funding Agreement with the Texas Department of Transportation. A Local Project Advanced Funding Agreement (LPAFA) is needed to use federal and state funds for traffic signal upgrades and communication system for 32 TxDOT and City of Allen traffic signals.

**ACTION PROPOSED:** Authorize the City Manager to enter into a construction/integration contract with Republic ITS for the amount of \$532,326.50.

**BACKGROUND**

City staff has been working with the North Central Texas Council of Governments (NCTCOG) and the Texas Department of Transportation (TxDOT) to determine the eligibility to upgrade various traffic signals belonging to TxDOT or to the City of Allen. The project includes upgrading traffic signal controllers (new equipment), progression timing, video detection, creation of a traffic signal communication system and improvements to intersection signing and striping. The main benefit of the upgrades will standardize our traffic signal system hardware, allow for remote management of the traffic signal operations from a central control center, and update all traffic signal timing plans.

The first phase of this \$1 million project was the engineering contract with Kimley-Horn approved by Council at the meeting on March 13, 2007 which provided engineering services for the upgrade of 32 traffic signals throughout the City.

Eight (8) signals were added to this project for continuity along corridors. In order to expedite the project and obtain discounts through existing purchasing agreements certain items were selected to be purchased. Contracts for the purchase of this equipment were approved by Council on November 25, 2008.

On December 4, 2008, the following bids were received for the construction/integration of City provided equipment of the signal upgrade on ST0312 and ST0810 projects:

Contractor	Number of Days	Bid Amount
Republic ITS	145	532,326.50
Durable	150	603,000.00
Mels Electric	220	557,401.70
Highway ITS	180	869,438.74

### **STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute a contract for \$532,326.50 with Republic ITS for construction/integration services, as it relates to the Signal Upgrade Project.

### **BUDGETARY IMPACT**

Funds are available in the respective project budgets for ST0312 and ST0810.

### **MOTION**

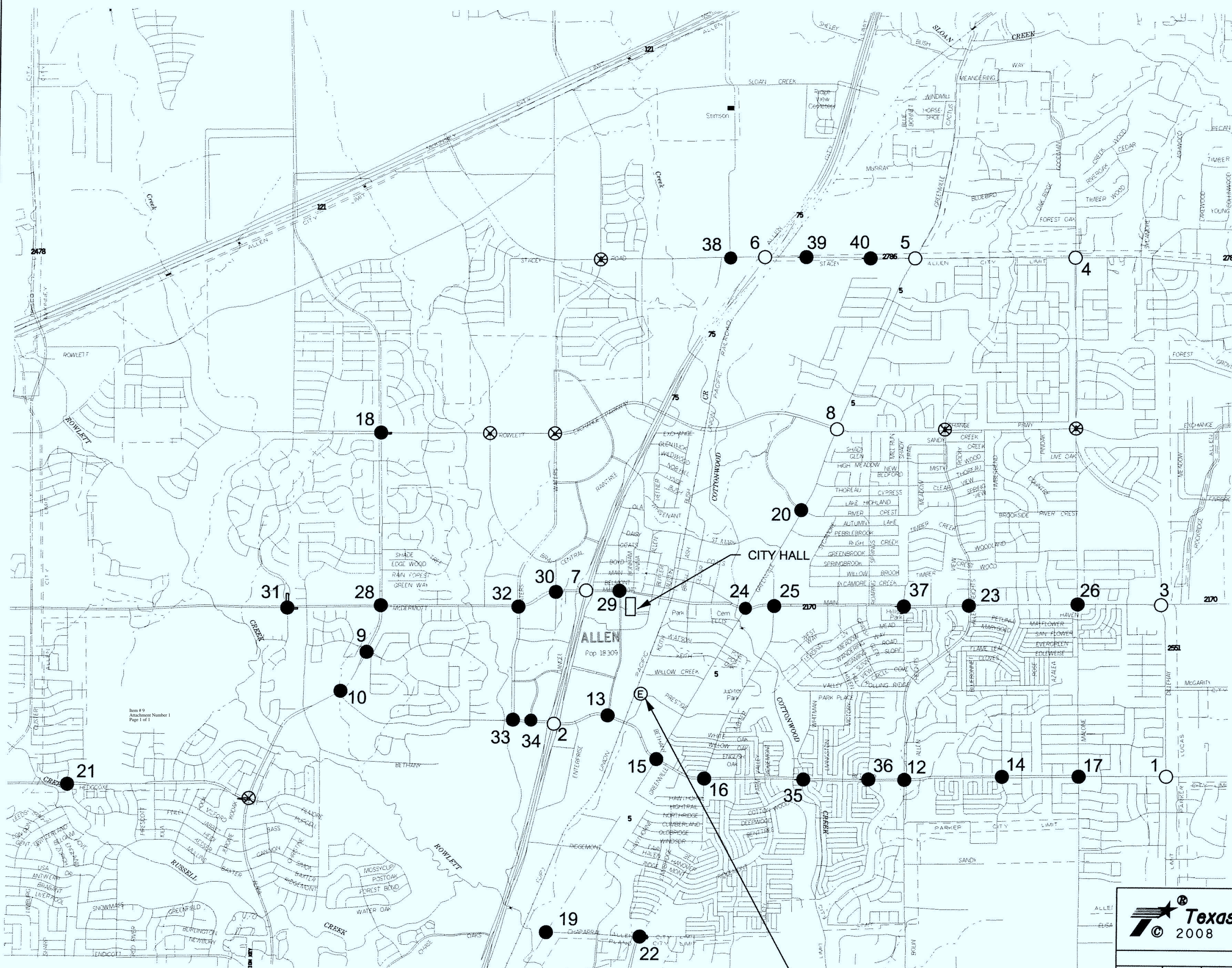
*I make a motion to authorize the City Manager to execute a contract with Republic ITS in the amount of \$532,326.50, for construction/integration services as it relates to the Traffic Signal Upgrade Project.*

**ATTACHMENT**

Location Map

Standard Form Agreement





SCALE: N. T. S.

- OFF-SYSTEM PROJECT INTERSECTIONS
- ON-SYSTEM PROJECT INTERSECTION
- ⊗ CITY OF ALLEN NON-PROJECT INTERSECTION
- ⓔ ELEVATED STORAGE TANK
- XX INTERSECTION IDENTIFICATION

Kimley-Horn and Associates, Inc.  
12700 Park Central Dr., Suite 1800 Dallas, TX 75261 972-770-1300

By: [Signature] Date: [ ]

No. [ ] Revision [ ]

**Traffic Signal Improvements Communication System**

**Systems Location Map**

DATE: AUGUST 2008	DESIGNED: DJB, WK	DRAWN: DJB, KJC	CHECKED: WK	KHA NO.: 063445004
SHEET				
2				
OF 50 SHEETS				



REVISIONS	STATE DISTRICT	FEDERAL REGION	PROJECT NUMBER			SHEET
			CM 2006 (700)			2
	COUNTY	CONTROL	SECTION	JOB	HIGHWAY	
	COLLIN	0918	24	132, etc.	VARIOUS	

PRESTIGE CIRCLE ELEVATED WATER STORAGE TANK



## STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2008, by and between \_\_\_\_\_ The City of Allen, Texas, a municipal corporation, of the County of \_\_\_\_\_ Collin \_\_\_\_\_ and State of Texas, acting through \_\_\_\_\_ Its City Manager \_\_\_\_\_

\_\_\_\_\_ thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and \_\_\_\_\_

\_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_, Party of the Second Part, hereinafter termed CONTRACTOR.

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

**ADVANCED TRAFFIC MANAGEMENT SYSTEM  
AND TRAFFIC SIGNAL UPGRADES CITYWIDE  
BID # 2008-5-268-B**

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefor, as prepared by City of Allen, 305 Century Parkway, Allen, TX 75013 herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, and the General Conditions of the Agreement hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same within \_\_\_\_\_ calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

**IN WITNESS WHEREOF**, the parties to these presents have executed this Agreement in the year and day first above written.

**CITY OF ALLEN, TEXAS**

\_\_\_\_\_  
Party of the First Part (OWNER)

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

Attest: \_\_\_\_\_  
Shelley B. George, City Secretary

\_\_\_\_\_  
Party of the Second Part (CONTRACTOR)

By: \_\_\_\_\_

Attest: \_\_\_\_\_

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

<b>AGENDA DATE:</b>	Tuesday, December 9, 2008
<b>SUBJECT:</b>	Authorize a Contract for Construction with JDC Construction Company and Establish a Budget for Country Meadows Park Improvements
<b>STAFF RESOURCE:</b>	Tim Dentler, Director of Parks & Recreation Brian Bristow, Assistant Director of Parks & Recreation Matt McComb, Landscape Architect
<b>PREVIOUS COUNCIL ACTION:</b>	None
<b>BOARD/COMMISSION ACTION:</b>	Two public input meetings were held in conjunction with Allen Park Board meetings during design of the Country Meadows Park Improvements project
<b>ACTION PROPOSED:</b>	Establish a new project budget and authorize the City Manager to execute a contract with JDC Construction Company for the construction of the park

## **BACKGROUND**

### **Planning and Design:**

In 1993, Phase I of Country Meadows Park was constructed within Country Meadows Subdivision consisting of approximately 7.43 acres. Since then, safety regulations and design criteria for playgrounds have become more stringent. Combined with the intense use the park receives, this makes Country Meadows Park an ideal candidate for Phase II improvements and replacements.

David C. Baldwin Incorporated was hired in 2008 to master plan and design Phase II of the park. Two public meetings were held in order to gather input for the planning and design of Phase II. With public input and review from City staff, the plans underwent several revisions. Plans were 100% complete in October 2008.

### **Funding, Bidding for Construction:**

The original project budget was set at \$126,400, of which \$13,515 has been spent on design. The remaining project balance of \$112,885 consists of \$76,885 in Allen Community



Development Corporation funds and \$36,000 in NE Quadrant Park Dedication Fees.

On November 13, 2008, bids were received for the construction of Country Meadows Park Improvements. The table below summarizes the four (4) bids received for this work:

Contractor	Calendar Days	Project Amount
JDC Construction Company	120	\$192,720.00
American Landscape Systems	90	\$202,027.00
Criterion Contractors, Inc.	130	\$225,610.00
Phoenix I Restoration & Construction, Ltd.	61	\$244,714.00

**Project Construction Budget:**

Based on the lowest bid received and current available funds of \$112,885, an additional funding of \$100,115 is needed to cover the implementation of the full bid package, delay the need for a Phase III project, pay for maximum park improvements with today's dollars and allow for routine testing and accessibility inspection. Staff proposes the following project construction budget:

Construction (materials / installation)	\$ 192,720
Contingency (10%)	\$ 19,280
TDLR Plan Review & Inspection	\$ 1,000
<b>Total Proposed Budget:</b>	<b>\$ 213,000</b>

**STAFF RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to amend the budget for the Country Meadows Park Improvements project to \$226,515 (including design costs) and to execute a contract with JDC Construction Company in the amount of \$192,720 for the construction of the improvements planned for Country Meadows Park.

**BUDGETARY IMPACT**

The project budget is to be funded through Allen Community Development Corporation funds and NE Quadrant Park Dedication Fees. Additional NE Quadrant Park Dedication Fees in the amount of \$100,115 will be transferred into the project to supplement the existing funding. These funds will be set up as the Country Meadows Park Improvement project funds.

	Current	Expenses To	Proposed
--	---------	-------------	----------

	Funding	Date	Budget
Allen Community Development Corporation Funds	\$90,000		
NE Quad Park Dedication Fees	\$36,000		
Bonds + Non-Bonds	\$400		
<b>Subtotal</b>	<b>\$126,400</b>		
Design Fees		\$13,515	
Proposed Construction Budget:			\$112,885
NE Quad Park Dedication Fees			\$100,115
<b>Construction Subtotal</b>			<b>\$213,000</b>
<b>Proposed Overall Project Budget</b>			<b>\$ 226,515</b>

\* Proposed Budget includes 10% contingency

### **MOTION**

*I make a motion to authorize the City Manager to award a contract for construction to JDC Construction Company in the amount of \$192,720 and to amend the Country Meadows Park Improvements Project budget to \$226,515.*

### **ATTACHMENT**

Country Meadows Park Improvements Construction Contract

# **CITY OF ALLEN, TEXAS**

# **STANDARD FIXED PRICE AGREEMENT**

**City of Allen**  
**Parks and Recreation Department**  
301 Century Parkway  
One Allen Civic Plaza  
Allen, Texas 75013

## City of Allen, Texas

This Agreement is made by and between the **City of Allen, Texas**, a home-rule municipality (hereinafter referred to as the "Owner") and **JDC Construction Company** hereinafter referred to as the "Contractor") for the construction of **Country Meadows Park** (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agreeing as follows:

### ARTICLE I

#### THE CONTRACT AND THE CONTRACT DOCUMENTS

##### 1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

##### 1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Requirements and Instructions to Bidders, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

##### Addendums N/A

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

##### 1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

##### 1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

### 1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or

the express or implied approval by the Owner or the Architect of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## **1.6 OWNERSHIP OF CONTRACT DOCUMENTS**

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

## **ARTICLE II**

### **THE WORK**

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

#### **2.2 WORK**

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

**This project includes the development of Country Meadows Parks phase II. The construction includes two playground units, pavilion, park sign, site furnishings, and various concrete repairs. The park is located in the Country Meadows subdivision.**

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

## **ARTICLE III**

### **CONTRACT TIME**

#### **3.1 TIME AND LIQUIDATED DAMAGES**

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than **120 calendar days** from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the

Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of **\$240** per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.1.3 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.1.4 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to

unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

### **3.2 SUBSTANTIAL COMPLETION**

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

### **3.3 TIME IS OF THE ESSENCE**

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

## **ARTICLE IV**

### **CONTRACT PRICE**

#### **4.1 THE CONTRACT PRICE**

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of

**\$192,720.00 (One hundred ninety two thousand, seven hundred twenty dollars and .00/100 cents).**

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract.

