

**AGENDA
CITY OF ALLEN
CITY COUNCIL WORKSHOP MEETING
FEBRUARY 10, 2009 – 6:00 P.M.
COUNCIL CONFERENCE ROOM
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Items of Interest.

1. Update Regarding the Capital Improvement Program —
John Baumgartner, Director of Engineering
2. Committee Updates from City Council Liaisons —
3. 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, February 6, 2009, at 5:00 p.m.

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.

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:	Tuesday, February 10, 2009
SUBJECT:	Status Report on the Capital Improvement Program
STAFF RESOURCE:	John Baumgartner, Director of Engineering
PREVIOUS COUNCIL ACTION:	None
ACTION PROPOSED:	Information Item

BACKGROUND

Staff will provide a status report on the Capital Improvement Program, including projects in the FY 2007 G.O. Bond Program, the Allen Event Center, Collin County Bond Program, the Economic Stimulus Program, TxDOT (Texas Department of Transportation) projects, NTTA (North Texas Tollway Association) projects, and the NTMWD (North Texas Municipal Water District) projects. Projects will include streets, water, sewer, and facilities.

**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
FEBRUARY 10, 2009 – 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 Blue Star Flags to the Families of Allen Service Personnel Currently Deployed by the U.S. Armed Forces.
3. Presentation of a Proclamation by the Office of the Mayor:
 - Presentation to Ms. Kathy Gase, BPA Advisor, and Members of the Allen High School Chapter of Business Professionals of America, Proclaiming the Week of February 8-14, 2009, as "*Business Professionals of America Week*."
4. Presentation by Jane Bennett, Board Member of the Friends of the Library, Regarding the 2009 ALLEN Reads Program.

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.]*

5. Approve Minutes of the January 27, 2009, Regular Meeting.

6. Adopt an Ordinance Approving and Enacting Supplement No. 5 to the Code of Ordinances.
7. Adopt a Resolution Supporting the Legislative Agenda Recommended by the Board of Directors of the Cities Aggregation Power Project, Inc. (CAPP).
8. Authorize the City Manager to Execute a Real Estate Contract with the City of Plano for the Purchase of Right-of-Way for Chaparral Road in the Amount of \$105,687.50 plus Customary Closing Costs.
9. Award Bid and Authorize the City Manager to Execute a Contract with Mario Sinacola and Sons Excavating, Inc. in the Amount of \$5,311,533.90 for Construction of Ridgeview Drive from Custer Road to Alma Drive and Amend the Project Budget to \$7,900,000.
10. Award Bid and Authorize the City Manager to Execute a Contract with Jim Bowman Construction, LP in the Amount of \$339,486 for Various Street and Alley Repairs and Establish a Project Budget in the Amount of \$429,938.
11. Award Bid and Authorize the City Manager to Execute a Contract with W. R. Hodgson Company LP in the Amount of \$273,208.90 for Construction of the Custer Road 24-inch Waterline and Establish a Project Budget of \$400,000.

Regular Agenda.

12. CONTINUED PUBLIC HEARING: Conduct a Public Hearing and Adopt an Ordinance Amending the Allen Land Development Code by Amending the Allen Land Development Code Article VII, Section 7.04.1 Parking Requirements for Church, Temple, or Rectory, and Section 7.07 Fences and Walls, Subsection 4 – Screening Walls or Visual Barriers Required.

Other Business.

13. Calendar.
 - March 7 – Arbor Day/Twin Creeks Park/9:00 a.m.
 - March 25-26 – Partners in Mobility
14. Items of Interest. *[Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]*
 - February 21 – Special Olympics

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. Personnel Pursuant to Section 551.074 of the Texas Government Code –

Annual Performance Review of the City Manager

16. 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, February 6, 2009, at 5:00 p.m.

Shelley B. George, City Secretary

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CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: Presentation of Blue Star Flags to the Families of Allen Service Personnel Currently Deployed by the U.S.

STAFF RESOURCE: Shelley B. George, City Secretary

ACTION PROPOSED: Presentation of Blue Star Flags

BACKGROUND

The City of Allen wishes to honor our Allen area service personnel currently deployed by the U.S. Armed Forces by presenting a Blue Star Flag to their families. The Blue Star Flag, whose history dates back to World War I, is displayed in the family's window when a loved one is currently serving in the Armed Forces.

Mayor Terrell and the Allen City Councilmembers will present a Blue Star Flag to the following families:

Ms. Edelina Ortega, mother of E-5 Steve B. Virrueta of the United States Navy. E-5 Virrueta was deployed in January 2009 to Iraq. He joined the Navy in 2004. Steve played football for AHS Eagles and graduated from AHS in 2004.

Ms. Sherry Parker, mother of PV2 Joshua Parker of the United States Army. PV2 Parker was deployed in January 2009 to Iraq. He joined the Army in 2007.

STAFF RECOMMENDATION

Staff recommends the Mayor and Allen City Council honor these servicemen by presenting a Blue Star Flag to their families.

*Office of the Mayor
City of Allen*

Proclamation

WHEREAS, Business Professionals of America (BPA) is recognized by the United States Department of Education as a national career and technical student organization; and,

WHEREAS, BPA helps students to develop their skills in leadership, business, information technology, and office occupations and encourages interest in the American business system; and,

WHEREAS, the Allen High School chapter of Business Professionals of America encourages and promotes the business education and training of students in Allen to prepare them for productive, satisfying careers.

NOW, THEREFORE, I, STEPHEN TERRELL, MAYOR OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, do hereby proclaim February 8-14, 2009, as:

"BUSINESS PROFESSIONALS OF AMERICA WEEK"

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.

Stephen Terrell, MAYOR

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: 2009 ALLEN Reads Program

STAFF RESOURCE: Jeff Timbs, Library Director

PREVIOUS COUNCIL ACTION: None

ACTION PROPOSED: Residents are encouraged to join book discussion groups and participate in the numerous special events at the Allen Public Library

BACKGROUND

ALLEN Reads is sponsored by the Friends of the Allen Public Library. In its ongoing effort to promote families and all generations reading and talking together, the 2009 ALLEN Reads Program will focus on community gardening. Under the leadership of the Friends of the Allen Public Library, the companion books chosen this year are *Seedfolks* by Paul Fleischman; *The Gardener* by Sarah Stewart and illustrated by David Small; and *Wanda's Roses* by Pat Brisson.

In April, Paul Fleischman, Sarah Stewart and David Small will be making rare public appearances at the Allen Public Library.

BUDGETARY IMPACT

ALLEN Reads is funded by grants, donations and Friends of the Allen Public Library.

STAFF RECOMMENDATION

Choose one of the books, read it and discuss with friends and family.

ALLEN CITY COUNCIL

REGULAR MEETING

JANUARY 27, 2009

Present:

Stephen Terrell, Mayor

Councilmembers:

Debbie Stout, Mayor Pro Tem
Ross Obermeyer
Joey Herald
Robin L. Sedlacek
Gary L. Caplinger
Jeff McGregor

City Staff:

Peter H. Vargas, City Manager
Shelli Siemer, Assistant City Manager
Shelley B. George, City Secretary
Pete Smith, City Attorney

Workshop Session

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, January 27, 2009, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas:

- Briefing Regarding Creation of an Employee Health and Wellness Clinic
- Briefing Regarding Public Art Sculpture for Fire Station #5
- 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 7:04 p.m. on Tuesday, January 27, 2009.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:08 p.m. on Tuesday, January 27, 2009, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. Citizens' Comments.

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2. **Presentation by Christopher DeBord, Allen Firefighter, to Mayor Stephen Terrell and Fire Chief Bill Hawley of a United States Flag flown during Mr. DeBord's Military Deployment in 2007 in Iraq.**

Consent Agenda

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Sedlacek, the Council voted seven (7) for and none (0) opposed to adopt the items on the Consent Agenda as follows:

3. **Approve Minutes of the January 13, 2009, Regular Meeting.**
4. **Approve Minutes of the January 17, 2009, Special Called Workshop for Strategic Planning.**
5. **Adopt a Resolution Suspending the Effective Date of CoServ Gas Ltd.'s Statement of Intent to Increase Gas Rates.**

RESOLUTION NO. 2799-1-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, SUSPENDING THE EFFECTIVE DATE OF COSERV GAS LTD.'S REQUESTED RATE CHANGES TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE COSERV SYSTEM TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; AUTHORIZING INTERVENTION IN THE PROCEEDING AT THE RAILROAD COMMISSION; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY.

6. **Adopt a Resolution Authorizing the City's Bond Counsel, the City's Financial Advisor, City Manager and Staff to proceed with Arrangements for the Sale of Water and Sewer System Revenue Refunding Bonds, Series 2009.**

RESOLUTION NO. 2800-1-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING A DATE FOR THE SALE OF REVENUE REFUNDING BONDS; AUTHORIZING APPROPRIATE PERSONNEL AND CONSULTANTS TO PROCEED WITH ARRANGEMENTS AND THE PREPARATION OF DOCUMENTS FOR THE ISSUANCE AND SALE OF SUCH BONDS AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.

