

**AGREEMENT BETWEEN THE CITY OF PLANO AND THE
CITY OF ALLEN FOR A JOINT RADIO COMMUNICATIONS SYSTEM
FOR MUNICIPAL SERVICES**

This Agreement is made between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation with the authorization of its governing body, (hereinafter referred to as "Plano"), and the **CITY OF ALLEN, TEXAS**, a home rule municipal corporation with the authorization of its governing body, (hereinafter referred to as "Allen") as follows:

WITNESSETH:

WHEREAS, Plano and Allen are political subdivisions within the State of Texas, and each is engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act") provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, municipalities owns and operates radio systems for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, each of the municipalities has investigated and determined that it would be advantageous and beneficial to the citizens within its respective municipality to jointly operate a radio system; and

WHEREAS, in order to provide dependable/mission-critical voice radio service for use by each of the municipalities and its respective users, Plano and Allen desire to enter into an Interlocal Agreement to provide a Joint Radio Communications System for Municipal Services (hereinafter "Joint System"); and

WHEREAS, use of this Joint System will provide for system coverage for each City to ensure safe, effective and efficient communications, and benefit the greatest number of citizens both now and in the future; and

WHEREAS, this Agreement will provide the framework for administering the Joint System, and the costs associated with implementation, maintenance and operation of the Joint System distributed among Plano and Allen.

NOW, THEREFORE, Plano and Allen (hereinafter collectively referred to as "Party" or "Parties"), for and in consideration of the mutual benefits and obligations set forth in this Agreement, agree as follows:

I.
ADMINISTRATION OF THE JOINT COMMUNICATIONS SYSTEM

1.01 Coordinating Committee. Operation, administration and policy development of the Joint System shall be the responsibility of a Coordinating Committee, comprised of one (1) member from each City, appointed by the respective City Manager (hereinafter "Coordinating Committee"). Additional ex-officio members may be selected by the City Managers to service on the Coordinating Committee and to assist the Committee, but shall have no voting authority.

The Coordinating Committee's duties will be to make recommendations to the respective Parties' governmental bodies of system changes, upgrades, additional uses and any other aspects of the Joint System. Payment of Monies pursuant to the terms and obligations of this Agreement must be approved by the governing bodies or their designees of each of the Parties as required by their respective City Charters and ordinances. Administrative decisions may be made by the Coordinating Committee.

1.02 Technical Committee. A committee of technical personnel shall be selected to advise the Coordinating Committee (hereinafter "Technical Committee"). Each City's Coordinating Committee member shall be able to appoint up to four (4) persons to serve on the Technical Committee.

Technical Standards for the operation of the Joint System shall be developed by the Technical Committee and approved by mutual agreement of the Coordination Committee. Once approved, these standards must be compatible with existing equipment and may not violate any of the terms of this agreement or of any existing maintenance or hardware agreement.

II.
FUTURE EXPANSION OF THIS AGREEMENT

2.01 Parties to this Agreement. All third parties who are serviced by the respective radio systems of Plano and Allen at the time of signing of this Agreement may participate in the Joint System created by this Agreement. However, for purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this agreement only affects the Parties hereto, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity not a party hereto, notwithstanding the fact that such third person or entity may be in a contractual relationship with Plano or Allen, either individually or collectively; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owed by them to any of the Parties or to create any rights for the benefit of third parties, unless expressly provided herein.

III.
OWNERSHIP INTERESTS OF THE PARTIES

3.01 Radio License Modification. Within ninety (90) days of execution of this Agreement, the Parties agree to make application to transfer their respective individually owned

Federal Communications Commission ("FCC") licenses to the City of Plano Radio Manager, for single entity titling, as required by FCC standards.

3.02 Hardware/Software. Each Party shall retain individual ownership of its respective hardware and software purchased prior to, or as a part of this Agreement. Allen shall retain the master communication site equipment located in Allen and Plano will retain the master communications site equipment located in Plano should this agreement be terminated. All communications and operating equipment owned by each Party will continue to be separately owned by such Party.

3.03 Recommendations regarding changes, upgrades, and maintenance costs for the Joint System will be made to the Coordinating Committee for joint resolution and policy determination.

IV. FINANCING AND INFRASTRUCTURE COST SHARING

4.01 Each Party incurring costs has the sole responsibility to make payment to Vendors providing equipment and services for the Joint System to that Party. In no event shall any Party be held liable for debts incurred by any other Party as a result of expenditures made pursuant to this Agreement.