## **ARTICLE V**

### **PAYMENT OF THE CONTRACT PRICE**

#### **5.1 SCHEDULE OF VALUES**

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Architect a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and

supported by such data as the Architect or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Architect and the Owner.

## **5.2 PAYMENT PROCEDURE**

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Architect and upon Certificates for Payment subsequently issued to the Owner by the Architect, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety percent **(90%)** of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise

owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 herein below.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

## **5.3 WITHHELD PAYMENT**

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;



- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The Owner shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

#### **5.4 UNEXCUSED FAILURE TO PAY**

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and the Architect, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Late payments shall not accrue interest or other late charges.

#### **5.5 SUBSTANTIAL COMPLETION**

5.5.1 The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials, and free from overgrown ground vegetation (grass, shrubs, trees). After completing the work and before final inspection, the Contractor shall:

- (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials), that are not the property of the City of Allen and all rubbish caused by its work;
- (2) mow the grass, trim all ground vegetation, reseed and/or resod all areas where ground cover and/or existing vegetation was damaged or destroyed by the work performed

and leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer;

- (3) perform all specified tests; and,
- (4) deliver the installation in complete and operating condition.

5.5.2 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect a list of items to be completed or corrected. When the Architect on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner and the Architect for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

#### **5.6 COMPLETION AND FINAL PAYMENT**

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final



inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the Architect in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth herein above as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Under no circumstance shall Contractor be entitled to receive interest on any payments or monies due Contractor by the Owner, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

## **ARTICLE VI**

### **THE OWNER**

#### **6.1 INFORMATION, SERVICES AND THINGS**

##### **REQUIRED FROM OWNER**

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project.

Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, one copy of the Contract Documents for execution of the Work.

#### **6.2 RIGHT TO STOP WORK**

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

### **6.3 OWNER'S RIGHT TO PERFORM WORK**

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

## **ARTICLE VII**

### **THE CONTRACTOR**

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

### **7.4 WARRANTY**

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

### **7.6 SUPERVISION**

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

<b>NAME</b>	<b>FUNCTION</b>
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.6.3. The Contractor's authorized superintendent

shall directly oversee construction 100% of the time (i.e. supervise construction onsite at all times). "The maintenance of a full-time construction supervisor shall be a material term and condition of this Agreement, the violation of which shall be deemed to be a material breach of this Agreement."

**7.7** The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner and the Architect for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

**7.8** The Contractor shall continuously maintain at the site, for the benefit of the owner and the Architect, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Architect the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

## **7.9 SHOP DRAWINGS, PRODUCT**

### **DATA AND SAMPLES**

**7.9.1** Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

**7.9.2** The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Architect. Approval by the Architect, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

**7.9.3** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-

subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**7.9.4** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**7.9.5** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**7.9.6** Submittals which are not required by the Contract Documents may be returned by the Architect without action.

**7.9.7** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect; Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall sign each submittal and stamp with, "REVIEWED FOR COMPLIANCE WITH THE CONTRACT DOCUMENTS AND APPROVED". Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**7.9.8** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor and Subcontractor represents that the Contractor and Subcontractor has reviewed for compliance with the Contract Documents, and has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**7.9.9** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples

or similar submittals by the Architect's approval thereof.

7.9.10 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

7.9.11 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor appropriate performance and design criteria that such services must satisfy. Pursuant to this Subparagraph, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

7.9.12 Submittals: See Division 1 for additional requirements.

## **7.10 CLEANING THE SITE**

### **AND THE PROJECT**

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

## **7.11 ACCESS TO WORK AND INSPECTIONS**

7.11.1 The Owner and the Architect shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the Owner or the Architect, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

## **7.12 INDEMNITY AND DISCLAIMER**

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE

PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a City of Allen Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.12.4 To the fullest extent permitted by law, the

Contractor shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

7.12.5 Contractor agrees to indemnify and hold Owner, Architect and Architect's consultants harmless from any and all loss or damages arising out of jurisdictional labor disputes or other labor troubles of any kind that may occur during performance of the Contract.

#### **7.13 NONDISCRIMINATION**

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

#### **7.14 PREVAILING WAGE RATES**

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Allen has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of Allen of a sum of not less than Sixty Dollars (\$60.00) for each person per

day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.14.2 A schedule of the prevailing wage rates applicable to this Contract is attached.

#### **7.15 JOB SITE SAFETY PRECAUTIONS**

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the job site and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walkways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure job site and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Architect during the progress of the Work.

The Architect's review of Contractor's performance does not include review of adequacy of Contractor's safety or health measures.

#### **7.16 WARNING DEVICES AND BARRICADES**

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Architect to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Allen and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

#### **7.17 PROTECTION OF UTILITIES**

##### **AND OTHER CONTRACTORS**

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

7.17.2 The Contractor understands and acknowledges that other contractors of the Owner or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the completion date established herein. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Architect and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

### **ARTICLE VIII**

#### **CONTRACT ADMINISTRATION**

##### **8.1 THE ARCHITECT**

8.1.1 When used in this Contract the term "Architect" does not necessarily denote a duly licensed, trained or certified architect; as used herein, the term shall be used interchangeably and shall mean a designated Architect, Engineer, or Contract Administrator (who may not be an architect or engineer) for the Owner, said person to be designated or re-designated by the Owner prior to or at any time during the Work hereunder. The Architect may be an employee of the Owner or may be retained by the Owner as an independent contractor but, in either event, the Architect's duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Architect notwithstanding the contractual relationship between the Owner and Architect. All of the Owner's instructions to the Contractor shall be through the Architect.

In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement Architect and the status of the replacement Architect shall be that of the former Architect.

## **8.2 ARCHITECT'S ADMINISTRATION**

8.2.1 The Architect, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Architect as set forth in this Contract. The Architect shall be the Owner's representative from the effective date of this Contract until final payment has been made.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Architect.

8.2.3 The Architect shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Architect shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Architect will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Architect will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Architect will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Architect shall, upon written request from the Contractor, conduct inspections to

determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Architect's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.2.10 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by Owner and Architect, and as Architect deems necessary (1) to become generally familiar with and to keep the Owner informed about the progress and aesthetic quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in general accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site evaluations or inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety or health precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

8.2.11 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents or failure to complete Work on schedule. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

8.2.12 Neither the authority of the Architect to reject Work nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. All costs made necessary by such failure, including those of repeated procedures, shall be at Contractor's sole expense, including compensation for Architect's services and expenses.

8.2.13 Review of submittals and action on the part of the Architect is limited to only those submittals required by the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review by the Architect, Architect's consultants, and Owner, if needed. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under this Agreement. The Architect's review shall not constitute approval of safety or health precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's review or approval of a specific item shall not indicate approval of an assembly of which the item is a component.

8.2.14 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

8.2.15 The Architect will not undertake to settle differences between the Contractor, Subcontractors or suppliers or act as arbiter as to which Subcontractor, trade or supplier is to furnish or install various items indicated or required.

8.2.16 The Architect's response to a request for information (RFI), or issuance of a clarification or interpretation shall be considered an interpretation, clarification, supplemental information or a order for a minor change in the Work not involving an adjustment in Contract Sum or extension of Contract Time and not inconsistent with the intent of the Contract Documents (Field Order), and shall be binding, unless indicated otherwise in the Architect's response to the RFI.

### 8.3 CLAIMS BY THE CONTRACTOR

8.3.1 The Architect shall determine all claims and matters in dispute between the Contractor and Owner with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Architect within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute who shall render a written decision within a reasonable time thereafter. The Architect's decisions shall be final and binding on the parties. In the event that either party objects to the Architect's determination as to any submitted dispute, that party shall submit a written objection to the Architect and the opposing party within ten (10) days of receipt of the Architect's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 **CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS** - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the Owner's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown condition which may affect the Work. No claims for extra work or additional compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, the



condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

**8.3.4 CLAIMS FOR ADDITIONAL COSTS** - If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall give the Architect written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

**8.3.4.1** In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors. The Owner shall not be liable to the Contractor for any claims based upon delay to the Contractor for any reason whatsoever including any act or neglect on the part of the Owner.

**8.3.5 CLAIMS FOR ADDITIONAL TIME** - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect, for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this

Subparagraph, any claim for an extension of time shall be waived.

#### **8.4 FIELD ORDERS**

**8.4.1** The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

#### **8.5 MEDIATION**

**8.5.1** In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Architect and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Architect's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

**8.5.2** In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Architect in accomplishing the timely completion of the Project.

### **ARTICLE IX**

#### **SUBCONTRACTORS**

##### **9.1 DEFINITION**

**9.1.1** A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

##### **9.2 AWARD OF SUBCONTRACTS**

**9.2.1** Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to

such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the Owner.

9.2.3 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

## **ARTICLE X**

### **CHANGES IN THE WORK**

#### **10.1 CHANGES PERMITTED**

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

#### **10.2 CHANGE ORDER DEFINED**

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

#### **10.3 CHANGES IN THE CONTRACT PRICE**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner

and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Architect on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Architect requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Architect's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

#### **10.4 MINOR CHANGES**

10.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the

Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

**10.5 EFFECT OF EXECUTED  
CHANGE ORDER**

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

**10.6 NOTICE TO SURETY; CONSENT**

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

**ARTICLE XI**

**UNCOVERING AND CORRECTING WORK**

**11.1 UNCOVERING WORK**

11.1.1 If any of the Work is covered contrary to the Architect's request or to any provisions of this Contract, it shall, if required by the Architect or the Owner, be uncovered for the Architect's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Architect or Owner, be uncovered for the Architect's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor

shall pay the costs of uncovering and proper replacement.

**11.2 CORRECTING WORK**

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

**11.3 OWNER MAY ACCEPT DEFECTIVE**

**OR NONCONFORMING WORK**

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

## ARTICLE XII

### CONTRACT TERMINATION

#### 12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

#### 12.2 TERMINATION BY THE OWNER

##### 12.2.1 *FOR CONVENIENCE*

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 (a) The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(d) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(e) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(f) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

#### **12.2.2 FOR CAUSE**

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Architect's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

### **ARTICLE XIII INSURANCE**

#### **13.1 CONTRACTOR SHALL MAINTAIN INSURANCE**

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of

this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Allen until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

#### **13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE**

13.2.1 The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation, Commercial General and Automobile Liability (Public) Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>
Worker's Compensation	as set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence.
Liability (Public)	\$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate.
Endorsement CG 2503	Amendment Aggregate Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.
Automobile Liability	\$1,000,000 Combined single limit per occurrence.

Builders Risk/Installation Floater Builder's Risk or Installation Floater (whichever is applicable). It shall be written on an "All Risks" of Physical Loss form, insuring all work in place and/or materials stored at the building site, including foundations and building

equipment. Insurance shall be for the benefit of the Contractor and City of Allen as their interests may appear and each shall be named in the policy or policies as an "Insured." Policies shall furnish coverage at all times for the full cash value of all construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by City of Allen. If the Contractor is installing equipment supplied by City of Allen, it shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by City of Allen. As respects buildings, the Contractor shall not terminate this insurance until they are occupied by City of Allen.

### **13.3 ADDITIONAL INSURED**

The City of Allen, (its officers, employees and volunteers), shall be an additional insured on the Commercial General Liability (Public) Insurance Policy and the Automobile Liability Insurance Policy furnished by the Contractor. The Architect shall be named as an additional insured on the Commercial General Liability (Public) Insurance Policy furnished by the Contractor.

### **13.4 WRITTEN NOTIFICATION**

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given by certified mail to the Parks and Recreation Department, City of Allen, 305 Century Parkway, Allen, Texas, 75013.

### **13.5 PREMIUMS AND ASSESSMENTS**

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor.

### **13.6 CERTIFICATE OF INSURANCE**

Proof that the insurance is in force shall be furnished to the City on City of Allen Standard Certificate of Insurance Forms. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Allen, the contractor shall furnish the City proof of identical continued coverage no later than thirty(30) days prior to the expiration date shown on the Certificate of Insurance.