7. **Authorize the City Manager to Execute a Contract with Soper Fabric Products, Ltd. in the Amount of \$64,300 to Repair and Replace the Tensile Fabric for the Sails at Celebration Park.**
8. **Authorize the City Manager to Execute a Ground Lease Agreement Between the City of Allen and Blue Sky Sports Center of Allen, L.P. for the Lease of Property at 900 East Main Street for the Development of an Indoor Soccer Facility and Supporting Infrastructure.**
9. **Authorize the City Manager to Execute a Professional Services Agreement with Solutions for Local Control, LLC in the Amount of \$3,000 per Month for Legislative Consulting Services.**

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REGULAR MEETING
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10. **Award Bid and Authorize the City Manager to Execute a Contract with Criterion Contractors, Inc. for Replacing the HVAC Units at the Chase Oaks Golf Course Club House and Establish a Project Budget of \$69,438.**
11. **Award Bid and Authorize the City Manager to Execute a Contract with Progressive Services dba Progressive Roofing for Replacing Roofing at the Chase Oaks Golf Course Club House in the Amount of \$60,600 and Establish a Budget of \$72,720.**
12. **Award Bid and Authorize the City Manager to Execute a Contract with Jim Bowman Construction, Inc. for the Construction of the Fountain Gate Drainage Project for an Amount Not to Exceed \$65,991.50 and Establish a Project Budget of \$98,000.**
13. **Receive Investment Report for the Period Ending September 30, 2008.**
14. **Receive Financial Report for the Period Ending September 30, 2008 (unaudited).**
15. **Receive the Summary of Property Tax Collections as of December 2008.**
16. **Receive the CIP (Capital Improvement Program) Status Report.**

The motion carried.

Other Business

17. **Calendar.**
 - February 9, 10 – Collin County Day/Austin
18. **Items of Interest.** [Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]
 - January 31- Spaghetti Dinner Benefit for Ben Ferguson at Rountree Elementary
 - February 7 – Celebrate Allen!
 - Councilmember McGregor requested that the United States Flag presented by Mr. DeBord be displayed in a public area.

Executive Session

The Executive Session was not held.

Adjourn

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 7:16 p.m. on Tuesday, January 27, 2009. The motion carried.

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REGULAR MEETING
JANUARY 27, 2009**

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These minutes approved on the 10th day of February, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: Adopt an Ordinance Approving and Enacting Supplement No. 5 to the Code of Ordinances

STAFF RESOURCE: Shelley B. George, City Secretary

PREVIOUS COUNCIL ACTION: Enacted Supplement No. 4 by Ordinance No. 2711-3-08

ACTION PROPOSED: Adopt Proposed Ordinance

BACKGROUND

Upon adoption of Ordinance No. 2341-10-04, the City Council adopted the Code of Ordinances for the City of Allen, 2004 Edition. Subsequent to that time, updates have been processed for the Code of Ordinances, the most recent update being Supplement No. 4.

The proper procedure for adopting the update supplement is through an ordinance. After adoption of the proposed ordinance, the City Secretary is requesting each Councilmember return their copy of the Code of Ordinances to be updated and the Code of Ordinances will be returned to you as soon as possible.

STAFF RECOMMENDATION

It is the recommendation of City Staff that the attached ordinance be adopted, updating the Code of Ordinances for the City of Allen.

MOTION

I make a motion to approve Ordinance No. _____ adopting and enacting Supplement No. 5 to the Code of Ordinances for the City of Allen.

ATTACHMENT

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ADOPTING SUPPLEMENT NO. 5 TO THE CODE OF ORDINANCES; PROVIDING FOR THE PRINTING THEREOF, AUTHENTICATION BY THE MAYOR AND ATTESTATION BY THE CITY SECRETARY; PROVIDING A REPEAL OF CERTAIN ORDINANCES; PROVIDING EXCEPTIONS TO REPEAL; PROVIDING A PENALTY FOR SUCH VIOLATION THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas, adopted a republication of the Code of Ordinances for the City of Allen by Ordinance; and,

WHEREAS, the City Council has enacted additional Ordinances amending the Code of Ordinances; and,

WHEREAS, it is necessary to supplement the Code of Ordinances of the City of Allen, Texas, to include those amendments within the body of the Code.

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

SECTION 1. Supplement No. 5 to the Code of Ordinances of the City of Allen, Texas, heretofore enacted by Ordinance No. 2341-10-04 be, and the same is hereby, adopted and shall hereafter constitute a Supplement to the Code of Ordinances.

SECTION 2. Copies of Supplement No. 5, duly authenticated and approved by attachment to a certified copy of this Ordinance, under signature of the Mayor and attested by the City Secretary, shall be printed and distributed to all holders of the Code of Ordinances in accordance with the current list kept for that purpose by the City Secretary.

SECTION 3. Said Code, as supplemented, shall be admitted in evidence without further proof, and the City Secretary shall record this Supplement adopted as amendments to said Code in the Ordinance records of the City, and thereafter such Code, as amended and supplemented, shall serve as a record of the Ordinances so codified, and it shall not be necessary in establishing the content of any particular Ordinance so codified to go beyond said record.

SECTION 4. It is the intention of the City Council to make this Supplement and the amendments incorporated within it part of the Code of Ordinances when printed or reprinted in page form, distributed to and incorporated within the original Code of Ordinance books distributed by the City Secretary. A copy of such Code, as supplemented hereby, shall be available for all persons desiring to examine the same in the office of the City Secretary during regular business hours. Ordinances passed subsequent to the enactment of this Supplement shall be added to the body of the Code of Ordinances and incorporated within it by reference so that reference to the Code of Ordinances of the City of Allen shall be understood and intended to include such additions and amendments.

SECTION 5. Whenever in the Code of Ordinances an act is prohibited or is made or declared to be unlawful, or an offense, or a misdemeanor, or whenever in such Code the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of such provision of the Code by any person, firm or corporation shall be deemed to be a misdemeanor and, upon conviction in the Municipal Court of the City of Allen, such person, firm or corporation shall be punished by a penalty of fine not to exceed the sum of Five Hundred Dollars (\$500) for each offense, except where a different penalty has been established by state law for such offense, in which case the penalty shall be that fixed by state law, and for any offense which is a violation of any provision

that governs fire safety, zoning, public health and sanitation or dumping refuse, the penalty shall be a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 6. This Ordinance and the Supplement adopted hereby shall become effective upon passage as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 10TH DAY OF FEBRUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: Adopt a Resolution Supporting the Legislative Agenda Recommended by the Board of Directors of the Cities Aggregation Power Project, Inc. (CAPP)

STAFF RESOURCE: Steve Massey, Community Services Director

PREVIOUS COUNCIL ACTION: Council approved Resolution No. 2641-4-07 (R) on April 10, 2007; the City of Allen resolved to support the CAPP legislative agenda during the last state legislative cycle

ACTION PROPOSED: Adopt a Resolution supporting the Legislative Agenda recommended by the Board of Directors of the Cities Aggregation Power Project

BACKGROUND

The City of Allen is a member of Cities Aggregation Power Project, Inc. ("CAPP"). The CAPP Board of Directors has voted to authorize certain legislative efforts on behalf of its members during the 81st Texas Legislative Session. CAPP will capitalize on the presence its members established in the last three legislative sessions to apprise legislators of CAPP Cities' perspective on electric issues and to recommend legislative action.

In 1999, Texas lawmakers adopted Senate Bill 7, the state's electric deregulation law. The legislation expanded competition in the wholesale electricity market and opened the door to competition among electric retailers. Proponents of the electric deregulation legislation cited the promise of lower electric prices as a key reason to deregulate.

Unfortunately, the reality has been otherwise. Although Texans paid electric prices well below the national average during the decade before Senate Bill 7 was passed, customers in deregulated parts of the state now pay prices above the national average. In fact, residential electric prices have increased by a greater percentage in Texas than in almost every other state – including every other deregulated state with retail competition.

CAPP believes that many of the current problems that keep the market from achieving the promise of full competition stem from problems in the Texas deregulated electricity market. For example, some electric generators are able to exercise monopoly-like control over

the wholesale cost of electric power in large swaths of Texas. That has hindered healthy competition. Efforts to address market design issues by the Electric Reliability Council of Texas (ERCOT) have been misguided, mismanaged, gone over budget, and fallen behind schedule.

As an active market participant, CAPP is in the unique position to identify problems that have developed in the deregulated marketplace and provide a consumer's perspective to legislators interested in fixing those problems.

Based upon this point of view, CAPP has created a legislative agenda that aims to transition the electric market from a deregulated market to a truly competitive one by limiting the market power of electric generators, eliminating cost shifting, and creating competitive options for all customers. The CAPP legislative agenda items reflect CAPP's desire for a truly healthy electric market where consumers can save and competition can flourish. Such a market - one where power remains affordable and reliable - will mean improved opportunities for economic development for Texas cities, and a better standard of living for our citizens.

