

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Interlocal Agreement, City of Allen, Improvements to East Bethany Drive – Engineering

On **January 10, 2011**, the Commissioners Court of Collin County, Texas, met in **regular session** with the following members present and participating, to wit:

Keith Self	County Judge, Presiding
Matt Shaheen	Commissioner, Precinct 1
Cheryl Williams	Commissioner, Precinct 2
Joe Jaynes	Commissioner, Precinct 3
Duncan Webb Not Present	Commissioner, Precinct 4

During such session the court considered approval of an Interlocal Agreement with the City of Allen.

Thereupon, a motion was made, seconded and carried with a majority vote of the court for approval of an Interlocal Agreement with the City of Allen for Improvements to East Bethany Drive from Allen Heights to Angel Parkway (Bond Project No. 07-004), budget amendment in the amount of \$150,000 (2010 Funding NTE \$150,000) and further authorize the County Judge to finalize and execute same. Same is hereby approved as per the attached documentation.

Keith Self, County Judge

Matt Shaheen, Commissioner, Pct. 1

Cheryl Williams, Commissioner, Pct. 2

Joe Jaynes, Commissioner, Pct. 3

Not Present

Duncan Webb, Commissioner, Pct. 4



ATTEST:

Stacey Kemp, Ex-Officio Clerk
Commissioners Court
Collin County, T E X A S

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF ALLEN
CONCERNING THE IMPROVEMENTS OF
EAST BETHANY DRIVE FROM ALLEN HEIGHTS TO ANGEL PARKWAY
COLLIN COUNTY 2007 BOND PROJECT #07-004
2010 FUNDING**

WHEREAS, the County of Collin, Texas (“County”) and the City of Allen, Texas (“City”) desire to enter into an agreement concerning the design and construction of **East Bethany Drive** from Allen Heights Drive to Angel Parkway (FM 2551) in Collin County, Texas (location map attached – see Exhibit A); and,

WHEREAS, the Collin County 2007 Bond Program allocated \$1,250,000 for improvements to East Bethany Drive from Allen Heights to Angel Parkway (FM 2551).

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and,

WHEREAS, the City and the County have determined that the improvements may be constructed most economically by implementing this agreement.

NOW, THEREFORE, this agreement is made and entered into by the County and City upon and for the mutual consideration stated herein, the receipt and sufficiency of which is hereby acknowledged:

WITNESSETH:

ARTICLE I.

The City shall arrange to design and construct improvements to East Bethany Drive, hereinafter called the “Project.” The Project shall consist of the design and construction of the interior two (2) lanes of the 6-lane divided roadway including pavement markings, street lights, traffic signal adjustment, and grass restoration within the project limits, from Allen Heights Drive to Angel Parkway (FM 2551). All improvements shall meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City and the County.

ARTICLE II.

The scope of the Project is as indicated below:

Phase I: Engineering

The City shall prepare engineering design plans and specifications, surveying, geotechnical investigation, and coordination with affected utility companies for the Project improvements. The City shall administer the engineering services agreement as set forth in Article III below.

Phase II: Construction

The City shall advertise for and accept bids for the construction of the Project, award a contract to construct the improvements, and administer the construction contract and perform inspection services. In general, these improvements shall consist of the construction of two (2) lanes of concrete pavement, interior to the existing 4-lane divided roadway.

ARTICLE III.

Phase I – The City shall select a properly licensed engineering firm and execute an engineering services agreement. The City will provide administration of the engineering services agreement and all necessary review of the plans and specifications associated with this Project. The City will provide the County with copies of the plans and specifications at 50%, 65% and 100% plan completion. The City will conduct a meeting with all affected utility companies and coordinate relocation efforts.

Phase II - The City shall publicly bid the Project, through City of Allen procurement policy, consistent with statutory requirements.

ARTICLE IV.

The City estimates the total cost of the Project to be \$2,500,000, however the total amount of the 2010 Funds remitted by the County shall not exceed \$150,000. The Payment Schedule is as follows:

- (a) Within thirty (30) days after receipt of written notice from the City that the selected engineer has been issued a written notice to proceed, the county shall remit the 2010 funding.
- (b) At the completion of Phase I and Phase II of Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost of the Project is less than

the estimated cost of \$2,500,000, the City shall reimburse the County so that the County will have only paid fifty percent (50%) of the actual cost of the Project.