### **13.7 PRIMARY COVERAGE**

The coverages provided herein shall be primary and noncontributory with any other insurance maintained by the City of Allen, Texas, for its benefit, including self insurance.

### **13.8 WORKER'S COMPENSATION INSURANCE COVERAGE**

13.8.1 The Contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
  - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew

or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

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

#### *REQUIRED WORKERS' COMPENSATION COVERAGE*

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

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

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
  - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

- (C) include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;
- (D) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (E) obtain from each other person with whom it contracts, and provide to the Contractor:
  - (i) a certificate of coverage, prior to the other person beginning work on the project; and
  - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (H) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

## ARTICLE XIV

### MISCELLANEOUS

#### 14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

#### 14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

#### 14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

#### 14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and

shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor. **A maintenance bond shall be for a period of (1) year from the date of final acceptance of the project.**

#### 14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

#### 14.6 AMENDMENTS

14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce, stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

#### 14.7 NOTICES

14.7.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect.



**EXECUTED** in single or multiple originals, this \_\_\_\_ day of \_\_\_\_\_, 2008.

**CITY OF ALLEN**

**CONTRACTOR:**

**APPROVED:**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
(Signature)

and Title)

\_\_\_\_\_  
(Type/Print Name

**ATTEST:**

Address)

\_\_\_\_\_  
(Street

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
(City/State/Zip)

## CORPORATE ACKNOWLEDGMENT

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared:

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Print Title)

of \_\_\_\_\_, the Contractor designated herein above, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Contractor, a corporation, that he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2008.

\_\_\_\_\_  
Notary Public In and For  
\_\_\_\_\_  
County, \_\_\_\_\_

My Commission expires: \_\_\_\_\_

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
--

<b>AGENDA DATE:</b>	Tuesday, December 9, 2008
<b>SUBJECT:</b>	Conduct a Public Hearing and Consider a Request for SUP Specific Use Permit No. 106 for Harvest Oaks Baptist Church; being 3.616± Acres Located in the Simons Burns Survey, Abstract No. 92, Tract 5; Located at 1403 Bethany Drive
<b>STAFF RESOURCE:</b>	Ogden "Bo" Bass, AICP Director of Planning & Development
<b>PREVIOUS COUNCIL ACTION:</b>	In December 2000, the Property was Annexed and Zoned R-5 Residential
<b>BOARD/COMMISSION ACTION:</b>	On November 18, 2008, the Planning & Zoning Commission held a Public Hearing and Recommended Denial
<b>ACTION PROPOSED:</b>	Consider an Appeal of Planning & Zoning Action

### **BACKGROUND**

This property is located north of Bethany Drive, west of Malone Road between Big Bend Drive and Cheyenne Drive. The property is surrounded by R-5 Residential zoning. The property is currently zoned R-5 Single Family and includes an existing house and accessory building. The church is requesting to develop this property in phases. The first phase will be to move into the existing building and complete improvements necessary to operate the church including a parking lot and landscaping. The second phase is the full development of the lots, which includes removal of existing buildings and construction of multiple new buildings.

The Allen Land Development Code (ALDC) requires that a Specific Use Permit (SUP) be approved prior to the development of a church, temple or rectory on land zoned R-5 Residential. While the site may be developed over time in two phases, the applicant is requesting SUP approval for the entire 3.16 acre property. As such, the potential impact of the development of the entire site on surrounding land uses must be considered.

While the proposed concept site development plan meets ALDC parking standards (1 parking space per 3 fixed seats), staff has sufficient cause for concern to recommend denial of the SUP.

The site is enclosed on its West, North and East sides by existing single family residential lots. It is bound to the South by Bethany Drive. The applicant has indicated a quantity of parking that exactly meets the ALDC parking standard. Staff has significant concerns that should additional parking be required in the future, no area remains on the site on which to construct such additional parking. And, furthermore, that should additional parking spaces be needed, and realizing that no parking will be allowed on Bethany Drive, church attendees would have little alternative other than to park within the immediately adjacent single-family neighborhood.

The SUP development plan illustrates the placement of two large buildings in addition to the main sanctuary building on the site at ultimate development. It is not at all unusual for a church site to include the development of educational, recreational, fellowship or other types of buildings in association with a main worship building. However, the small size of this site in combination with the land area taken up by minimum required parking, on-site drainage improvements and the size and location of the three proposed buildings provides no options for expansion.

On November 18, 2008, the Planning & Zoning Commission denied the SUP request. Numerous residents spoke at this meeting. Some indicated serious concerns or opposition to this proposal and others spoke in support. The pastor of Harvest Oaks Baptist Church is appealing the Commission's decision and is requesting that the SUP be granted.

### **STAFF RECOMMENDATION**

Staff concurs with the recommendation of the Planning & Zoning Commission.

### **MOTION**

*I make a motion to approve the request to grant SUP Specific Use Permit No. 106 for Harvest Oaks Baptist Church, on property zoned R-5 Residential on 3± acres of land located at 1403 Bethany Drive.*

**OR**

*I make a motion to deny the request to grant SUP Specific Use Permit No. 106 for Harvest Oaks Baptist Church, on property zoned R-5 Residential on 3± acres of land located at 1403 Bethany Drive.*

### **ATTACHMENT**

Appeal Letter

Site Plan (Concept Plan) -- Future Phases Only

Site Plan (Concept Plan) -- Current and Future Phases

Tree Survey

Building Elevations  
Ordinance  
Minutes









*Harvest Oaks*  
BAPTIST CHURCH

*"Loving Through Serving"*

November 19, 2008

City of Allen  
Attn: Ogden "Bo" Bass, Director of Planning & Development  
305 Century Parkway  
Allen, Texas 75013

RE: Appeal of Planning & Zoning Commission Decision to Deny the Harvest Oaks SUP No. 106

Dear Mr. Bass,

Please accept this letter as a request to appeal the Planning & Zoning Commission's decision at their November 18, 2008 meeting to deny the request for a Specific Use Permit by the Harvest Oaks Baptist Church.

In speaking to your staff last night, it is my understanding that the appeal will be scheduled for the City Council meeting on Tuesday, December 9, 2008.