Legislative change is necessary to better protect cities' budgets, enhance cities' ability to protect their citizens, and increase competition among retail providers. The following changes are proposed by the CAPP Board:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power. Current regulations exempt smaller generators from market power prohibitions. Nonetheless, these smaller generators are able to successfully "game" the wholesale electric market and cause the cost of power to be higher than warranted based on actual generation costs.
- Entities harmed by wholesale market abuse such as municipalities, commercial customers or retail electric providers should be given explicit standing to participate in enforcement actions brought by the Public Utility Commission ("PUC"). Affected parties are currently barred from participating in such proceedings. The Public Utility Commission proposed a considerable fine against TXU for market manipulation by their economic withholding of power to drive bid prices up. However, the PUC denied other generators, CAPP, and individual citizens a right to participate in the hearings to establish a final fine because the PUC determined that they lacked standing.
- Ownership and control of generation capacity should be limited to no more than twenty percent (20%) of total generation capacity within each of the ERCOT zones in order to enhance competition and mitigate market power and the ability of any one generator to affect prices. It would even be more appropriate and competitive if in the alternative, the PUC should be directed to create a single ERCOT-wide market with uniform congestion pricing while still restricting control of generation assets in the ERCOT-wide market.
- Permit cities to create and implement opt-out citizen aggregation programs, or alternatively to become Retail Electric Providers or Municipally Owned Utilities.
- Direct the Electric Reliability Council of Texas, the organization that administers the state power grid, to abandon all efforts to transition to a nodal market and direct the PUC to open a proceeding to consider other market design options.

The CAPP Board, made up exclusively of City representatives, requests that the City Council pass the attached resolution endorsing CAPP's legislative agenda.

BUDGETARY IMPACT

There is no immediate budget impact from this proposed resolution in Fiscal Year 08-09. If the legislative agenda is passed into legislation, it may assist in reducing future electric rates paid by our residents and the City government.

STAFF RECOMMENDATION

Staff recommends the City Council adopt a resolution supporting the CAPP legislative agenda.

MOTION

I make a motion to adopt Resolution No. _____ endorsing the Cities Aggregation Power Project Inc.'s (CAPP) recommended legislative agenda to be brought before the state legislature in the current legislative session.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ENDORSING CERTAIN LEGISLATIVE CHANGES TO ENHANCE THE COMPETITIVE ELECTRIC MARKET SUPPORTED BY THE CITIES AGGREGATION POWER PROJECT, INC. (CAPP); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Allen is a member of Cities Aggregation Power Project, Inc. (“CAPP”), a non-profit organization created by cities throughout Texas to secure affordable energy for its members in the deregulated electric market; and,

WHEREAS, affordable and reliable power means economic development for our cities and a better standard of living for our citizens; and,

WHEREAS, by deregulating the retail electric market, Senate Bill 7 of 1999 ("SB 7") intended to allow competitive forces to drive down the price of electricity; and,

WHEREAS, CAPP's seven-year experience with the deregulated market, including negotiating power contracts with several different retail electric providers, indicates that the Texas electric retail market has failed to develop into a truly competitive market as envisioned by the Texas Legislature and that prices are higher, not lower, after deregulation; and,

WHEREAS, competition has failed to develop in the deregulated electric market because certain power generation companies own or control enough generation capacity to exercise market power to the detriment of customers and non-affiliated retail electric providers; and,

WHEREAS, alleged market power abuse inquiries conducted by the Public Utility Commission (“PUC”) are hampered by the lack of adequate resources because the parties hurt by the illegal activity, like cities, are not allowed to participate in the investigations; and,

WHEREAS, residential customers in Texas communities are unable to obtain lower power prices that may be available to them through bulk purchasing because current law makes the creation of citizen aggregation groups unworkable; and,

WHEREAS, the Electric Reliability Council of Texas (“ERCOT”) is expected to spend at least \$660 million to implement a nodal market in Texas, an unproven market design program that is several years behind schedule and several hundred million dollars over budget; and,

WHEREAS, the City supports all legislative initiatives that promote a truly healthy electric market where competition can flourish and consumers can save money; and,

WHEREAS, the City endorses efforts proposed by CAPP to modify the electric deregulation legislation to enhance competition, implement the original intent of SB 7 and reduce costs to the City and its residents.

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

SECTION 1. The City supports the introduction and adoption of legislation in the 81st Session of the Texas State Legislature that promotes affordable power and the transition of the Texas electric market from a deregulated market to a fully competitive one. Specifically, the City supports legislation that will address the following issues:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power.
- Ownership and control of generation capacity should be limited to no more than twenty percent (20%) of total generation capacity within the market in order to enhance competition and mitigate market power and the ability of any one generator to affect prices. This is in accordance with basic anti-trust principles and as originally designed in SB 7, although the "market" should be redefined as the functional market (an ERCOT zone) to reflect real-world conditions. In the alternative, the PUC should be directed to create a single ERCOT-wide market with uniform congestion pricing.
- Entities such as municipalities, commercial customers or retail electric providers harmed by wholesale market abuse should be given explicit standing to participate in market power abuse enforcement actions brought by the PUC.
- Cities should be permitted to create citizen aggregation groups to combine the power needs of residents that have not specifically asked to be excluded in order to facilitate bulk power purchasing and enhance the opportunities for residential customers to benefit from deregulation and benefit the entire state by increasing competition. Citizens who have signed a contract with a retail provider would be excluded, as would those citizens who otherwise opt out.
- All efforts to transition to a nodal market in ERCOT should be abandoned and other market design options that benefit all market participants should be considered.

SECTION 2. A copy of this Resolution shall be sent to the elected lawmakers representing the City's interests in the Texas House and Senate and to the Chairman and Legal Counsel of the Cities Aggregation Power Project.

SECTION 3. This Resolution shall take effect immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS ON THIS THE 10TH DAY OF FEBRUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

Tuesday, February 10, 2009

SUBJECT:

Authorize the City Manager to Execute a Real Estate Contract with the City of Plano for the Purchase of Right-of-Way for Chaparral Road in the Amount of \$105,687.50 plus Customary Closing Costs (CIP #ST9904)

STAFF RESOURCE:

John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION:

On January 22, 2008, City Council authorized the City Manager to execute a contract with Carter & Burgess, Inc. for the design of Chaparral Bridge.

On April 4, 2008, City Council adopted Resolution No. 2722-4-08 (R) authorizing the City Manager to execute an Interlocal Agreement with Collin County regarding funds for the design and construction of Chaparral Bridge, from Persimmon Court to Brook Ridge Avenue, and amend the project budget.

On October 14, 2008, City Council adopted Resolution No. 2779-10-08 (R) determining the necessity for acquisition of right-of-way, easements, and attached improvements for the construction of Chaparral Bridge, from Persimmon Court to Brook Ridge Avenue and authorize the City Manager and City Attorney to file proceedings in eminent domain to acquire such property, if necessary.

ACTION PROPOSED:

Authorize the City Manager to execute a Real Estate Contract with the City of Plano for the purchase of right-of-way for Chaparral Road in the amount of \$105,687.50 plus customary closing costs.

BACKGROUND

The Chaparral Bridge project consists of the design and construction of two lanes of the missing 4-lane divided 1400 foot gap between Persimmon Court and Brook Ridge Drive; and includes two lanes of the 4-lane Cottonwood Creek Bridge. In 1998 Carter & Burgess, Inc. was charged with the design of improvements to Chaparral Road. The conceptual design was completed in 2000. The Chaparral Road project was partially funded as a result of the 1999 bond election. However, due to lack of construction funding the project was put on hold. The 2007 City of Allen and 2008 Collin County bond elections included funding for Chaparral Road. With the project fully funded, staff reactivated the project.

City staff is currently working to acquire four parcels needed for this project. One of the parcels is owned by the City of Plano. The parcel is very large and spans both sides of the roadway. After negotiating with the City of Plano, the subject purchase agreement defines terms such that the City of Plano will be dedicating the right-of-way south of the centerline without charge, while the City of Allen will purchase from Plano the right-of-way needed on the north side of the centerline. Consequently, the purchase price proposed is a proportional share of the actual value of the whole parcel.

BUDGETARY IMPACT

The current balance in Fund 562 is sufficient to cover the purchase of the right-of-way.

STAFF RECOMMENDATION

Authorize the City Manager to execute a Real Estate Contract with the City of Plano for the purchase of right-of-way for Chaparral Road in the amount of \$105,687.50 plus customary closing costs.

MOTION

I make a motion to authorize the City Manager to execute a Real Estate Contract with the City of Plano for the purchase of right-of-way for Chaparral Road in the amount of \$105,687.50 plus customary closing costs.

ATTACHMENT

Real Estate Contract
Aerial Map
Location Map

REAL ESTATE CONTRACT

THIS CONTRACT is entered into as of the effective date as hereinafter defined by and between the **CITY OF PLANO**, a home rule municipal corporation (the "Seller"), and **CITY OF ALLEN, TEXAS**, a home rule municipal corporation (the "Purchaser").

WHEREAS, the Purchaser desires to purchase and the Seller desires to sell to Purchaser a 2.225 acre tract of land in fee simple for right-of-way purposes. Seller shall also dedicate a 1.350 acre tract of land in fee simple for right-of-way purposes and a slope easement consisting of a 0.417 acre tract of land. The three parcels are more particularly described in Exhibit "A" attached hereto and made a part hereof by reference and being herein referred to as the "Property".

WHEREAS, Seller and Purchaser have entered into this Contract to provide for the terms and conditions of the sale and purchase of the Property.