- (c) The Commissioners Court may revise this payment schedule based on the progress of the Project.

ARTICLE V.

Allen and the County agree that the parties paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VI.

Indemnification. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from its performance under this agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement. This agreement and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third parties or any person not a party to this agreement.

ARTICLE VII.

Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this agreement. The parties agree that this agreement is performable in Collin County, Texas, and that exclusive venue shall lie in the state courts of competent jurisdiction of Collin County, Texas.

ARTICLE VI.

Severability. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE IX.

Entire Agreement. This agreement embodies the entire agreement between the parties and may only be modified in a writing executed by all parties. This agreement supersedes all prior negotiations, representations and/or agreements, either written or oral.

ARTICLE X.

Successors and Assigns. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. No party will assign or transfer an interest in this agreement without the written consent of the other party.

ARTICLE XI.

Immunity. It is expressly understood and agreed that, in the execution of this agreement, no party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, expressed or implied, other than those set forth herein, and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE XII.

Term. This agreement shall be effective upon execution by all parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: 
Name: Keith Self
Title: County Judge
Date: 1/10/11

Executed on this 10th day of January, 2011,
by the County of Collin, pursuant to
Commissioners' Court Order No. _____
2011-016-01-10

ATTEST:

By: Shelley B. George
Name: Shelley B. George
Title: City Secretary
Date: 11-19-2010