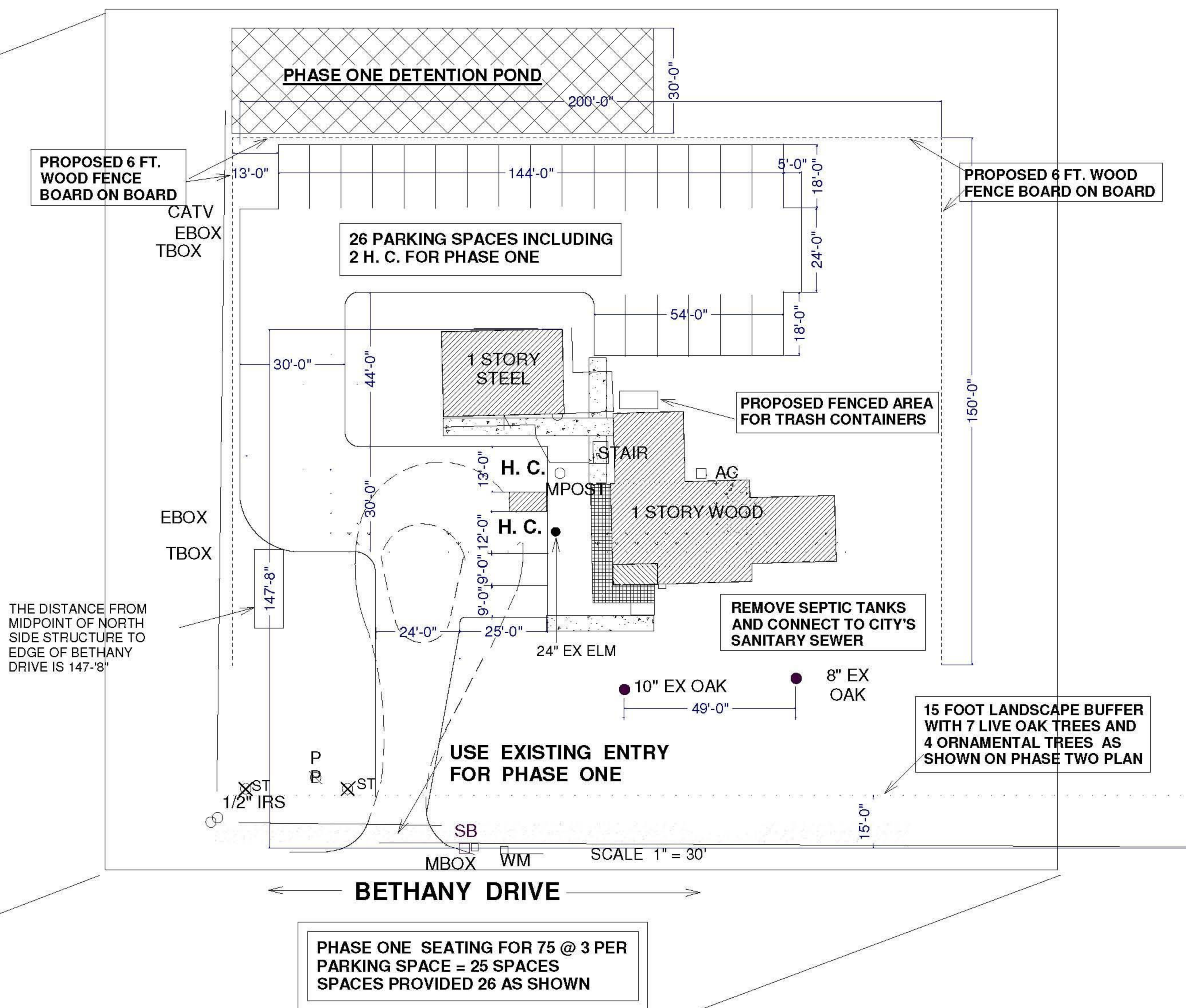
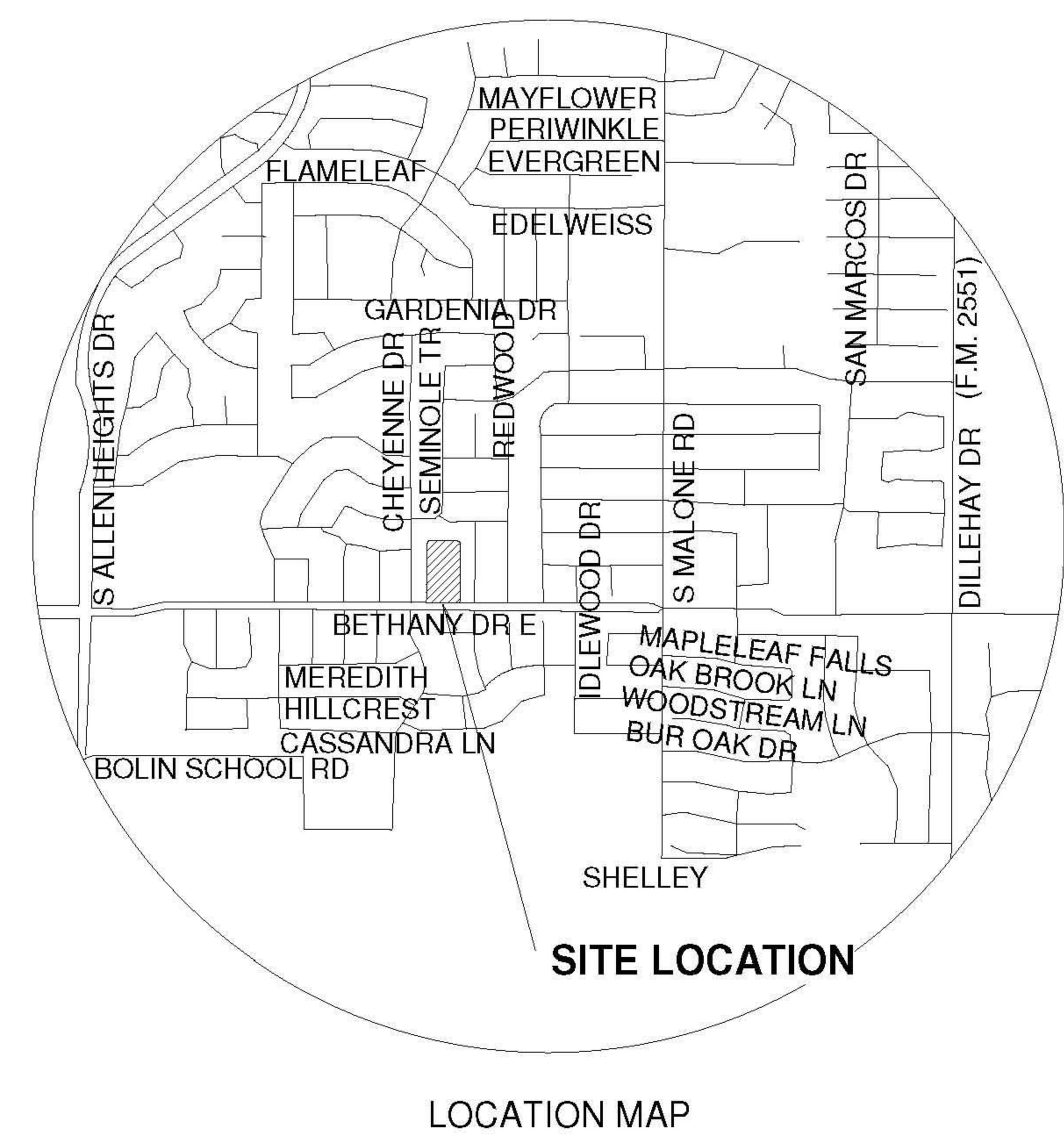
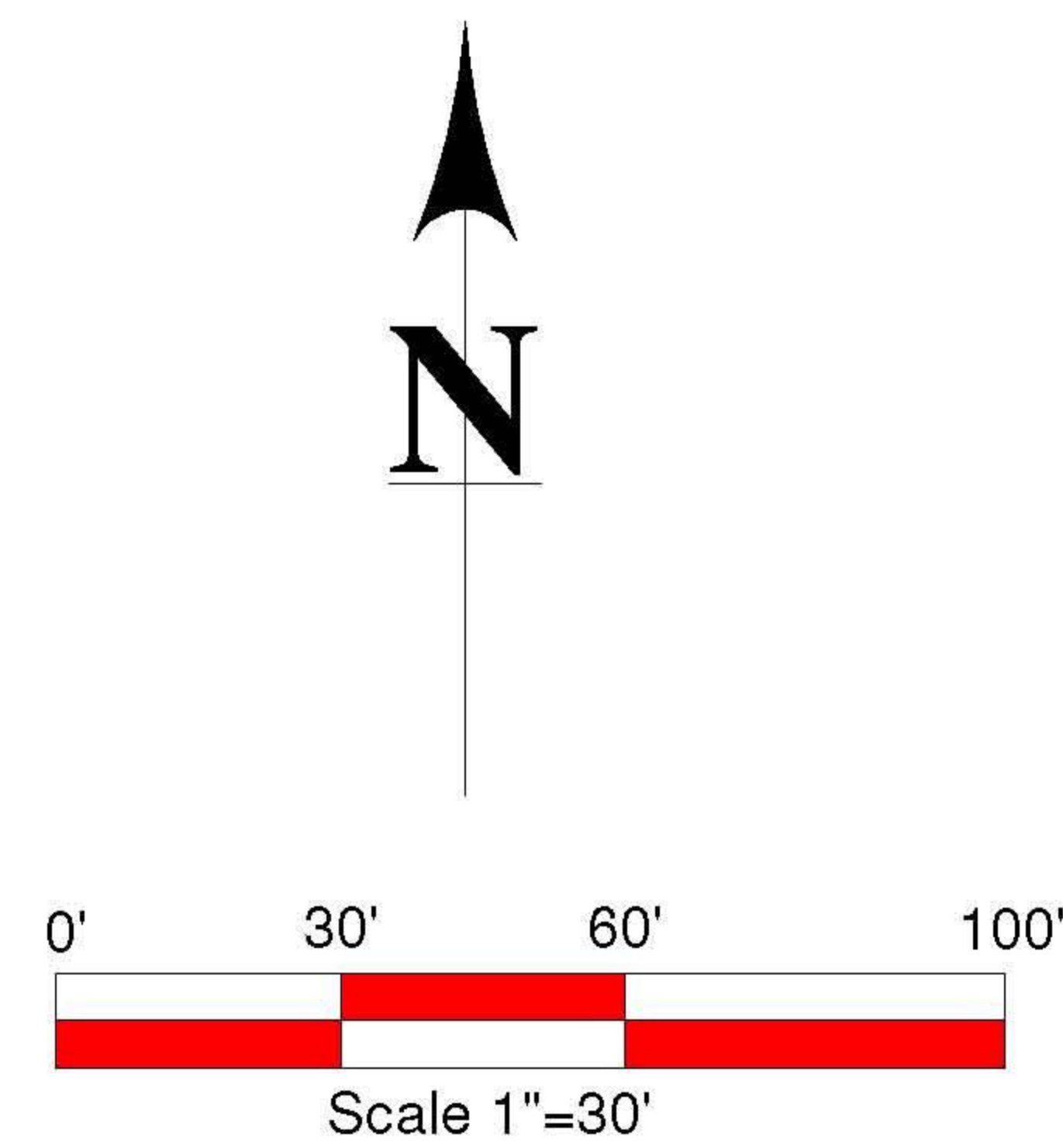
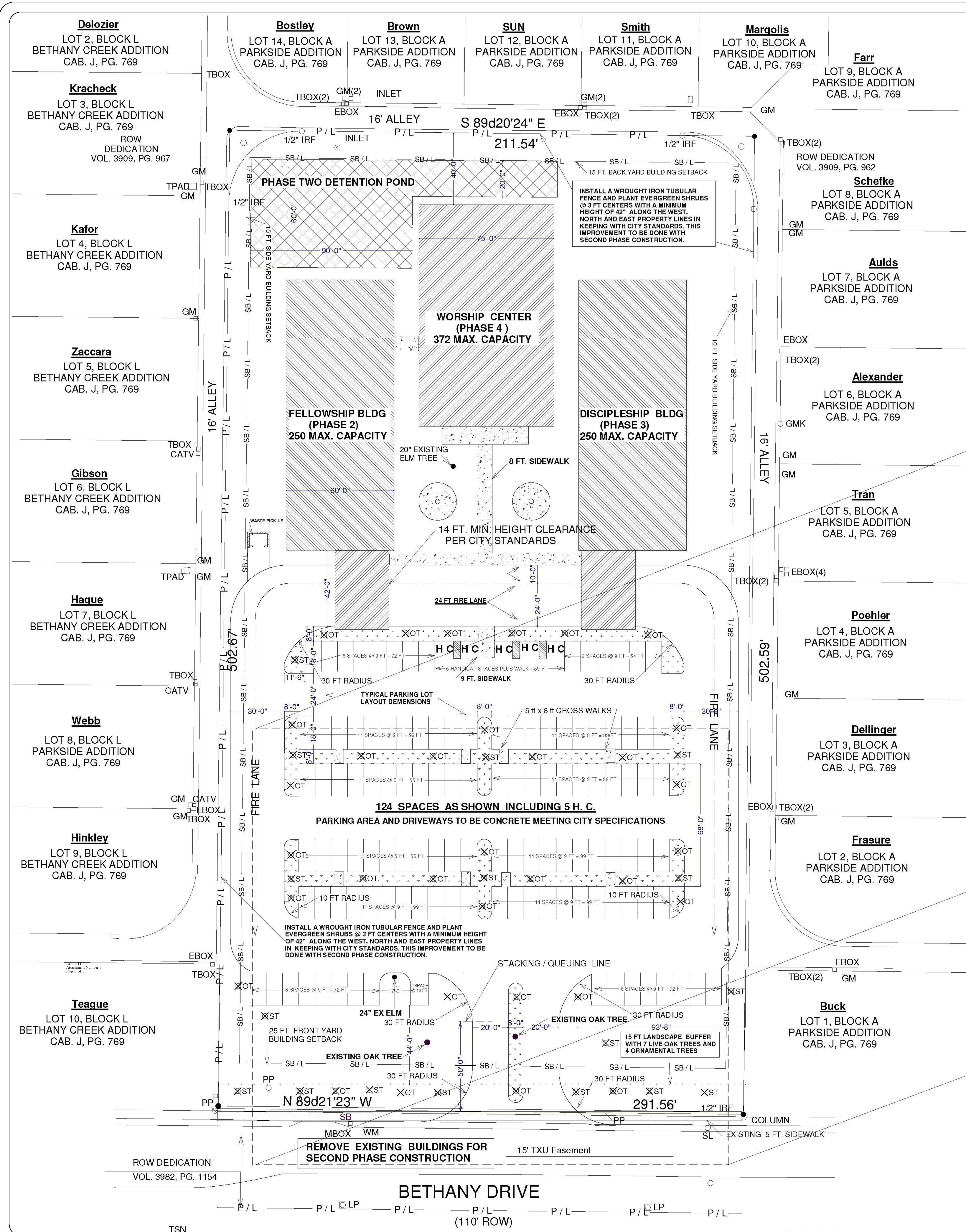
Should you have any questions or need any further information, please contact me at the church number (214) 495-9651 or by way of email at [pastor@harvestoaks.org](mailto:pastor@harvestoaks.org). Thank you.

Sincerely,

A handwritten signature in black ink that reads "Pastor Jay". The signature is written in a cursive, flowing style.

Jay Gibson  
Senior Pastor, Harvest Oaks Baptist Church  
741 Cheyenne Drive  
Allen, Texas





**CONCEPT PLAN** SCALE 1" = 30 FT

**HARVEST OAKS BAPTIST CHURCH**

1403 BETHANY DRIVE - ALLEN, TEXAS 75002

SIMONS BURNS SURVEY, ABSTRACT NO. 92, TRACT #5, 3.6+ ACERS

CITY OF ALLEN, COLLIN COUNTY, TEXAS

OWNER

**HARVEST OAKS BAPTIST CHURCH**

% JAY GIBSON

741 CHEYENNE DR.

ALLEN, TEXAS 75002 (214) 495-9651

**CONCEPT PLAN** SCALE 1" = 30'

**HARVEST OAKS BAPTIST CHURCH**

1403 BETHANY DRIVE - ALLEN, TEXAS 75002

PASTOR JAY GIBSON P. O. BOX 187, ALLEN, TX 75013 - 972-390-0894

DATE OF ISSUE  
REV. 11-05-08

SHEET NUMBER

**2**

OF 4 SHEETS

**Church Building Ministries**

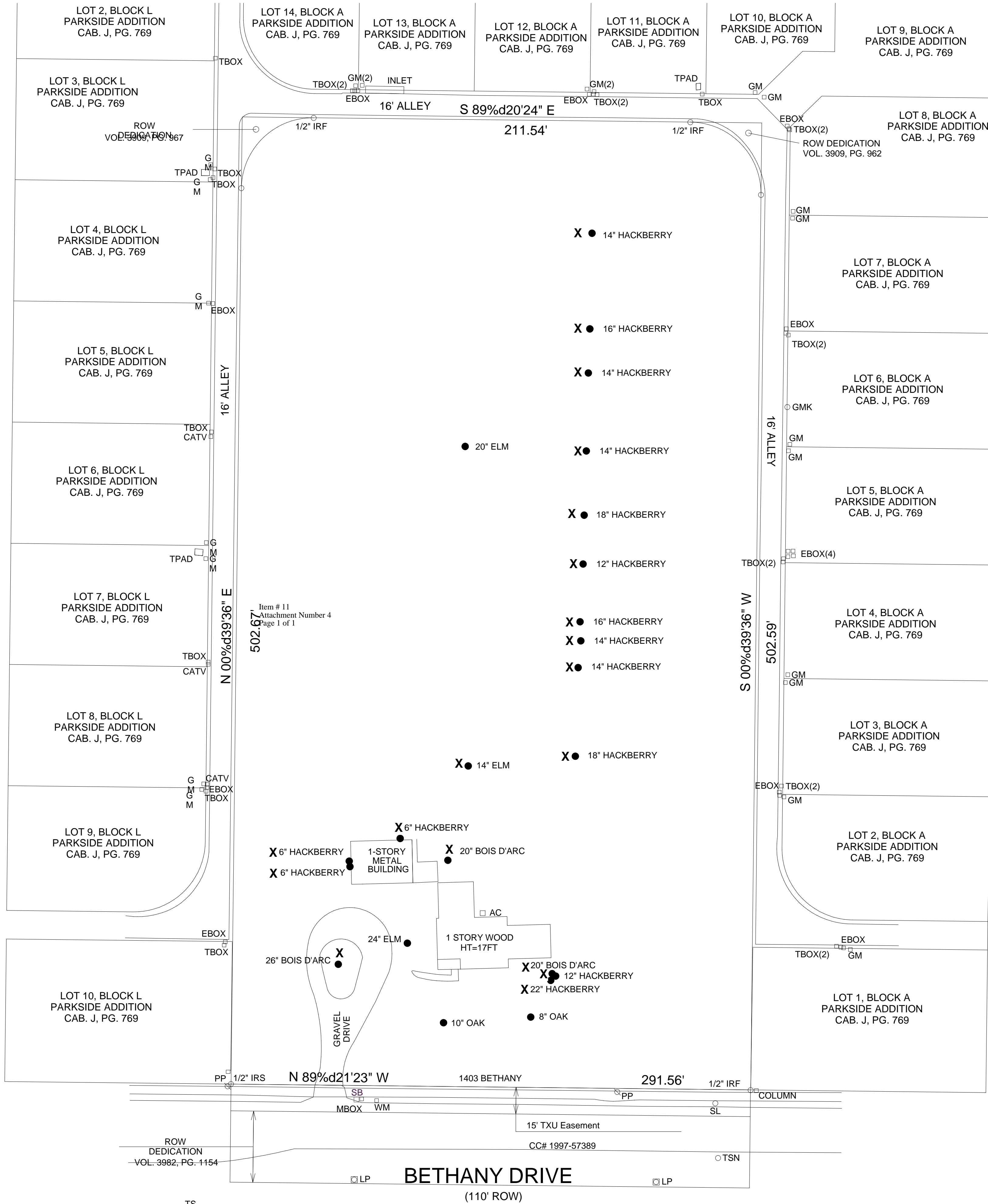
**FACILITY AND SITE PLANNING**

4010 Lindewood Lane Garland, Texas 75042

972-272-7727 fax : 972-444-6454

Email: cbmin1@verizon.net





Trees to be Preserved			
Type	Size	Credit Rate	Positive Credits
Elm	20"	3 credits/caliper inch	60
Elm	24"	3 credits/caliper inch	72
Oak	10"	1 credit/caliper inch	10
Oak	8"	1 credit/caliper inch	8
Total			150