NOW, THEREFORE, in consideration of the premises and for the further consideration of the terms, provisions, and condition hereinafter set forth, Seller and Purchaser have agreed as follows:

1. Agreement to Convey

For the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth, Seller has agreed and does hereby agree to sell, grant and convey to the Purchaser the Property and Purchaser has agreed and does hereby agree to purchase the Property from the Seller. The Property shall be conveyed to Purchaser together with all and singular the rights and appurtenances pertaining to such Property including, but not limited to, any right, title and interest of Seller in and to easements, adjacent streets, alleys and rights-of-way and together with all improvements, fixtures and buildings located, constructed, or placed thereon. All references in this Contract to the term "Property" shall include all right, title and interest of Seller to easements, streets, alleys, rights-of-way, improvements, fixtures, and buildings as set forth above.

2. Purchase Price

The purchase price ("Purchase Price") to be paid for the Property shall be **ONE HUNDRED FIVE THOUSAND SIX HUNDRED EIGHTY SEVEN AND 50/100 DOLLARS (\$105,687.50)**.

3. Title Commitment

Purchaser, at its sole cost and expense, shall obtain a current commitment or commitments for title insurance (the "Title Commitment") covering

the Property and issued by a title company (the "Title Company") selected by Purchaser.

4. Representations and Warranties of Seller

(a) At Closing, Seller shall have good and indefeasible fee simple title to the Property, free and clear of all mortgages, liens, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title except easements, licenses or rights-of-way for public or private utilities or gas lines noted in the Permitted Exceptions.

(b) To the best knowledge and belief of Seller, at Closing there will be no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers, and no prescriptive rights will have been acquired in, or have commenced to run against the Property or any portion thereof.

(c) To the best knowledge and belief of Seller, there is no litigation or similar proceeding pending against the Property and no litigation or similar proceeding is threatened or contemplated that would affect the Property or any portion thereof.

(d) At Closing, no person, firm, partnership, corporation or other entity shall have any right or option to purchase, lease, occupy or use the Property or any part thereof.

(e) At Closing, the consummation of the transactions contemplated herein will not violate or constitute a default under any provision of any contract, agreement, regulation, court order, judgment, decree, law or other document or instrument to which Seller is subject or bound and will not violate any other restrictions or prohibition of any kind or character to which Seller is subject.

(f) Seller is duly authorized and empowered to enter into this Contract and to consummate the transactions contemplated hereunder, and any person executing this Contract on behalf of Seller is duly authorized and empowered to do so.

The representations and warranties set forth above shall be continuing and shall be true and correct at Closing with the same force and effect as if made at that time, and all such representations and warranties shall survive Closing.

5. Acknowledgments, Covenants and Agreements of Seller

Seller acknowledges covenants and agrees with Purchaser as follows:

(a) Purchaser and its agents and representatives shall have full access to the Property at all times prior to Closing.

(b) No new or additional improvements will be constructed, located or placed on the Property.

(c) To the best of Seller's knowledge and belief, the Property does not include any personal property.

(d) During the pendency of this Contract, Seller shall not (without the prior written consent of the Purchaser) create, impose or agree to any mortgages, liens, encumbrances, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title to the Property.

(e) This Contract constitutes a full and final settlement for all compensation due Seller for the Property.

(f) The covenants in this Section 5 shall survive Closing.

6. The Closing

The closing of this Contract pertaining to the Property shall be consummated at a closing (the "Closing") to be held at the office of the Title Company on or before thirty (30) days after the effective date of this Contract, or at such other time, date and place that the parties may agree upon. At the Closing, Seller agrees to deliver to Purchaser:

(a) A Special Warranty Deed (the "Deed") substantially the same as the form attached hereto as Exhibit "B" duly executed by Seller and properly acknowledge, in form for recording, conveying good and indefeasible title in fee simple absolute to the Property and containing covenants of special warranty; said Deed being subject to no liens, charges, encumbrances, exceptions or reservations of any kind or character other than those permitted by paragraph 4(a) of this Contract; and

(b) All releases or other documents or instruments (all in recordable form) necessary to convey title to the Property as required by paragraph 4(a) of this Contract; and

(c) Such other documents and instruments as may be necessary to evidence the authority of Seller to convey title to the Property.

7. Closing Costs and Proration

Costs of title insurance for the Property, escrow fees of the Title Company, costs of recording any documents in connection with the Closing of the Property shall be paid by Purchaser. All other expenses incurred by Seller and Purchaser with respect to the Closing, including, but not limited to, attorneys' fees incurred

in connection with this Contract, shall be borne and paid exclusively by the party incurring same. Ad valorem taxes for the year of closing shall be prorated as of the Closing in accordance with Section 26.11 of the Texas Tax Code. All delinquent ad valorem taxes, if any, shall be paid by Seller.

8. Default

(a) Seller's Default. In the event Seller should fail to consummate this Contract for any reason except Purchaser's default, Purchaser may, at its option, either enforce specific performance of this Contract or terminate this Contract as its sole and exclusive remedy hereunder. If Seller is unable to deliver title as required by this Contract, Purchaser shall have the right to take the Property with whatever title Seller can deliver. Nothing herein shall be construed to limit the Purchaser's right and power of eminent domain.

(b) Purchaser's Default. In the event Purchaser shall fail to consummate this Contract for any reason except Seller's default, Seller may, at its option and as its sole and exclusive remedy, either enforce specific performance of this Contract or terminate this Contract by giving written notice thereof to Purchaser. Seller's remedy set forth in this Paragraph 8(b) is exclusive.

9. Right to Possession

Purchaser shall be entitled to possession of the Property at Closing.

10. Nonwaiver

No waiver by either party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the party against which enforcement is sought. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach of this Contract by the other party shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other or subsequent breach of the same or any other term, covenant or condition herein contained.

11. Miscellaneous Provisions

(a) All median cuts and curb cuts providing access to the Property which exist at the time of execution of this Contract shall continue in full force and effect.

(b) This Contract (including the exhibits attached hereto) embodies the complete and entire agreement between the parties hereto relative to the

Property and supersedes all prior negotiations, agreements and understanding relating thereto and may not be varied except by written agreement of such parties.

(c) This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, heirs, representatives, administrators and assigns.

(d) This Contract shall be construed under and in accordance with the laws of the State of Texas and is full performable in Collin County, Texas.

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

(f) Any notice to be given or to be served upon any party hereto in connection with this Contract must be in writing and may be given by Certified or Registered Mail and shall be deemed to have been given and received when a Certified or Registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail, and if given otherwise than by Certified or Registered Mail, it shall be deemed to have been given when delivered to and received by the party (or such party's agents or representatives) to whom it is addressed. Such notice shall be given to the parties hereto at the address set forth under their respective signatures below. Any party hereto may, at any time by giving two (2) days written notice to the other parties hereto, designate any other address in substitution of the foregoing address to which such notice shall be given.

(g) This Contract may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) The headings used throughout this Contract have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Contract.

(i) Purchaser represents and warrants unto Seller that Purchaser has full power and authority to enter into and consummate this Contract.

(j) the effective date of this Contract shall be the last date of signature of any party set forth below.

(k) Seller and Purchaser each represent to the other that there have been no brokers or real estate commission incurred as a result of this transaction.

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates shown below their respective signatures.

SELLER:

**CITY OF PLANO, TEXAS, a Home Rule
Municipal Corporation**

Date: _____

By: _____

THOMAS H. MUEHLENBECK

City Manager

1520 Avenue K

P. O. Box 860358

Plano, TX 75086-0358

PURCHASER:

**CITY OF PLANO, ALLEN, a Home Rule
Municipal Corporation**

Date: _____

By: _____

Name: _____

Title: _____

305 Century Parkway

Allen, Texas 75013

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS, a home rule municipal corporation**, on behalf of said corporation.

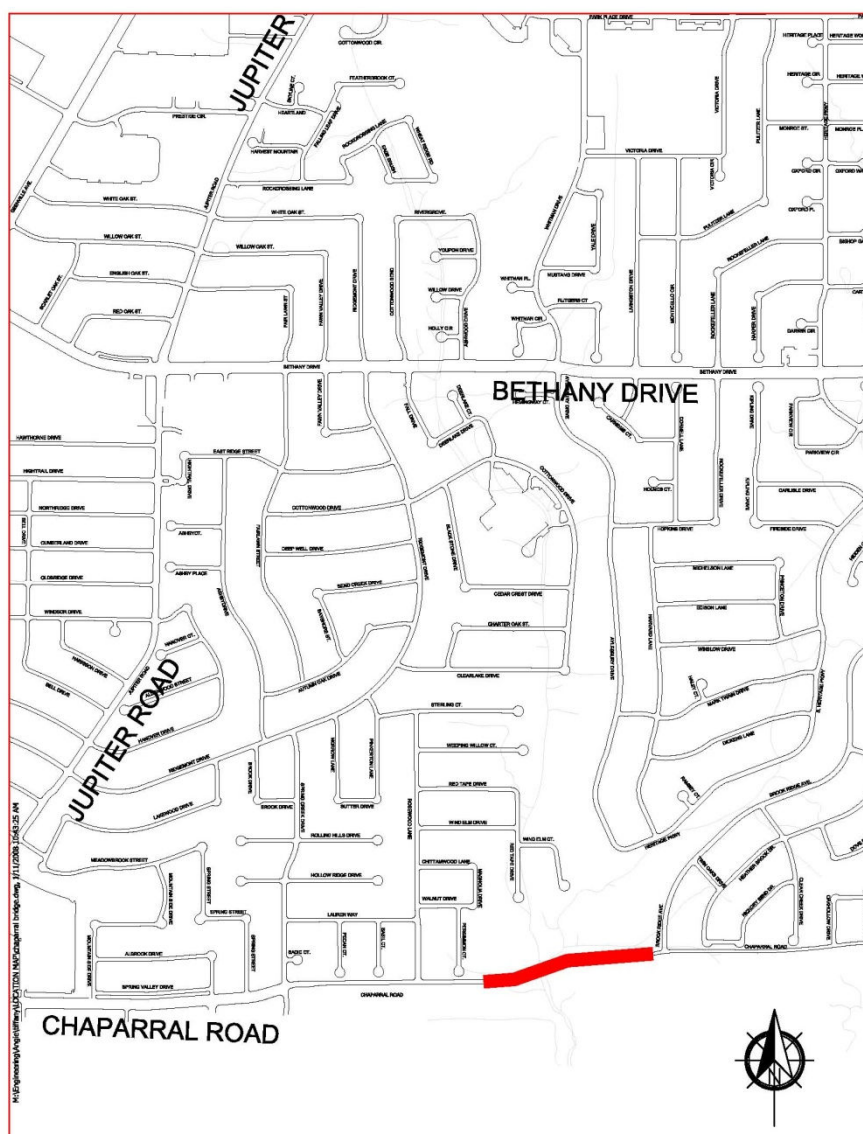
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009 by _____, _____ of the **CITY OF PLANO, ALLEN, a home rule municipal corporation**, on behalf of said corporation.