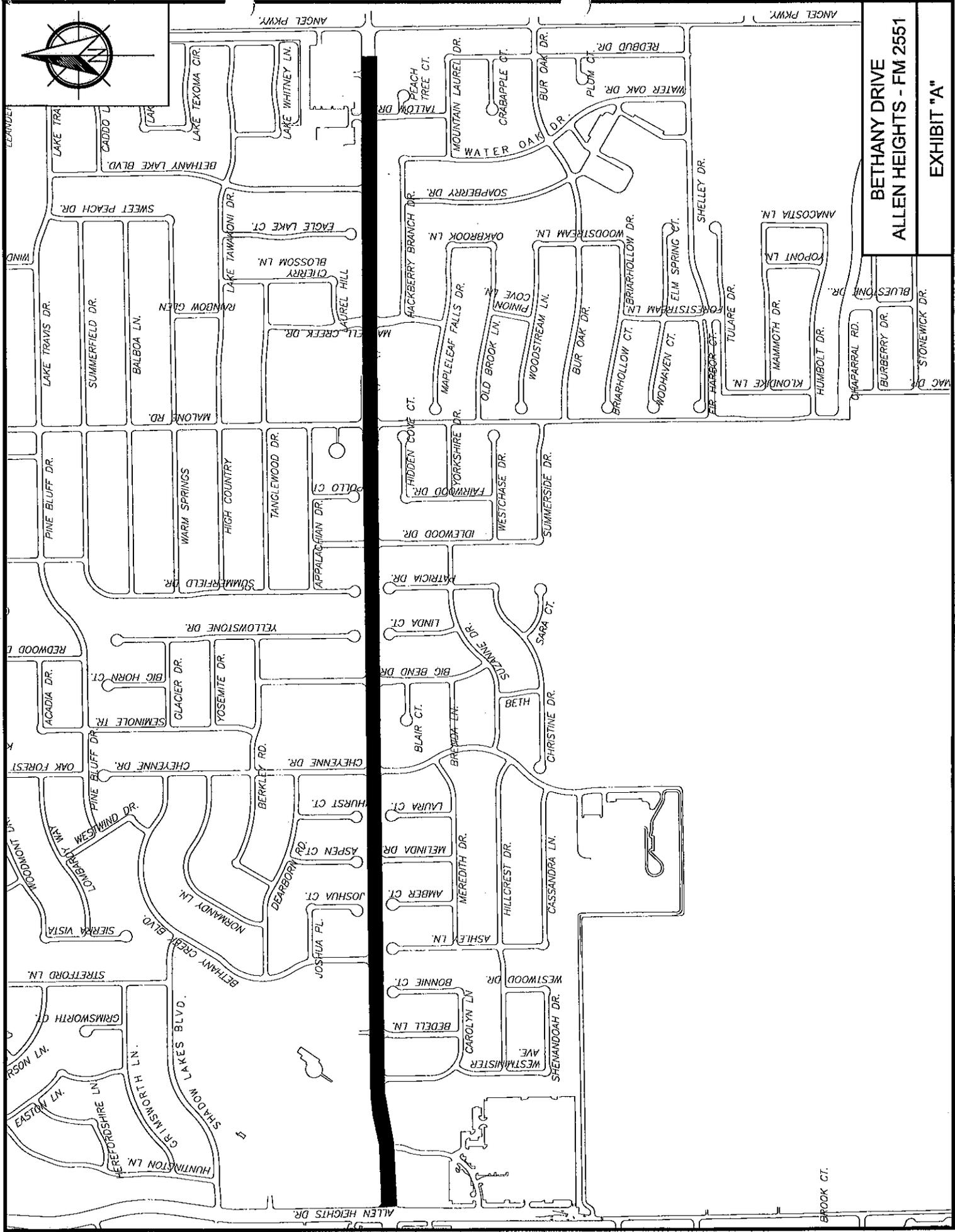
CITY OF ALLEN, TEXAS

By: Peter H. Vargas
Name: Peter H. Vargas
Title: City Manager
Date: November 19, 2010

Executed on behalf of the City of Allen
pursuant to the City Council Resolution
No. 2958-10-10(P)

APPROVED AS TO FORM:

By: Peter G. Smith
Name: Peter G. Smith
Title: City Attorney
Date: 11-23-10



BETHANY DRIVE
ALLEN HEIGHTS - FM 2551

EXHIBIT "A"

BROOK CT.



CERTIFICATION

CITY OF ALLEN, TEXAS §

COLLIN COUNTY, TEXAS §

I, Shelley B. George, City Secretary of the City of Allen, Collin County, Texas, do hereby certify that the attached is a true and correct copy of the City of Allen Resolution No. 2958-10-10(R) duly passed and approved by the City Council of the City of Allen, Texas, on the 12th day of October, 2010.

**WITNESS MY HAND AND SEAL OF SAID CITY, this the 29th day
of November, 2010.**

A handwritten signature in black ink, appearing to read "Shelley B. George", is written over a horizontal line.

Shelley B. George
City Secretary
City of Allen, Texas

RESOLUTION NO. 2958-10-10(R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND COLLIN COUNTY, TEXAS, AUTHORIZING PARTICIPATION IN THE DESIGN AND CONSTRUCTION OF BETHANY DRIVE FROM ALLEN HEIGHTS TO FM 255; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas, has been presented a proposed Interlocal Agreement by and between the City of Allen, Texas, and Collin County, Texas, a copy of which is attached hereto and incorporated herein by reference (herein called "Agreement"); and,

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

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

SECTION 1. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Allen and found to be acceptable and in the best interests of the City of Allen and its citizens, be, and the same is hereby, in all things approved.

SECTION 2. The City Manager or designee, under the direction of the City Council of the City of Allen, is hereby designated as the official representative to act for the City in all matters relating to the design and construction of Bethany Drive from Allen Heights to FM 2551.

SECTION 3. The City Manager or designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Allen, substantially according to the terms and conditions set forth in this Agreement.

SECTION 4. This Resolution shall take effect immediately from and after its passage, 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 12TH DAY OF OCTOBER, 2010.

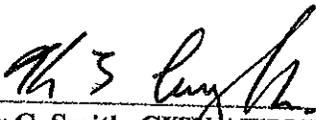
APPROVED:



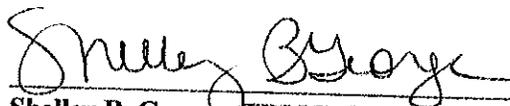
Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:



Peter G. Smith, CITY ATTORNEY



Shelley B. George, TRMC, CITY SECRETARY