Protected Trees to be Removed			
Type	Size	Credit Rate	Negative Credits
Hackberry	14"	-4 credits/caliper inch	-56
Hackberry	16"	-4 credits/caliper inch	-64
Hackberry	14"	-4 credits/caliper inch	-56
Hackberry	14"	-4 credits/caliper inch	-56
Hackberry	18"	-4 credits/caliper inch	-72
Hackberry	12"	-4 credits/caliper inch	-48
Hackberry	16"	-4 credits/caliper inch	-64
Hackberry	14"	-4 credits/caliper inch	-56
Hackberry	14"	-4 credits/caliper inch	-56
Hackberry	18"	-4 credits/caliper inch	-72
Elm	14"	-4 credits/caliper inch	-56
Hackberry	6"	-2 credits/caliper inch	-12
Hackberry	6"	-2 credits/caliper inch	-12
Hackberry	6"	-2 credits/caliper inch	-12
Hackberry	12"	-4 credits/caliper inch	-48
Hackberry	22"	-4 credits/caliper inch	-88
Total			-828

Unprotected Trees to be Removed	
Bois D'Arc	20"
Bois D'Arc	26"
Bois D'Arc	20"

- TREES BY COUNT
- 1- 8" OAK

1 - 10" OAK

X 3 - 6" HACKBERRY

X 1 - 12" HACKBERRY

X 6 - 14" HACKBERRY

X 2 - 16" HACKBERRY

X 3 - 18" HACKBERRY

X 2 - 20 HACKBERRY

X 1 - 22" HACKBERRY

X 1 - 14" ELM

1 - 20" ELM

1 - 24" ELM

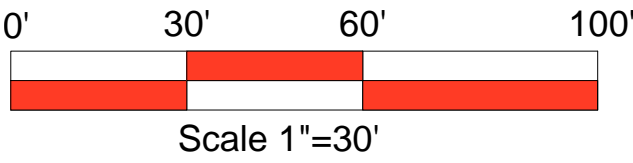
X 1 - 20" BOIS D'ARC

X 1 - 26" BOIS D'ARC

**NOTE!** ALL TREES MARKED "X" TO BE REMOVED  
ALL OTHERS TO REMAIN

ON SITE TREE SURVEY

SCALE 1" = 30 FT.



Church Building Ministries  
FACILITY AND SITE PLANNING  
4010 Lindewood Lane Garland, Texas 75042  
972-272-7727 fax : 972-444-6454  
Email: dbmin1@verizon.net

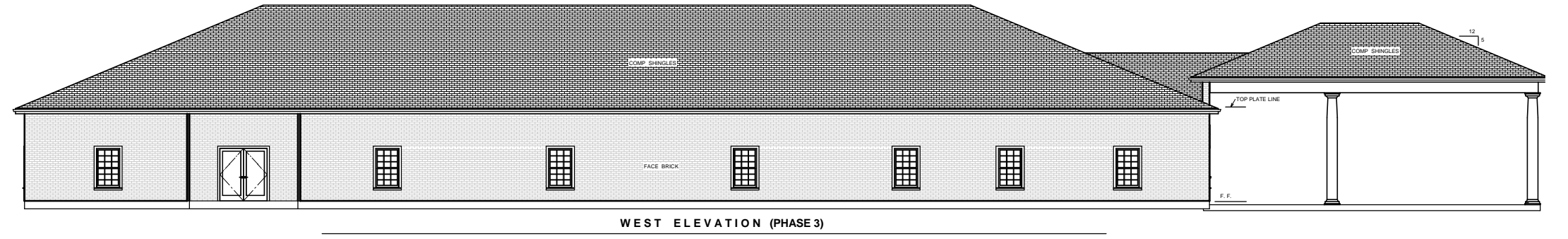
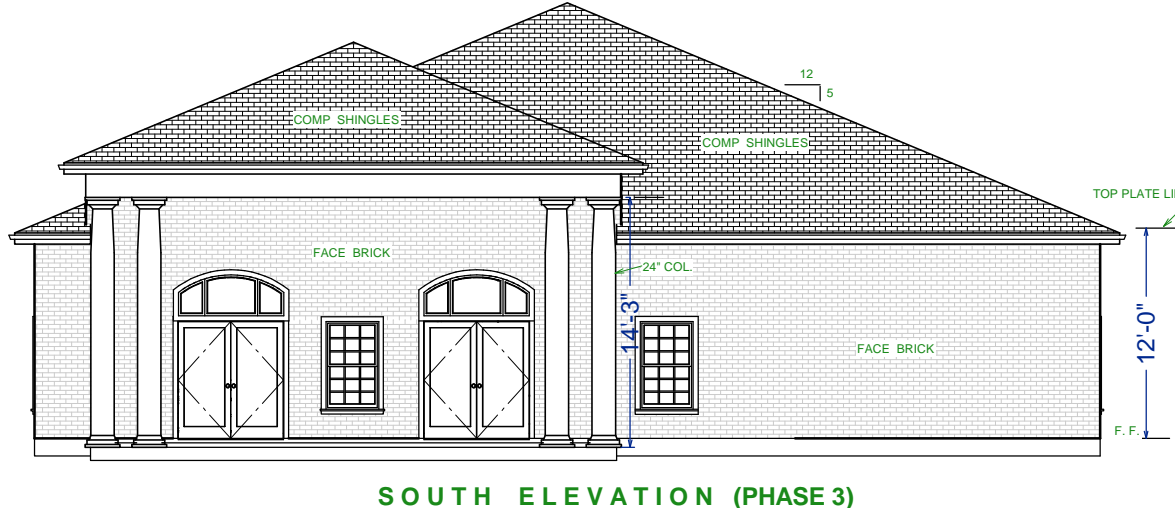
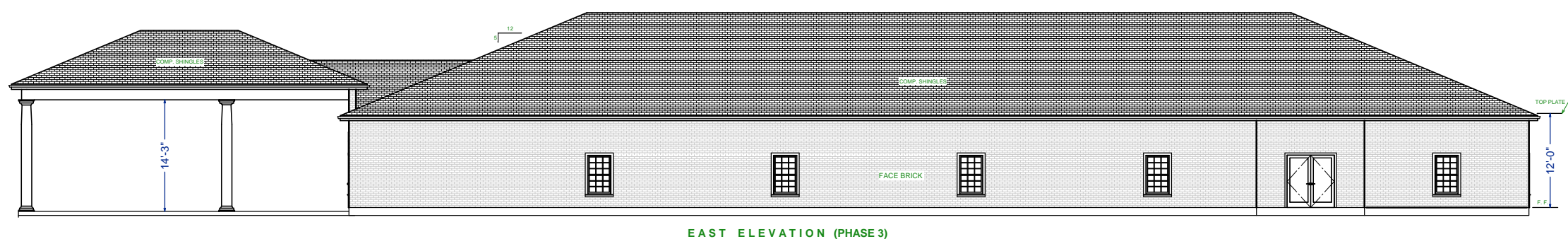
SITE TREE SURVEY  
HARVEST OAKS BAPTIST CHURCH  
1403 BETHANY DRIVE - ALLEN, TEXAS 75002  
PASTOR JAY GIBSON P. O. BOX 187, ALLEN, TX 75013 - 972-390-0944

DATE OF ISSUE  
REV. 11-05-08

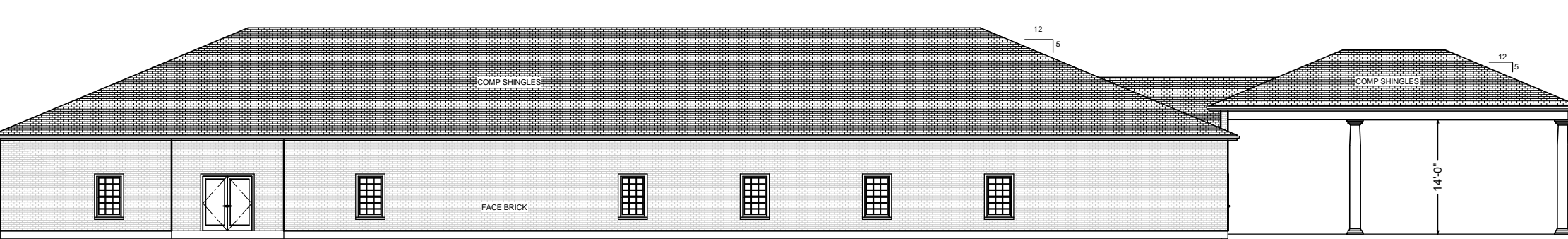
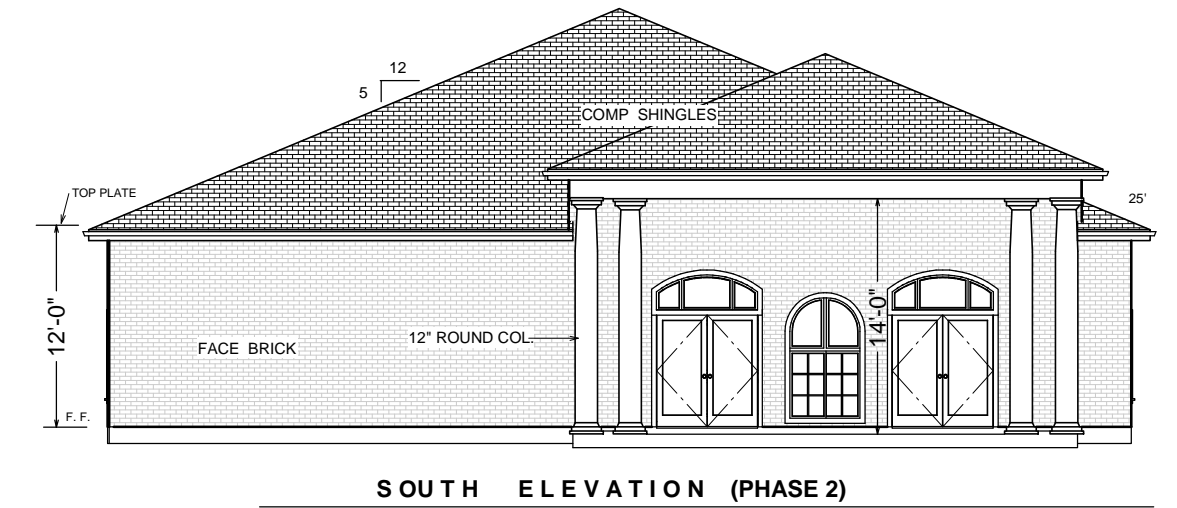
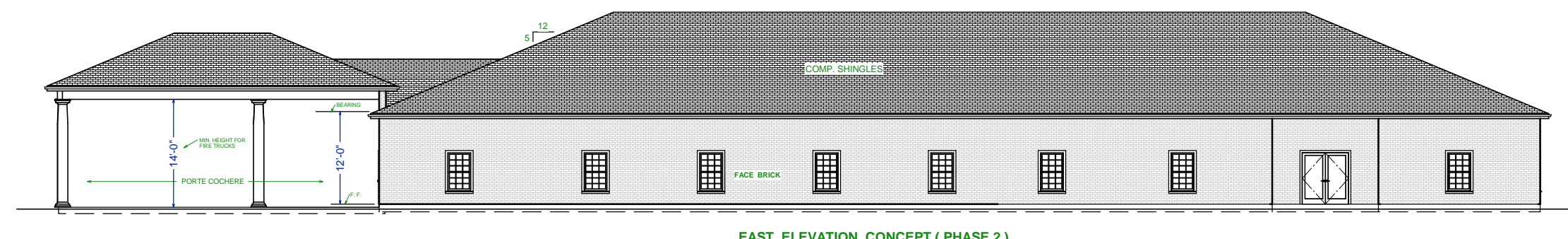
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3  
OF 4 SHEETS