Notary Public, State of Texas



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: Authorize the City Manager to Execute a Contract with Mario Sinacola and Sons Excavating, Inc. for Construction of Ridgeview Drive from Custer Road to Alma Drive
(CIP #ST0801)

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: On November 13, 2007, Council authorized the City Manager to execute a contract with Teague Nall and Perkins, Inc. for the design of Ridgeview Drive from Custer Road to Alma Drive and establish the project budget

ACTION PROPOSED: Authorize the City Manager to execute a contract with Mario Sinacola and Sons Excavating, Inc. for construction of Ridgeview Drive from Custer Road to Alma Drive and amend the project budget to \$7,900,000

BACKGROUND

Ridgeview Drive is a part of both the County and City Thoroughfare Plans and will ultimately be a six-lane divided thoroughfare that runs parallel to SH 121. Segments of this major arterial have been built as development has progressed along the corridor.

Ridgeview Drive, from Custer Road to Alma Drive, currently exists as separate two-lane roadway segments from Custer Road to Twin Creeks Phase 7A-1 and from Twin Creeks Drive to Alma Drive. Phase I of this project entails the addition of eastbound and westbound lanes and the construction of three bridges, in order to create a continuous four-lane divided roadway from Custer Road to Alma Drive. Through an RFQ process, Teague, Nall and Perkins was selected to design Phase I of this project.

The table below summarizes the bids received for this work:

Contractor	Calendar Days	Bid Amount	Adjusted Bid*

Weir Brothers	365	\$5,265,863.65	\$5,343,336.65
Mario Sinacola and Sons	210	\$5,311,533.90	\$5,311,533.90
Ed Bell Construction	300	\$5,381,073.75	\$5,426,073.75
Tiseo Paving Co.	365	\$5,395,755.70	\$5,473,255.70
Glen Thurman	378	\$5,526,620.00	\$5,510,620.00

*When considering the time (days) component of the bid, the bid amount was normalized to account for the disparity in time (at \$500/day as compared to the lowest days bid). The value of \$500/day coincides with the liquidated damages incurred, if the project is delivered late.

Comparing the two lowest bids received for this work, there is a \$45,670.25 difference. However, when considering the best value among the bids received, staff evaluates the time of completion proposed in the bid. In this case, there is a difference of 155 calendar days between the two apparent-low bidders. When the bids are adjusted to account for delivery of the project five months earlier than the apparent-low bidder, Mario Sinacola and Sons Excavating, Inc. is the better value.

Consequently, staff recommends that the Council award the Ridgeview Drive construction contract to Mario Sinacola and Sons Excavating, Inc.

BUDGETARY IMPACT

A preliminary project budget was established in 2007 for this project at \$682,752, to cover the expenses associated with design services.

A new project budget is proposed as follows:

Task	Funding Source	Amount
Engineering (Design, Survey, and Testing)	G.O. Bonds	\$600,000
Construction (waterline improvements)	F290 (from WA9999)	\$221,175
Construction (all other improvements)	G.O. Bonds	\$3,128,825
Construction	Collin County	\$3,950,000
	TOTAL	\$7,900,000

The proposed funding contingency in this project may be used to enhance the scope of the project (fund traffic signal installations and landscaping), cover unanticipated expenses during construction (i.e. change orders), or will be programmed for future phases of Ridgeview Drive.

Under the terms of the Interlocal Agreement with Collin County, the County will provide 50% of the project funding up to \$7.9 million. The funding from Collin County will be provided in two disbursements: \$1,975,000 within 30 days after the notice to proceed for construction is issued and the remaining \$1,975,000 after construction is 50% complete.

At the conclusion of this phase of Ridgeview Drive construction, if there are any Collin County bond funds remaining, staff will work with Collin County to fund other segments (phases) of Ridgeview Drive. The City's matching funds will come from G.O. Bonds for the Ridgeview

Drive project and unprogrammed funds from the Water/Sewer Capital Improvement Fund (F290).

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute a contract with Mario Sinacola and Sons Excavating, Inc. for an amount not to exceed \$5,311,533.90 for the construction of Ridgeview Drive and amend the project budget.

MOTION

I make a motion to authorize the City Manager to execute a contract with Mario Sinacola and Sons Excavating, Inc. for an amount not to exceed \$5,311,533.90 for construction of Ridgeview Drive from Custer Road to Alma Drive and amend the project budget to \$7,900,000.

ATTACHMENT

Location Map
Form of Agreement

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this 10th day of February, A.D. 2009, 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 Mario Sinacola and Sons Excavating, Inc.

of the City of Frisco, County of Collin and State of Texas, 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:

Ridgeview (Custer to Alma)
CIP No. ST0801
BID # 2009-11-43

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 210 **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)

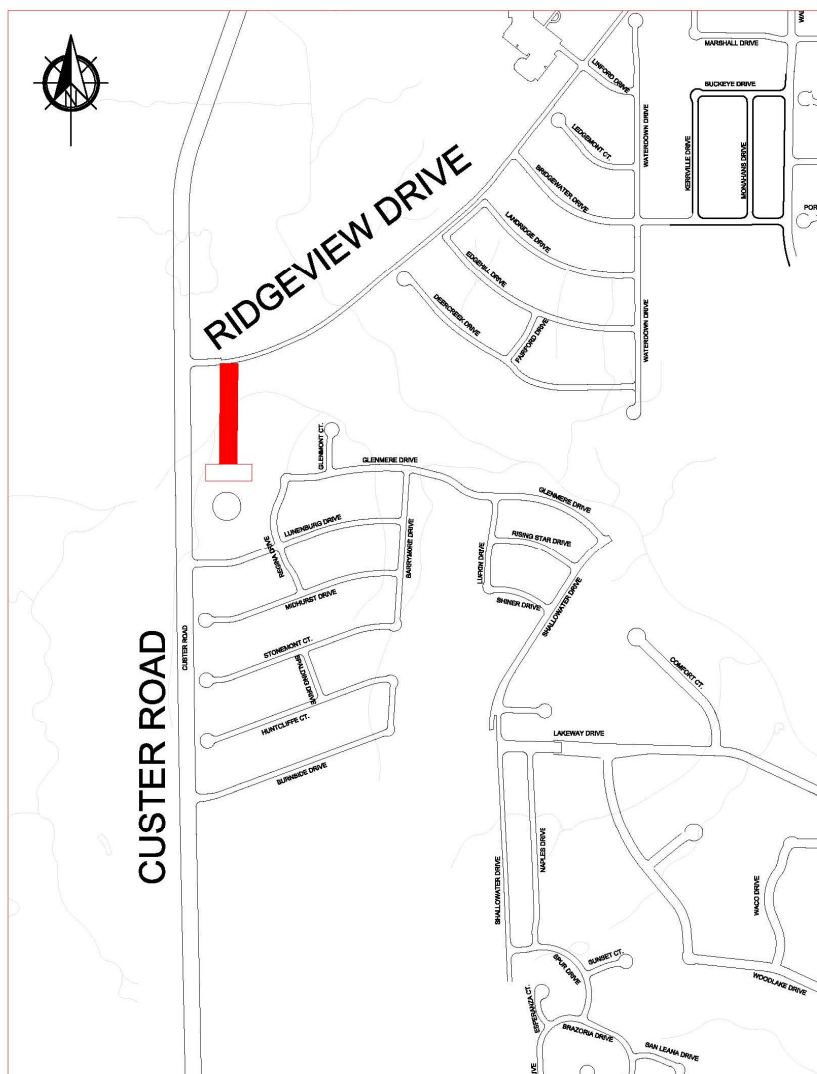
Mario Sinacola and Sons Excavating, Inc.
Party of the Second Part (CONTRACTOR)

By: _____
Peter H. Vargas, City Manager

By: _____

Attest: _____
Shelley B. George, City Secretary

Attest: _____



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: Authorize the City Manager to Execute a Contract with Jim Bowman Construction, LP for Various Street and Alley Repairs
CIP #ST0812

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: None

ACTION PROPOSED: Authorize the City Manager to execute a contract with Jim Bowman Construction, LP for various street and alley repairs and establish a project budget

BACKGROUND

Included in this project is approximately 4,500 square yards of alley pavement reconstruction, 60 square yards of street approach repair, reconstruction of 10 barrier free ramps (BFR), 270 linear feet of curb and gutter rehabilitation at various locations, 3,200 square feet of sidewalk repair/installation, 625 square yards of concrete pavement repair, and incidental items associated with the project.

On January 28, 2009, a total of 7 bids were received for this project.

The table below summarizes bids received for this work:

Contractor	Calendar Days	Bid Amount
Jim Bowman Construction	50	\$339,486.00
Advanced Paving	120	\$405,520.21
Smith Contracting	180	\$422,041.50
Camino Construction	160	\$425,609.00
Jerusalem	90	\$427,469.00
Ratliff Hardscape	200	\$454,781.72
Bill Benett	180	\$579,055.16

BUDGETARY IMPACT

Funding for this project is available from other completed projects (see table below) and \$280,000 was specifically budgeted in the Solid Waste FY2009 budget.

Closed Project	Fund	Amount
McDermott Drive Rehab—ST0717	366	\$51,271.00
Allen Drive—ST0701	390	\$95,429.00
2007 Street & Alley—ST0797	390	\$887.00
2008 Street & Alley—ST0805	390	\$2,351.00
Solid Waste Operating Fund	205	\$280,000.00
TOTAL		\$429,938.00

STAFF RECOMMENDATION

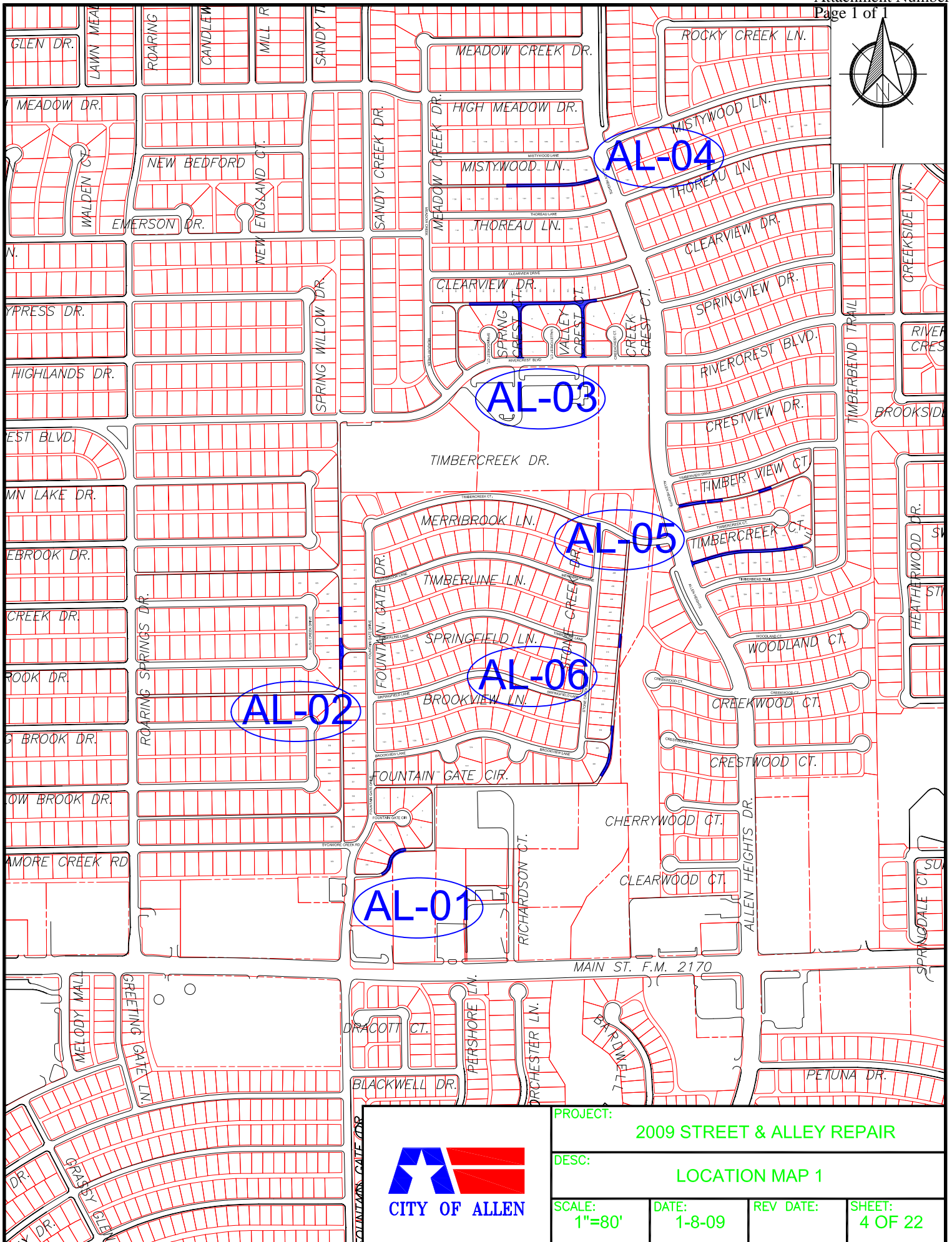
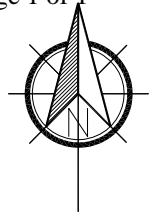
Staff recommends that Council authorize the City Manager to execute a contract with Jim Bowman Construction, LP for street and alley repair for an amount of \$339,486.

MOTION

I make a motion to authorize the City Manager to execute a contract with Jim Bowman Construction, LP for street and alley repair at various locations within the City for an amount not to exceed \$339,486 and establish a project budget in the amount of \$429,938.

ATTACHMENT

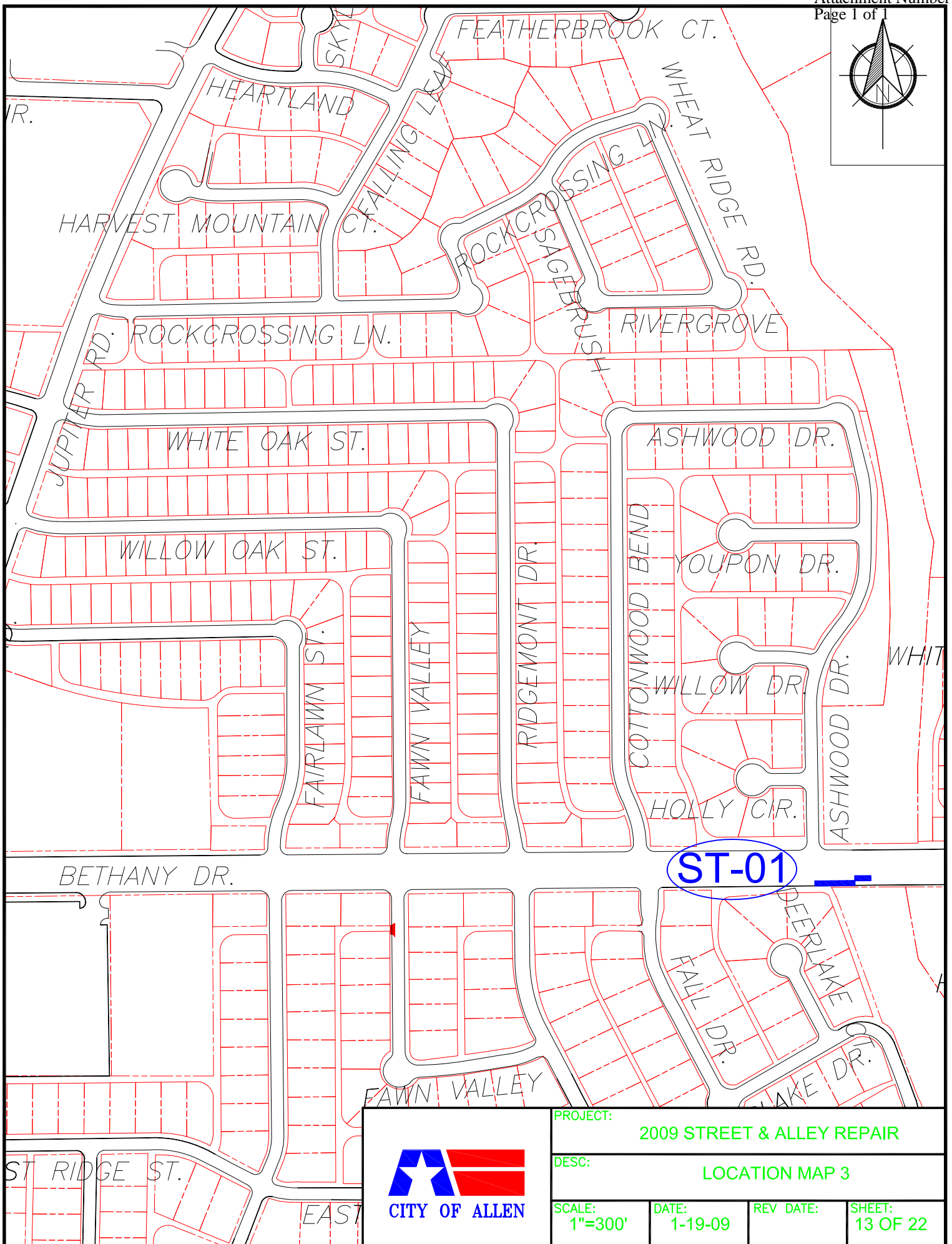
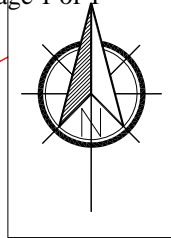
Location Map 1
 Location Map 2
 Location Map 3
 Location Map 4
 Location Map 5
 Standard Form of Agreement