PHASE 3 DISCIPLESHIP FACILITY

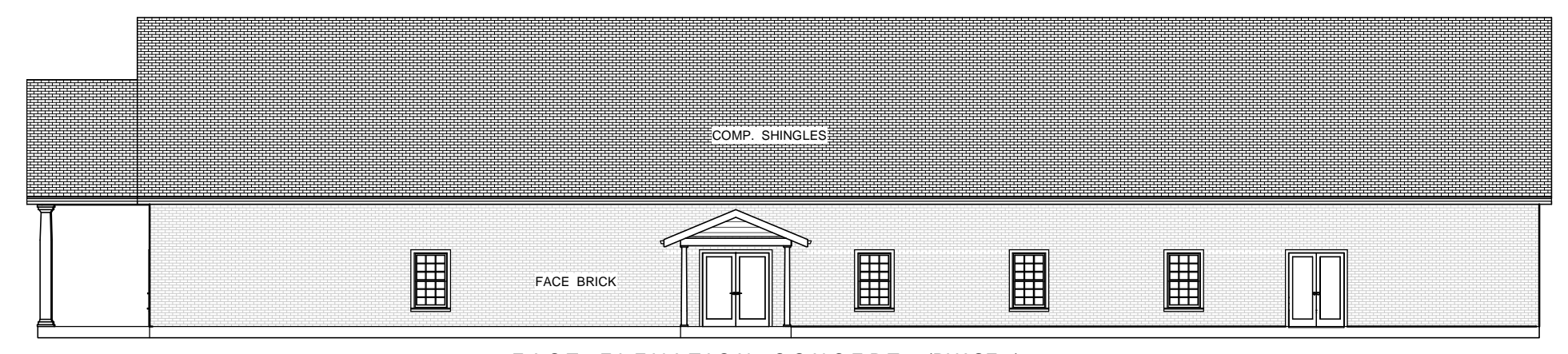
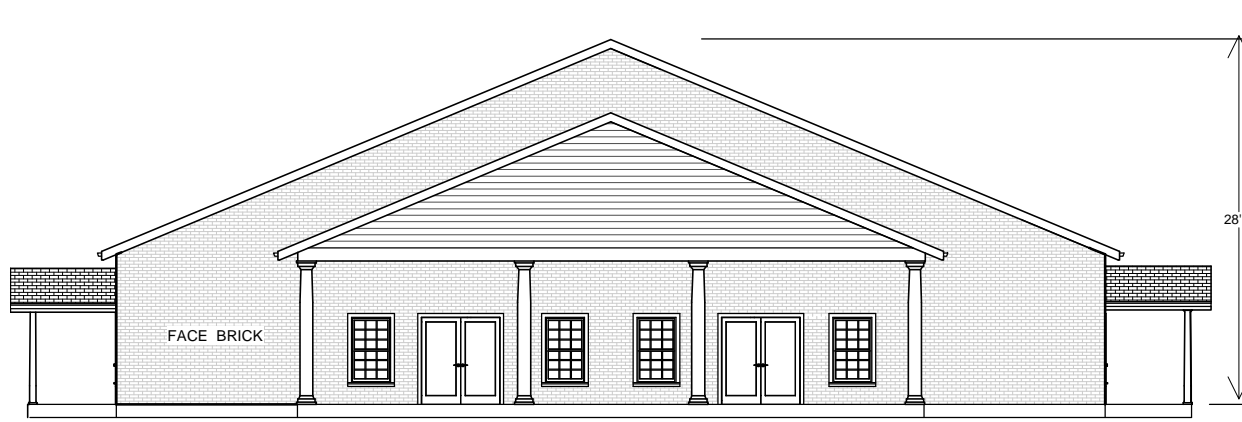
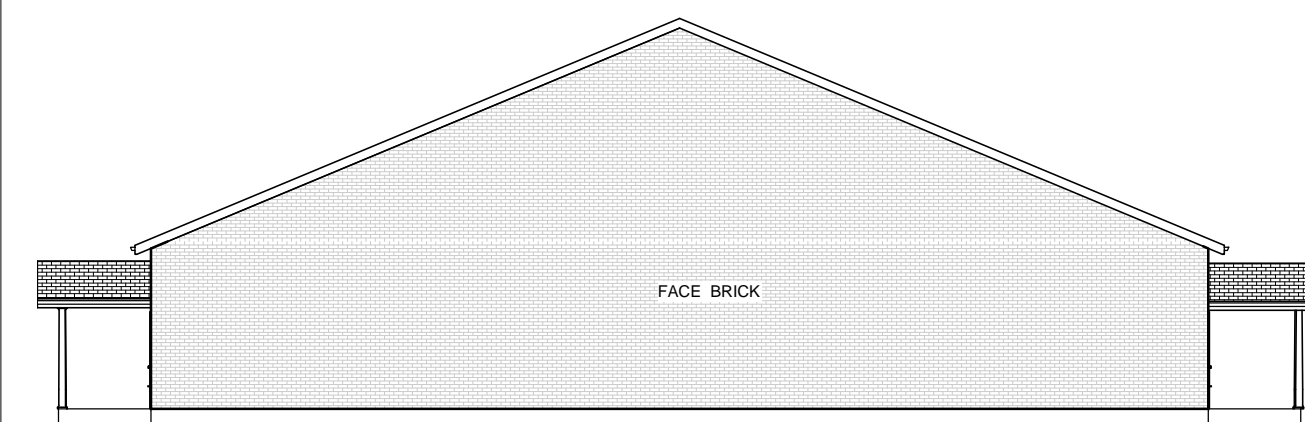
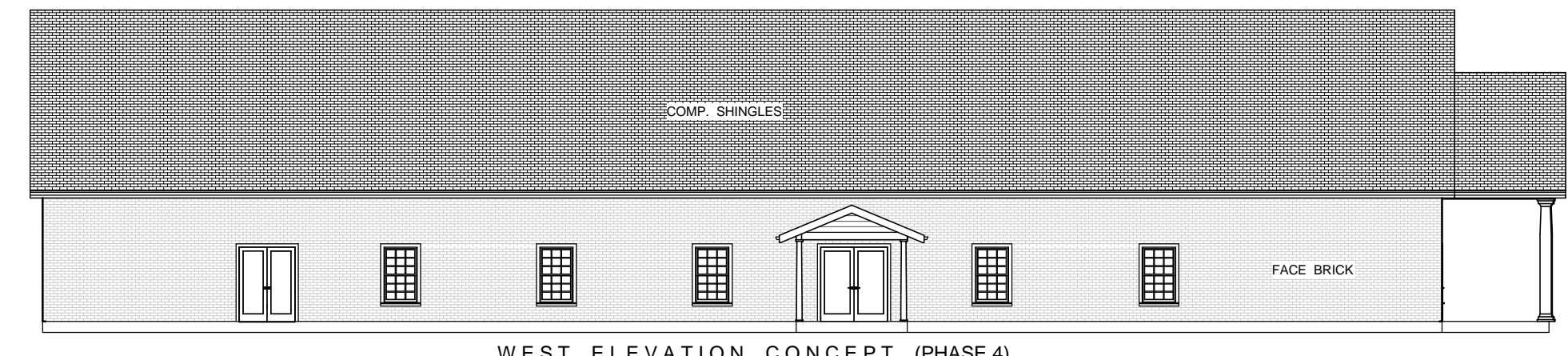


PHASE 2 FELOWSHIP FACILITY



Item # 11  
Attachment Number 5  
Page 1 of 1

PHASE 4 WORSHIP CENTER FACILITY



PHASE 1 REMODEL EXISTING HOUSE



BUILDING ELEVATION CONCEPT

NOT TO SCALE

BUILDING ELEVATION CONCEPT

NOT TO SCALE

HARVEST OAKS BAPTIST CHURCH

1403 BETHANY DRIVE - ALLEN, TEXAS 75002  
PASTOR JAY GIBSON P. O. BOX 187, ALLEN, TX 75013 - 972-390-0949

Church Building Ministries

FACILITY AND SITE PLANNING  
4010 Lindewood Lane Garland, Texas 75042

972-272-7727 fax : 972-444-6494  
Email: cbm1@verizon.net

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE ZONING REGULATIONS AND ZONING MAP, AS PREVIOUSLY AMENDED, BY GRANTING SPECIFIC USE PERMIT NO. 106 FOR A CHURCH FOR PROPERTY ZONED “R-5” RESIDENTIAL, BEING 3.616± ACRES IN THE SIMON BURNS SURVEY, ABSTRACT NO. 92, CITY OF ALLEN, COLLIN COUNTY, TEXAS, AND FURTHER DESCRIBED IN EXHIBIT “A” ATTACHED; PROVIDING FOR A SITE PLAN ATTACHED AS EXHIBIT “B”; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Commission and the governing body of the City of Allen, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that the Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, as previously amended, should be amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1.** The Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Collin County, Texas, be amended by granting Specific Use Permit No. 106 for property zoned “R-5” Residential, consisting of 3.616 ± acres in the Simon Burns Survey, Abstract No. 92, City of Allen, Collin County, Texas, and being further described in Exhibit “A” attached hereto.

**SECTION 2.** The property shall be used only in the manner and for the purposes provided for in the Allen Land Development Code of the City of Allen, Texas, subject to the following special condition:

1. The Specific Use Permit shall be for a Church.
2. The property shall be developed and used only in accordance with the Site Plan, attached hereto as Exhibit “B,” and made part hereof for all purposes.

**SECTION 3.** All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Allen Land Development Code, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code, as amended hereby, which shall remain in full force and effect.



**SECTION 5.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6.** Any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

**SECTION 7.** This ordinance shall take effect immediately from and after its passage and publication of the caption in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9<sup>TH</sup> DAY OF DECEMBER, 2008.**

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Peter G. Smith, CITY ATTORNEY**

\_\_\_\_\_  
**Shelley B. George, TRMC, CITY SECRETARY**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

BEING a tract of land situated in the Simon Burns Survey, Abstract No. 92, and being the same tract of land described in a deed to the Walter L. Mason Family Irrevocable Trust, as recorded in CC#95-0090546, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod with a red plastic cap stamped "W.A.I." set in the northerly right of way line of Bethany Drive (110 foot ROW), said point also being the most southeasterly corner of Lot 10, Block L of Parkside Addition, an addition to the City of Allen as recorded in Cabinet J, Pate 769;

THENCE North 00 deg 39 min 36 sec East a distance of 502.67 feet to a ½ inch iron rod found, said point being in the easterly line of a 16 foot alley, said point being the beginning of a non-tangent curve to the right having a radius of 40.00 feet and a chord bearing North 45 deg 39 min 36 sec East a distance of 56.57 feet;

CONTINUING along said non-tangent curve to the right through a central angle of 90 deg 00 min 00 sec and an arc length of 62.83 to a ½ inch iron rod found for corner in the southerly line of a 16 foot alley;

THENCE along the southerly line of said 16 foot alley, South 89 deg 20 min 24 sec East a distance of 211.54 feet to a ½ inch iron rod found for corner, said point being the beginning of a non-tangent curve to the right having a radius of 40.00 feet and a chord bearing South 44 deg 20 min 24 sec East a distance of 56.57 feet;

CONTINUING along said non-tangent curve to the right through a central angle of 90 deg 00 min 00 sec for an arc length of 62.83 feet to a ½ inch iron rod found for corner in the westerly right of way line of

THENCE along the westerly right of way line of a 16 foot alley South 00 deg 39 min 36 sec West a distance of 502.59 feet to a ½ inch iron rod found for corner in the northerly right of way line of said Bethany Drive;

THENCE North 89 deg 21 min 23 sec West a distance of 291.56 feet to the POINT OF BEGINNING

CONTAINING within these metes and bounds 3.616 Acres or 157,511 Square Feet of land, more or less.





**PLANNING AND ZONING  
COMMISSION**  

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**Regular Meeting  
November 18, 2008**

**ATTENDANCE:**

**Commissioners Present:**

Robert Wendland  
Jeff Cocking  
Douglas Dreggors  
Alan Grimes  
Marcelle Jones  
Shirley Mangrum  
James Rushing

**Commissioners Absent:**

None

**City Staff Present:**

Ogden "Bo" Bass, Director of Planning & Development  
Lee Battle, Assistant Director of Planning & Development  
Chris Flanigan, Assistant Director of Engineering  
Kevin Laughlin, Attorney  
Tiffany McLeod, Planner

**Call to Order and Announce a Quorum is Present:**

With a quorum of the Commissioners present, Chairman Wendland called the meeting to order at 7:00 p.m. in the City Hall Council Chambers at Allen City Hall, 305 Century Parkway.

**Director's Report from 11/11/08 Council Meeting**

Director's Report is attached.

**Consent Agenda**

1. Approve minutes of the November 4, 2008 meeting.
2. Final Plat – Consider a Final Plat for Lot 13, Block B, Starcreek Commercial for Strikz. The property is 3.868± acres located east of the northeast corner of Ridgeview Drive and Watters Road.