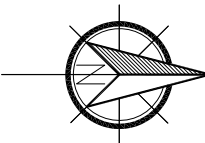
CITY OF ALLEN

PROJECT: 2009 STREET & ALLEY REPAIR			
DESC: LOCATION MAP 1			
SCALE: 1"=80'	DATE: 1-8-09	REV DATE:	SHEET: 4 OF 22





PROJECT:			
2009 STREET & ALLEY REPAIR			
DESC:			
LOCATION MAP 3			
SCALE:	DATE:	REV DATE:	SHEET:
1"=300'	1-19-09		13 OF 22



ST-04

ST-03

ST-02



PROJECT: 2009 STREET & ALLEY REPAIR

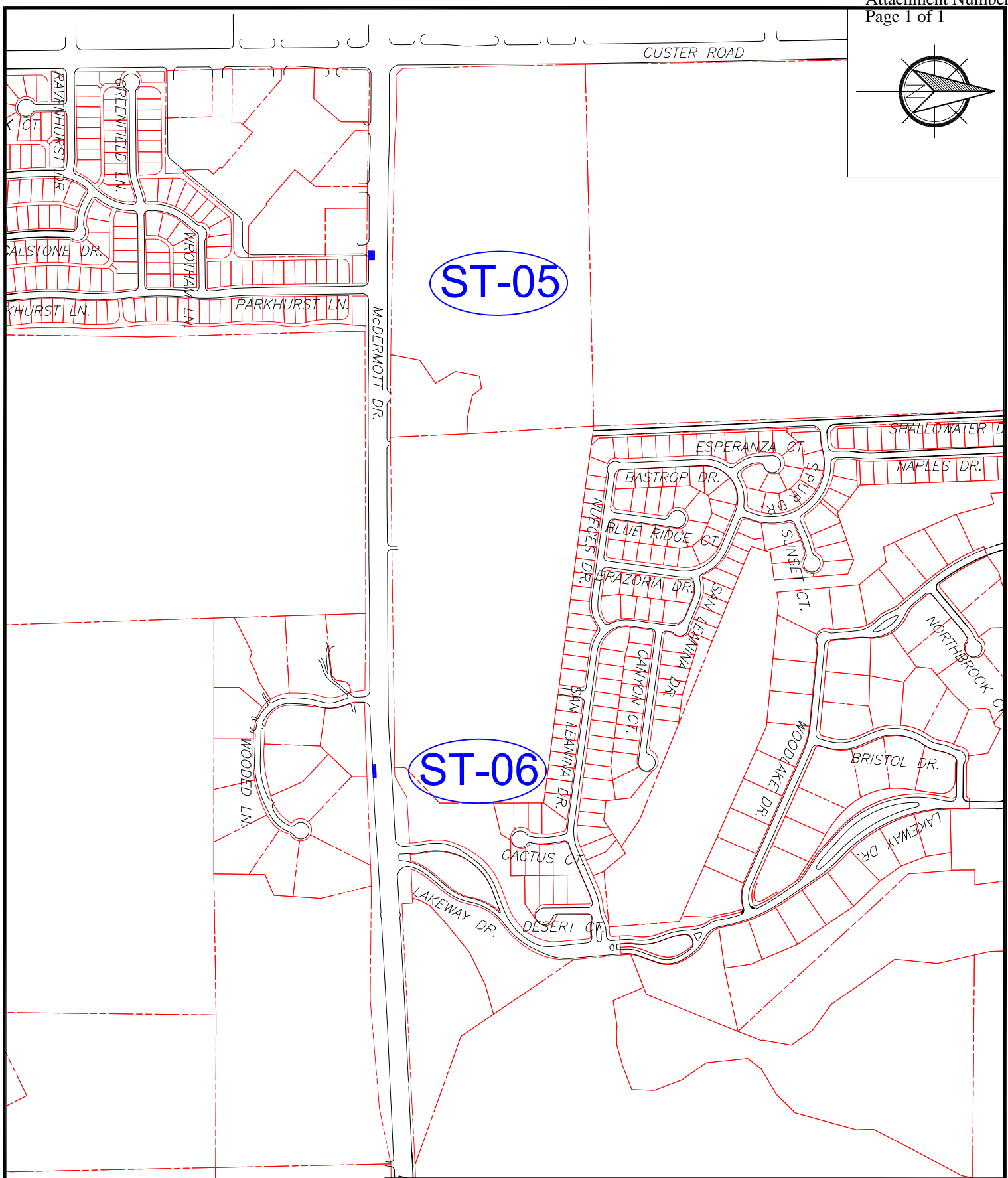
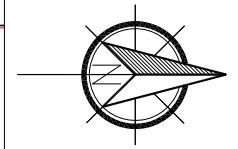
DESC:	LOCATION MAP 4
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SCALE:
1"=600'

DATE:
1-19-09

REV DATE:

SHEET:
14 OF 22



PROJECT: 2009 STREET & ALLEY REPAIR			
DESC: LOCATION MAP 5			
SCALE: 1"=600'	DATE: 1-19-09	REV DATE:	SHEET: 15 OF 22

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this _____ day of _____, A.D. 2009, 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 **Jim Bowman Construction Co., LP**

_____ of the City of _____ Plano _____, County of _____ Collin _____ and State of _____ Texas _____, 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:

2009 STREET AND ALLEY REPAIR (VARIOUS LOCATIONS)

CIP No. ST0812

BID # 2009-11-44

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 50 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)

Jim Bowman Construction Co. LP

Party of the Second Part (CONTRACTOR)

By: _____
Peter H. Vargas, City Manager

By: _____

Attest: _____
Shelley B. George, City Secretary

Attest: _____

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: Authorize the City Manager to Execute a Contract with W. R. Hodgson Company LP for Construction of the Custer Road 24-inch Waterline

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: On February 26, 2008, and September 23, 2008, Council approved Resolution Nos. 2710-2-08(R) and 2768-9-08(R) respectively, determining the necessity of land acquisition for construction of a 24" waterline along Custer Road, and authorize the City Manager and City Attorney to file proceedings in eminent domain to acquire such property, if necessary

ACTION PROPOSED: Authorize the City Manager to execute a contract with W. R. Hodgson Company LP for construction of the Custer Road 24-inch waterline and establish the project budget

BACKGROUND

In order to improve City-wide water distribution in conformance with the master water distribution plan a 24-inch waterline is necessary to connect the Custer Road Pump Station to the Cross Town waterline in Ridgeview. This main would extend from the Custer Pump Station site parallel to Custer Road to the north where it would tie-in to an existing City water main on the north side of Ridgeview Drive.

On January 28, 2009, a total of 13 bids were received for this project. The table below summarizes the five lowest bids received for this work:

Contractor	Calendar Days	Bid Amount
W. R. Hodgson Company LP	30	\$273,208.90
Municipal Construction	28	\$287,131.00
Jim Bowman Construction	30	\$294,826.00
Duval & Sons	180	\$312,753.50
Saber Development	180	\$339,776.10

BUDGETARY IMPACT

Task	Amount
Engineering	\$53,352.00
Land Acquisition	\$23,637.00
Construction	\$273,208.90
Lab Testing	\$2,002.00
Contingency	\$47,800.10
TOTAL	\$400,000.00

The current funds available are \$260,423, and the remaining amount of \$139,577 will come from unprogrammed water capital improvements in NB9999.

STAFF RECOMMENDATION

Execute a contract with W. R. Hodgson Company LP for construction of the Custer Road 24-inch waterline and establish the project budget.

MOTION

I make a motion to authorize the City Manager to execute a contract with W. R. Hodgson Company LP for construction of the Custer Road 24-inch waterline for an amount of \$273,208.90 and establish a project budget of \$400,000.