**Motion:** Upon a motion by Commissioner Grimes, and a second by Commissioner Rushing, the Commission voted 7 IN FAVOR, and 0 OPPOSED, to approve the Consent Agenda. The Motion Carried.

### **Regular Agenda**

**Agenda Item #3:** Public Hearing/Replat – Conduct a Public Hearing and consider a Replat for Lot 2 & Lot 3, Block B, Exxon Allen Heights Addition, being a Replat of Lot 2, Block B, Exxon Allen Heights Addition. The property is 3.7582± acres located east of the southeast corner of Main Street and Allen Heights Drive.

Tiffany McLeod, Planner, presented the item to the Commission. The purpose of the replat is to divide existing Lot 2 into two lots. A shopping center will be built in one of the lots. The replat has been reviewed by the Technical Review Committee (TRC). Staff recommends approval of this item.

Chairman Wendland opened the Public Hearing.

With no one wishing to speak, Chairman Wendland closed the Public Hearing.

**Motion:** Upon a motion by Commissioner Grimes, and a second by Commissioner Rushing, the Commission voted 7 IN FAVOR, 0 OPPOSED, to approve Item 3. The motion carried.

**Agenda Item #4:** Public Hearing – Conduct a Public Hearing and consider a request for SUP Specific Use Permit No. 106 for Harvest Oaks Baptist Church, being 3.616± acres located in the Simons Burns Survey, Abstract No. 92, Tract 5; located at 1403 Bethany Drive.

Ogden “Bo” Bass, Director of Planning, presented the item to the Commission. The church is requesting a specific use permit to develop this property. The Allen Land Development Code (ALDC) requires that a Specific Use Permit (SUP) be approved prior to the development of a church, temple or rectory on land zoned R-5 Residential. While the site may be developed over time in phases, the applicant is requesting SUP approval for the entire 3.16 acre property. As such, the potential impact of the development of the entire site on surrounding land uses must be considered.

The first phase will be to move into the existing building and complete improvements necessary to operate the church including a parking lot and landscaping. The second phase is the full development of the lots, which includes removal of existing buildings and construction of multiple new buildings.

While the proposed concept site development plan meets ALDC parking standards (1 parking space per 3 fixed seats), staff has sufficient cause for concern to recommend denial of the



SUP. The site is enclosed on its West, North and East sides by existing single-family residential lots. It is bound to the South by Bethany Drive. The applicant has indicated a quantity of parking that exactly meets the ALDC parking standard. Staff has significant concerns that should additional parking be required in the future, no area remains on the site on which to construct such additional parking. And, furthermore, that should additional parking spaces be needed, and realizing that no parking will be allowed on Bethany Drive, church attendees would have little alternative other than to park within the immediately adjacent single-family neighborhood.

Staff recommends denial of this item.

Doug Mousel, 5400 Dallas Parkway, Frisco, applicant representative, spoke in favor of the request. He invited the members of the church to stand. He continued by presenting the church's request to the Commission. The property will be screened per staff's recommendations and a screening plan is included. The concept plan provides the required number of parking spaces per the ALDC. City staff has stated that additional parking is required. This request for additional parking is not consistent with the ALDC parking standards, parking previously required of other churches and parking requirements of other surrounding municipalities.

The church met with area residents to discuss the project and their concerns were addressed. There is federal legislation in place that applies to the regulation of religious uses. Mr. Mousel requested that the Commission consider this legislation when deciding on a recommendation. The church is requesting approval of this SUP request.

Jay Gibson, 741 Cheyenne Drive, Allen, applicant, Senior Pastor, spoke in favor of the request. He stated that the church vision is to be a community church. They do not plan to grow past the worship center maximum. Once the church grows to around 150 to 200 people, they will move some families to a new site. Another option is to go to multiple services to remedy the parking issue.

Chairman Wendland opened the Public Hearing.

Larry Frasure, 754 Big Bend Drive, Allen, spoke in opposition of the request. He stated that he is concerned with safety. He questioned who would maintain the property and if code enforcement would take care of overgrown/dead vegetation. Parking is another issue. For certain events, there will be "overparking" problems.

Orene Beck, 1439 Berkley Road, Allen, spoke in favor of the request. She is concerned with the location of the parking lot, however, would rather have church on property than another type of development.

Chris Farr, 1436 Berkley Road, Allen, spoke in opposition of the request. Mr. Farr invited the residents, adjacent to the property, to stand. He stated he lives in the neighborhood and is happy that the church is going on the site. However, he is concerned with noise, lighting and the possibility for future upward expansion. In addition, he is concerned with the resale of his home if the church develops behind his property.

Dan Zaccara, 739 Cheyenne Drive, Allen, spoke in favor of the request. He believes in the church's vision and in the applicant. In addition he believes this is a positive alternative for this property.

Patrick Kafor, 737 Cheyenne Drive, Allen, spoke in opposition of the request. He believes the church would potentially bring a negative impact to the neighborhood. He is concerned with parking associated with church growth. He stated that the possibility of relocating was mentioned; however there will still be a wait period. He is concerned with noise, parking, potential construction issues and safety.

Jerry Gibson, 4409 Sycamore Lane, Parker, Harvest Oaks Baptist Church trustee, spoke in favor of the request. He stated he served on the Planning and Zoning Commission for North Texas cities in the past. For concerns about building height, an SUP would be required for the construction of a taller building. The original owners of the community feel the project is the most suitable use of the property. He believes the church has met all of the City's requirements.

Marci Farr, 1436 Berkley Road, Allen, spoke in opposition of the request. She stated that out of fourteen (14) homes, eleven (11) were against this request due to the issues discussed (petition attached). She believes the space is an odd shape and is concerned with privacy, safety and future uses of property.

Ryan Schefke, 742 Big Bend Drive, Allen, spoke in opposition of the request. He is concerned with the amount of church versus the size of the property. He believes the huge parking lot will be an eyesore. He is also concerned with noise and traffic.

Matt Mumm, 1701 Summerfield Drive, Allen, spoke in opposition of the request. He stated he appreciates the fact that every property in Allen is not built out. He hopes to preserve the property as what it is today. He is concerned with parking and overflow and believes the church will cause significant traffic disruption. He does not believe the church is an appropriate use for the property.

Lordene Brown, 1428 Berkley Road, Allen, spoke in opposition of the request. She is concerned with the environmental impact of cars being parked on the site.

The following people submitted a written statement in support of the request:

Richard Bydlon, 741 Big Bend Drive, Allen, Texas

Ashlee Gibson, 741 Cheyenne Drive, Allen, Texas

The following people submitted a written statement in opposition of the request:

Bob Coopza, 1409 Blair Court, Allen, Texas

Michael and Jenny Margolis, 1434 Berkley Road, Allen, Texas

Roger and Lori Smith, 1432 Berkley Road, Allen, Texas

James and Stephanie Clark, 731 Cheyenne Drive, Allen, Texas

Jerry Beck, 1439 Berkley Road, Allen, Texas

Jade Schefke, 742 Big Bend Drive, Allen, Texas

Ryan and Valerie Poehler, 750 Big Bend Drive, Allen, Texas

Jeff and Tamara Gillyn, 749 Cheyenne Drive, Allen, Texas

With no one else wishing to speak, Chairman Wendland closed the Public Hearing.

Commissioner Grimes stated he knows the neighborhood. Even though it meets the letter of the law, he does not believe the church is a good fit. The proposed church is too heavy of a use for the property. Every other church shown as an example has room to grow.

Commissioner Rushing stated the land is zoned R-5 Residential. He believes this is not a place for a church. Churches are in use seven (7) days a week.

Commissioner Jones is concerned with special events. She does not believe the church is an appropriate use. The site will not be sufficiently parked for special events. She stated that the issue is intensity.

Commissioner Cocking questioned how to handle a piece of property that has been "left over". He stated that the applicant has followed all requests. He would support the request if limitations were placed on the SUP such as limiting multi-stories, light barriers and noise ordinances.

Commissioner Mangrum stated she sees growth in the church's future. She has an issue with growth, parking and activity on the site. She suggested that if the church wanted to start a daycare program there would not be enough land to build a playground.

Commissioner Dreggors stated the space on the site is limited.

Chairman Wendland commended the Commissioners for their eloquence. He continued by saying he looked at the site and believes the use is too intense. Traffic and parking are issues. He would not want to impose conditions on operations of a church. He could have supported a request for Phase 1.

**Motion: Upon a motion by Commissioner Grimes, and a second by Commissioner Rushing, the Commission voted 7 IN FAVOR, 0 OPPOSED, to deny Item 4. The motion carried.**

### **Adjournment**

**Motion: Upon a motion by Commissioner Dreggors and a second by Commissioner Rushing the Commission voted 7 IN FAVOR and 0 OPPOSED to adjourn the Planning and Zoning Commission meeting at 8:15 p.m.**

These minutes approved this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

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Robert Wendland, Chairman

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Tiffany McLeod, Planner

### **Director's Report from 11/11/08 Council Meeting**

Ogden "Bo" Bass, Director of Planning & Development, reported to the Commission. The City Council approved the zoning amendment for the Appleseed Project. All of the conditions and recommendations from the Planning and Zoning Commission were accepted. In addition, the Council included a requirement for the submission of a sworn affidavit (annually or as requested) certifying compliance with the ordinance.

<b>CITY COUNCIL AGENDA COMMUNICATION</b>
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**AGENDA DATE:** Tuesday, December 9, 2008

**SUBJECT:** Drainage Fund Fee Adjustments

**STAFF RESOURCE:** Steve Massey, Director of Community Services  
John Baumgartner, Director of Engineering  
Kevin Hammeke, Finance Director  
Jimmy Knipp, Assistant Director of Community Services

**PREVIOUS COUNCIL ACTION:** Ordinance No. 1161-3-93 adopted on March 4, 1993, and Ordinance No. 121-9-93 adopted on September 16, 1993, created the Municipal Utility Drainage System and established drainage charges

### **BACKGROUND**

The City's Municipal Utility Drainage System ordinance and drainage charges have remained unchanged since the system was established in 1993.

The Drainage Utility Fund revenues reflect a decreasing balance because developer paid inspection fees for new construction have dropped over the last several years. The decrease in rate of new construction is not expected to reverse, so without a rate increase the fund's revenues are certain to continue to decline. Therefore, in order to maintain fund integrity and maintain a fund reserve that provides the flexibility to undertake emergency storm damage repairs, annually scheduled drainage system maintenance, periodic drainage system projects, and fund the increasing requirements of the Texas Pollution Discharge Elimination Program (TPDES), Staff proposes drainage fee increases for FY 08-09.

Research into single family residential municipal drainage fees in our area was conducted. The comparison reflected a monthly fee range from \$1.00 to \$12.20, with an average of \$4.21 per month, for properties with residential density of one lot per acre. The fee range for more dense single family residential developments ranged from \$1.00 to \$6.98, with an average of \$3.19 per month. Allen's current single family residential drainage fee is \$2.75 per month. Therefore, our current single family residential drainage fee per month is less than the averages currently charged per month for the area.

Research into commercial municipal drainage fees in our area was also conducted. For commercial properties with 1.5 acres, the fees ranged from \$10.00 to \$61.00 per month, with an average of \$39. Allen's current base drainage fee for 1.5 acres of property is \$28.08 per

month. For commercial properties with 12 acres, the fees ranged from \$50.00 to \$483.00 per month, with an average of \$255. Allen's current base drainage fee for 12 acres of property is \$224.64; however, the fee is currently capped at \$50.00 regardless of the acreage of the commercial property. Therefore, our current commercial drainage fee per month is considerably less than the averages currently charged per month for the area. This dramatic difference is because Allen caps monthly commercial drainage fees at \$50.00 per month.

The following is how Staff's drainage fee increase proposal would affect the residential rate category.

#### Residential

- 1 Single family residential, garden home, townhome, and mobile home charges are proposed to increase the fee from \$2.75 to \$3.00 per month per home or unit, a 9.1 percent rate increase. New charge recommended being effective January 1, 2009. This recommended rate is still under the average charged in our area.

The remaining four rate categories are Multi-Family; Commercial and Industrial; Churches; and Day Cares. These categories can have their drainage fees calculated based either upon drainage "base charge" or "alternate charge." The City establishes the base charge in dollars per acre based on the total acreage of the property, regardless of percentage of impervious versus pervious surface (base charge in dollars charged per acre times the number of total acres). The property owner may instead request that the property be charged using the alternate charge that bases drainage fees on only the impervious surfaces (alternate charge in dollars per acre charged times the number of impervious acres). The property owner is required to establish the impervious acres based on calculations made by either a professional engineer or a land surveyor. The alternate charge would then only be applied to the impervious area of the property that in many cases results in a considerably lower drainage fee than when the charges are based on the entire area of the property.