ATTACHMENT

Location Map
Standard Form of Agreement

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this 10th day of February, A.D. 2009, 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 W. R. Hodgson Company, LP

of the City of Celina, County of Collin and State of Texas, 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:

**Custer Road 24" Waterline
CIP No. WA0704
BID # 2009-10-14**

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 30 **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)

W. R. Hodgson Company LP
Party of the Second Part (CONTRACTOR)

By: _____
Peter H. Vargas, City Manager

By: _____

Attest: _____
Shelley B. George, City Secretary

Attest: _____

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: Tuesday, February 10, 2009

SUBJECT: Continue Public Hearing and Adopt an Ordinance Amending the Allen Land Development Code by Amending the Allen Land Development Code Article VII, Section 7.04.1 Parking Requirements for Church, Temple, or Rectory, and Section 7.07 Fences and Walls, Subsection 4 – Screening Walls or Visual Barriers Required

STAFF RESOURCE: Lee Battle, AICP
Assistant Director of Planning and Development

PREVIOUS COUNCIL ACTION: At their January 13, 2009, meeting, City Council opened the Public Hearing and continued it to the February 10, 2009, City Council Meeting

BOARD/COMMISSION ACTION: A Public Hearing was held at the February 3, 2009, Planning and Zoning Commission meeting and a recommendation was made

ACTION PROPOSED: Adopt an ordinance

BACKGROUND

Recent projects have caused staff to evaluate the requirements in the Allen Land Development Code related to parking and screening requirements for churches and institutional facilities. Staff has researched existing developments in town as well as other cities in the area. As a result two specific changes are being proposed.

The proposed changes will modify the parking requirements for churches and other religious facilities to include additional building areas outside the main sanctuary or assembly area. The intent is to ensure that adequate parking is provided for the multiple buildings and uses that often occur at these developments. Staff has met with local church leaders and discussed the proposed changes. A survey was sent via email to the Allen Ministerial Alliance requesting specific information about the existing churches in the community. Information was received from five Allen churches. After additional study and discussion, the following parking requirement is now being proposed:

1 parking space per 3 fixed seats in the sanctuary or main assembly area;
plus 1 space per 300 sq. ft. of indoor building area designated for education.

Because the most common overlap of activities is religious services and education activities, staff believes this change will address concerns of parking shortages created by concurrent activities in most situations. Staff recognizes that every religious facility is designed and operates differently, and staff will have to consider each project individually in determining the square footage dedicated to education. Overall this amendment will provide a reasonable amount of additional parking without creating an excessive burden.

The proposed changes will also clarify the requirement for screening for non-residential uses. Currently the code specifies that “commercial and industrial” uses are required to construct a screening wall adjacent to residential developments. However, there are some uses, such as institutional uses, that may not be considered “commercial and industrial” but may warrant screening. The proposed change states “non-residential” uses instead. Because the ALDC also allows the Planning Commission to approve alternative screening standards where appropriate, staff believes there is enough flexibility in the code to provide relief where warranted.

Both items were initially discussed at the January 6, 2009, Planning and Zoning Commission meeting. At that meeting, the Planning Commission recommended approval of the amendment for the screening requirements and tabled the amendment for the parking standards. This item was tabled to allow time for staff to meet with the local church community and return with a recommendation. The parking standard was again discussed at the February 3, 2009, Planning and Zoning Commission meeting. The Planning Commission recommended approval of the amendment for the parking requirements at that meeting.

BUDGETARY IMPACT

None

STAFF RECOMMENDATION

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

MOTION

I make a motion to adopt Ordinance No. _____ amending the Allen Land Development Code, Article VII, Section 7.04.1 Parking Requirements for Church, Temple, or Rectory, and Section 7.07 Fences and Walls, Subsection 4 – Screening Walls or Visual Barriers Required.

ATTACHMENT

Proposed ALDC Amendments
Minutes from the February 3, 2009, P&Z Meeting
Ordinance

DRAFT

Agenda Item #4: Tabled Item/Public Hearing – Conduct a Public Hearing and consider a request for amendments to the Allen Land Development Code by amending the Allen Land Development Code Article VII, Section 7.04.1 Parking Requirements for Church, Temple, or Rectory.

Bo Bass, Director of Planning and Development, presented the item to the Commission. He stated that religious classrooms create the greatest demand for parking. The site plan will undergo the Technical Review Committee's review process that requires educational space to be identified. This requirement will only be for new or renovating churches. Mr. Bass stated that staff enjoyed working with the Ministerial Alliance, and specifically Bryce Green. Staff recommends approval.

Commissioner Rushing stated that sometimes churches will build gymnasiums first then make that into a sanctuary. Are they considered educational?

Mr. Bass stated that they are not considered educational. The greatest peaks are multiple services and multiple classes. We will be asking for programming during our review. We have an enforcement mechanism to address violations if they occur. For the vast majority of circumstances, new churches that will be built in the City of Allen in a residential area will require a Specific Use Permit, which will come before the Planning Commission and City Council for review.

Chairman Wendland reminded the commission that this is a minimum parking standard which, in most cases, the majority of churches have already exceeded the proposed standards.

Chairman Wendland Opened the Public Hearing.

Bryce Greene, 708 Franklin Drive, Allen, spoke in favor, stating that most current churches have exceeded not only the current parking standards, but the proposed standards as well. He also stated that the churches that will be using the gym for worship will be required to present a proposed seating plan to address those issues. Mr. Greene reiterated that these requirements are only for new or renovating churches.

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

The Commission was in agreement that this proposal was a great solution, and expressed their appreciation and thanks to the Ministerial Alliance and staff for working together on this issue.

Motion: Upon a motion by Commissioner Jones, and a second by Commissioner Rushing, the Commission voted 7 IN FAVOR, 0 OPPOSED, to approve the request for amendments to the Allen Land Development Code, Article VII, Section 7.04.1 Parking Requirements for Church, Temple, or Rectory as follows: 1 parking space per 3 fixed seats in the sanctuary or main assembly

area; Plus 1 space per 300 square feet of indoor building area designated for education. The motion carried.

Proposed Amendments to the Allen Land Development Code:

Section 7.04.1 – Parking Requirements

USE	PARKING SPACE PER							PLUS/ FOR SQUARE FOOTAGE GREATER THAN
	DWELLING UNIT	Fixed number	Sq.Ft. of Gross Area	Fixed Seats	Bedroom/Suite	Bowling lanes	Beds	Hole of Golf
CHURCH, TEMPLE OR RECTORY				3				Plus 1/300 sq. ft. indoor space designated for education

Section 7.07 - Fences & Walls

4. Screening Walls or Visual Barriers Required

- e. Screening walls or visual barriers are required adjacent to existing residential uses and shall be placed and maintained by the property owner at the following locations:
 - i. Along any property line or district boundary between any single-family detached or attached or any two family use and any multi-family, mobile home park, [or non-residential](#), ~~commercial, or industrial~~ use, but not across a dividing street between such uses.
 - ii. Along any property line or district boundary between any multi-family use and any [non-residential](#), ~~commercial or industrial~~ use, but not across a dividing street between such uses.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ALLEN LAND DEVELOPMENT CODE SECTION 7.04.1 “VEHICLE PARKING,” TABLE 7.04.1. “PARKING REQUIREMENTS” RELATING TO MINIMUM OFF-STREET PARKING REQUIREMENTS FOR CHURCHES AND OTHER RELIGIOUS FACILITIES, AND SECTION 7.07 “FENCES & WALLS,” SUBSECTION 4, “SCREENING WALLS OR VISUAL BARRIERS REQUIRED” WITH RESPECT TO SCREENING OF NON-RESIDENTIAL USES ADJACENT TO EXISTING RESIDENTIAL USES; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that in order to preserve and enhance the City as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance; and,

WHEREAS, one method of achieving a visually attractive environment within the City is to provide for screening walls and visual barriers between different uses; and,

WHEREAS, Section 7.07, Subsection 4, Paragraph e. of the Allen Land Development Code sets forth regulations requiring screening walls and visual barriers between existing residential uses and certain “commercial or industrial” uses; and,

WHEREAS, the City Council has determined that to achieve the goal of obtaining a visually attractive environment in the community, non-residential uses that may not be considered “commercial and industrial” should also be screened from adjacent residential uses; and,

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, Texas, in compliance with the laws of the State of Texas and the Ordinances of the City of Allen, Texas, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all persons interested and in the exercise of its legislative discretion, the City Council has concluded that the Allen Land Development Code Zoning Regulations of the City of Allen, Texas, as previously amended, should be further amended as follows.

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

SECTION 1. Section 7.04.1, “Vehicle Parking”, “Table 7.04.1 – Parking Requirements,” of the Allen Land Development Code, is hereby amended with respect to the use designated as “Church, Temple, or Rectory,” to read as follows:

“

USE	PARKING SPACE PER							PLUS/ FOR SQUARE FOOTAGE GREATER THAN
	DWELLING UNIT	Fixed number	Sq.Ft. of Gross Area	Fixed Seats	Bedroom/Suite	Bowling lanes	Beds	
CHURCH, TEMPLE OR RECTORY				3				Plus 1/300 sq. ft. indoor space designated for education

”

SECTION 2. Section 7.07, “Fences & Walls,” Subsection 4, “Screening Walls or Visual Barriers Required,” Paragraphs 4.e.i and 4.e.ii of the Allen Land Development Code be, are hereby amended to read as follows:

“Section 7.07 Fences & Walls

. . . .

4. Screening Walls or Visual Barriers Required

. . . .

- e. Screening walls or visual barriers are required adjacent to existing residential uses and shall be placed and maintained by the property owner at the following locations:
 - i. Along any property line or district boundary between any single-family detached or attached or any two family use and any multi-family, mobile home park, or non-residential, use, but not across a dividing street between such uses.
 - ii. Along any property line or district boundary between any multi-family use and any non-residential use, but not across a dividing street between such uses.”

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

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, 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, 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 the Allen Land Development Code, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate 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 10TH DAY OF FEBRUARY, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, CITY SECRETARY