The following is how Staff's drainage fee increase proposal would affect the remaining rate categories:

#### Multi-Family

- 1 Increase the base charges for multi-family from \$18.72 to \$20.42 per acre and the alternate charge from \$20.80 to \$22.69 per impervious acre. This 9.1 percent rate increase parallels the increase recommended for single family residential properties. Since multi-family is already charged for all their acreage, the rate increase to all multi-family properties will be 9.1 percent. New charge recommended being effective January 1, 2009.

#### Commercial and Industrial

- 1 Increase the base charges for these property classes from \$18.72 to \$20.42 per acre and the alternate charge from \$20.80 to \$22.69 per impervious acre. Increase the current minimum charge of \$2.75 per property to \$3.00 per property. These 9.1 percent rate increases parallel the increase recommended for single family residential properties. Lift the current \$50.00 maximum drainage fee charged per month per property at an increasing rate of \$50.00 per year beginning January 1, 2009; and thereafter increasing

each year on January 1. New commercial properties will be charged at the prevailing per acre rate and maximum drainage fee in effect at the time of establishment of their water utility account. This new fee basis, when totally uncapped, brings Allen's commercial fees in line with the monthly drainage fee averages charged in the area. New charges recommended being effective March 1, 2009.

### Churches

- 1 Increase the base charges for these property classes from \$14.56 to \$15.88 per acre and the alternate charge from \$20.80 to \$22.69 per impervious acre. Increase the current minimum charge of \$2.75 per property to \$3.00 per property. These 9.1 percent rate increases parallel the increase recommended for single family residential properties. Due to the impact of uncapping drainage fees on nonprofit church properties, recommend reduction of the drainage fees by fifty percent. This provision is covered in Section 14-74(b) Exemptions of the revised Municipal Drainage Utility System Ordinance (attached). Lift the current \$50.00 maximum drainage fee charged per month per property at an increasing rate of \$50.00 per year beginning January 1, 2009; and thereafter increasing each year on January 1. New Church properties will be charged at the prevailing per acre rate and maximum drainage fee in effect at the time of establishment of their water utility account. New charges recommended being effective March 1, 2009.

### Day Care Centers

- 1 Increase the base charges for these property classes from \$14.56 to \$15.88 per acre and the alternate charge from \$20.80 to \$22.69 per impervious acre. Increase the current minimum charge of \$2.75 per property to \$3.00 per property. These 9.1 percent rate increases parallel the increase recommended for single family residential properties. Lift the current \$50.00 maximum drainage fee charged per month per property at an increasing rate of \$50.00 per year beginning January 1, 2009; and thereafter increasing each year on January 1. New Day Care properties will be charged at the prevailing per acre rate and maximum drainage fee in effect at the time of establishment of their water utility account. New charges recommended being effective March 1, 2009.

### For the Purpose of Drainage Fee Calculations:

1. Fees will be assigned using the Base Zoning District of the underlying property, including the case of Planned Developments. However, fees for Churches and Day Cares are based on these permitted uses existing within a Base Zoning District.
2. Church properties are considered properties that are both owned by a church or religious organization and have a tax exemption for their property established with the Collin County Appraisal District.
3. The City may consider each replat of large properties for development purposes as creating a separate property.
4. On large single platted properties with multiple tenants or separate building owners, the City may apportion common area space such as parking and traffic circulation between the tenants or separate building owners for the purpose of apportioning drainage fees for the area as a whole. Maximum drainage fee provisions apply to each apportioned property.
5. Assessed fees will appear on the City utility bills, whether residential, commercial

domestic, or irrigation-only utility accounts. Staff will provide commercial, industrial, churches, and day care customers at least 30 days notice before their initial rate increase caused by raising the maximum drainage fee. This will provide customers ample time to develop and present to the City their impermeable analysis that can be used to set the drainage fee using the “alternate” method.

### **STAFF RECOMMENDATION**

Staff recommends that City Council adopt an ordinance that amends the provisions of the Municipal Utility Drainage System and adopt a rate setting resolution.

### **BUDGETARY IMPACT**

The proposed drainage fee adjustments will generate about \$70,000 in additional revenue in FY09 for the drainage fund. This additional income was already programmed into the FY 08-09 Drainage Fund budget.

### **MOTION**

*I make a motion to adopt Ordinance No. \_\_\_\_\_ amending provisions of the Municipal Drainage Utility System and Resolution No. \_\_\_\_\_ that sets new drainage fees.*

### **ATTACHMENT**

Ordinance  
Resolution



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, RENAMING AND AMENDING IN ITS ENTIRETY CHAPTER 14, "UTILITIES", ARTICLE III, "MUNICIPAL DRAINAGE UTILITY SYSTEM," SECTION 14-73 "DRAINAGE CHARGES" OF THE CODE OF ORDINANCES; AMENDING IN ITS ENTIRETY CHAPTER 14, "UTILITIES", ARTICLE III, "MUNICIPAL DRAINAGE UTILITY SYSTEM," SECTION 14-74 "EXEMPTIONS" OF THE CODE OF ORDINANCES; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1.** The Code of Ordinances of the City of Allen, Texas, is hereby amended by renaming and amending Chapter 14, Article III, "Municipal Drainage Utility System" Section 14-73, to read in its entirety as follows:

Sec. 14-73. Procedures for determining charges.

(a) For purposes of determining the applicable rate of drainage charges to assess against a property within the Municipal Drainage Utility System, properties shall be classified as follows:

(1) *Single Family Residential Property* shall mean a property developed with:

- a. a single attached or detached dwelling that would be permissible as a use in a Single-Family Residential District (R-1, R-1.5, R-2, R-3, R-4, R-5, R-6, or R-7); or
- b. one or more attached or detached dwellings that would be permissible as a use in a Townhome Residential District (TH), Duplex Residential District (2-F); or Mobile Home Park District (MH); or
- c. a dwelling located on property developed pursuant to a site plan or Planned Development District that allows any of the uses, described in a., or b., above.

(2) *Multi-Family Residential Property* shall mean property developed with attached multi-family dwellings that would be permissible as a use in a Multi-Family Residential District (MF-12 or MF-18) or that is located on property developed pursuant to a site plan or Planned Development District that allows such use.

(3) *Commercial/Industrial Property* shall mean a property developed with a use that is not classified as a Single Family Residential Property, Multi-Family Residential Property, Day Care Facility or Religious Facility;

(4) *Day Care Facility* shall have the meaning given to that phrase in Appendix A of the City of Allen Land Development Code, as amended.

- (5) *Religious Facility* shall mean property owned by a religious organization that is exempt from taxation pursuant to Texas Tax Code §11.20 as indicated on the property tax rolls of the Collin Central Appraisal District.
- (b) On large single platted properties with multiple tenants or separate building owners, the City may apportion common area space such as parking and traffic circulation between the tenants or separate building owners for the purpose of apportioning drainage fees for the area as a whole. In such event, any remaining maximum drainage fee provisions apply to each apportioned property, and not to the property as a whole.
- (c) Assessed fees will appear on City utility bills, whether residential, commercial domestic, or irrigation-only utility accounts.
- (d) Staff may consider each replat of large properties for development purposes as creating a separate property for application of drainage fees.
- (e) For purposes of this section, the words and phrases used herein shall have the same meaning as those set forth in the City of Allen Land Development Code, as amended, unless the context clearly indicates otherwise.

**SECTION 2.** The Code of Ordinances of the City of Allen, Texas, is hereby amended by amending Chapter 14, Article III, "Municipal Drainage Utility System" Section 14-74 to read in its entirety as follows:

Sec. 14-74. Exemptions from charges.

- (a) The following property shall be fully exempt from the payment of drainage charges pursuant to this Article III:
- (1) Property owned by the State of Texas, Collin County, City of Allen, or any independent school district created or existing pursuant to Chapter 11 of the Texas Education Code;
  - (2) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;
  - (3) Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the City for maintenance; and
  - (4) A subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the City.
- (b) Religious Facilities shall be exempt from the payment of one-half of the amount of the drainage charges set forth in a schedule of charges adopted pursuant to Sec. 14-72(c).

**SECTION 3.** All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 5.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6.** Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Hundred Dollars (\$200) for each offense.

**SECTION 7.** This ordinance shall take effect immediately from and after its passage and publication in accordance with its provisions of the Charter of the City of Allen, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9<sup>TH</sup> DAY OF DECEMBER, 2008.**

**APPROVED:**

\_\_\_\_\_  
**Stephen Terrell, MAYOR**

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
**Peter G. Smith, CITY ATTORNEY**  
PGS:tc 32285

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**Shelley B. George, CITY SECRETARY**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING A SCHEDULE OF CHARGES FOR DRAINAGE SERVICE FOR THE MUNICIPAL DRAINAGE UTILITY SYSTEM; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Chapter 14, Article III, of the Code of Ordinances of the City of Allen, Texas, as amended, the City of Allen has created the Municipal Drainage Utility System (“System”) in accordance with V.T.C.A., Local Government Code §402.041, et.seq., known as the Municipal Drainage Utility Systems Act (“the Act”); and,

**WHEREAS**, in accordance with Section 402.045(d) of the Act and Section 14-72 of the Code of Ordinances of the City of Allen, Texas, the City Council of the City of Allen, has established a schedule of drainage charges to be levied on real property that will benefit from and use the System except those properties otherwise exempt from such under the Act or as otherwise set forth in Section 14-74 of the Code of Ordinances of the City of Allen, Texas; and,

**WHEREAS**, the City Council of the City of Allen, Texas, finds that proper notice of the public hearing held this date was made in accordance Section 402.045(c) and (d) of the Act and that a public hearing with respect to the subject matter contained in the Resolution has been held in accordance with the Act prior to the passage of this Resolution; and,

**WHEREAS**, as the result of the increased cost of repairing, expanding, operating, and maintaining the System and the need to provide an even greater equity of drainage charges for users of the System, the City Council of the City of Allen, Texas, finds it to be in the public interest to amend the schedule of drainage charges for the System in order to provide adequate revenue to pay the costs of operating the System.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1.** The property classes set forth in this Resolution shall be as defined in Section 14-73 of the Code of Ordinances of the City of Allen, Texas.

**SECTION 2.** Every owner of non-exempt property within the Municipal Drainage Utility System shall pay each and every month a Base Drainage Charge in an amount equal to the greater of:

- (a) the Base Rate for the respective property class set forth in Section 5, below, multiplied by the total acreage of the property being assessed; or
- (b) \$3.00.

**SECTION 3.** In lieu of the Base Drainage Charge and upon the determination of the impervious acreage within the boundaries of the property to be assessed in accordance with Section 4, below, owners of non-exempt property classified as anything other than Single Family Residential may pay each and every month an Alternate Drainage Charge in an amount equal to the greater of:

- (a) the Alternate Rate for the respective property class set forth in Section 5, below, multiplied by the impervious acreage of the property being assessed; or
- (b) \$3.00.

**SECTION 4.** The impervious acreage of a property to be assessed shall be determined by the City Engineer upon review of a survey of the property prepared and sealed by a Texas registered professional engineer or a Texas registered professional land surveyor which survey shows the location of the impervious area of the property and calculates the acreage of the impervious area.

**SECTION 5.** The Base Rates and Alternate Rates for each property classification shall be as follows:

Property Classification	Base Rate	Alternate Rate
Single Family Residential Property	\$3.00 per dwelling located on the property	n/a
Multi-Family Residential Property	\$20.42	\$22.69
Commercial/Industrial Property	\$20.42	\$22.69
Day Care Facility	\$15.88	\$22.69
Religious Facility	\$15.88	\$22.69

**SECTION 6.** Notwithstanding the amount of Base Drainage Charge or Alternate Drainage Charge due pursuant to Section 3 or Section 4, above, the maximum monthly Base Drainage Charge or Alternate Drainage Charge for properties classified as Commercial/Industrial Property, Day Care Facility, or Religious Facility shall be \$100.00 per month beginning January 1, 2009, which maximum monthly amount shall increase by an additional \$50.00 on January 1<sup>st</sup> of each year thereafter until January 1, 2018. Beginning January 1, 2019, and each month thereafter, the maximum Base Drainage Charge or Alternate Drainage Charge due each month shall be the amounts set forth in Section 3 or Section 4, above, whichever is applicable.

**SECTION 7.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Resolution, which shall remain in full force and effect.

**SECTION 8.** All prior Resolutions of the City of Allen, Collin County, Texas, in conflict with the provisions of this Resolution, and the same are hereby repealed; provided, however, that all other provisions of said Resolutions not in conflict with the provisions of this Resolution shall remain in full force and effect.

**SECTION 9.** This Resolution shall be effective on January 1, 2009, for properties classified as Single Family Residential and Multi-Family Residential, and on March 1, 2009, for properties classified as Commercial/Industrial, Day Care Facility, and Religious Facility, and it is accordingly so resolved.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 9TH DAY OF DECEMBER, 2008.**

**APPROVED:**

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**Stephen Terrell, MAYOR**

**ATTEST:**

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**Shelley B. George, TRMC, CITY SECRETARY**  
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