4.02 Full Time Radio Technician. Plano and Allen shall equally fund a full time radio technician. The technician will provide programming service and maintenance of radios on the system. Plano shall provide the necessary office space, supplies, equipment and training for this technician. The salary and benefits cost for the technician shall be divided equally between the Cities of Plano and Allen.

4.03 Maintenance Agreements. Plano will maintain a high tech support agreement with the manufacturer to provide system infrastructure technical expertise and guidance to the Plano Radio Shop personnel. The cost of the high tech support agreement will be shared between Plano and Allen using the 2/3 Plano, 1/3 Allen formula referenced in section 4.04.

In addition, all Parties agree that consistent with and to the extent allowed by all laws governing purchases made by municipalities, each Party shall pay their agency's maintenance agreement to include software, mobile and portable radios directly to the manufacturer. The manufacturer will invoice each agency individually. The agency may elect to pay per repair or enter into a comprehensive maintenance agreement. Each agency is responsible for the type of service they choose. The Radio Shop will serve as a centralized shipping and receiving point for all agencies, ensuring proper programming, database maintenance and fault analysis. Any agency that does not enter into a maintenance agreement will be required to directly pay the manufacturer's time and material charges on a per unit repair basis.

4.04 Subscriber Revenue Fund. The Parties agree that there will be participants who receive beneficial use of the Joint System although not a party hereto. The Parties agree to charge participants a reasonable fee, as set by the Coordinating Committee, for this use and such

fees shall be remitted to Plano for the benefit of the Parties to this Joint Agreement. Plano shall establish a fund, which shall be used as recommended by the Coordinating Committee and approved by each Parties governing body. These funds shall be used to pay expenses associated with the operation of the joint radio system. Any additional monies or fees shall be used for repairs, upgrades or other enhancements to the Joint System. Plano's share of the fund shall be 2/3 and Allen will retain 1/3.

4.05 Infrastructure Members. Any city building infrastructure such as a tower with communications repeaters and backhaul infrastructure connected to the Plano/Allen system are considered to be Infrastructure Members. Infrastructure Member's participation will require approval by Allen and Plano. In addition, they will be required to meet the minimum system requirements for site hardening, maintenance and reliability as defined by Allen and Plano.

Ex-officio members may be selected by the Infrastructure Members to serve on the Technical Committee and to assist the Committee, but shall have no voting authority. Infrastructure members may select ex-officio members to represent them on the committee, at their sole discretion. Infrastructure Members may select up to two persons from each agency to act as ex-officio representatives.

Infrastructure Members shall fund an additional technician to support the existing radio system infrastructure. The purpose of the additional technician is to offset the costs of an annual system maintenance agreement. The shared costs of the technician by the infrastructure members are expected to result in a costs savings over the typical manufactures' maintenance agreement. The technician will be stationed at the City of Plano radio shop and will be assigned maintenance and repair tasks in a prioritized manner. The technician will also provide after hours call out service for the radio system and dispatch agencies. The technician will be on-call after hours, holidays and weekends for members and associate member agencies. Infrastructure members may avoid the monthly airtime and talk group charges. However, this benefit includes only the infrastructure member and its internal departments.

Infrastructure Members will be exempt from user fees associated with leased airtime on the radio system. The cities of Allen and Plano reserve the right to seek additional airtime lease subscribers from other municipal and private agencies within the corporate limits Infrastructure Members. The revenue from any such additional subscribers will be held by Plano and Allen and used to support the jointly owned radio system infrastructure.

V. JOINT SYSTEM USE AND STANDARDS

5.01 Rules. To maintain an effective and safe system, the following rules shall apply:

a. Talk Groups. A talk group is comparable to a "channel" used on a conventional system. The term "talk group" shall mean a group of radio users in a common functional responsibility that transmit and talk among themselves. The number of talk groups that each Party to this Agreement may maintain shall not exceed fifteen percent (15%) of the total number of their respective subscriber

units as hereinafter defined. For example, a city with 500 subscriber units shall have no more than 75 talk groups. The number of talk groups used by subscribers shall be determined by the Coordinating Committee.

b. **Subscriber Units.** Subscriber Units are individual radios. The number of subscriber radios permitted on the system shall be reviewed and approved by the Coordinating Committee.

c. **Equipment.** No Party shall purchase, install or use equipment on the Joint System, unless such use is approved by the other Party in writing. If at the time of signing of this Agreement, any Party hereto does not have fully type-accepted equipment, such Party shall replace such nonconforming equipment with conforming equipment. All subscriber units shall be equipped with P-25 phase 1 or phase 2 digital architecture. Additionally, agencies may request subscriber units that are backwards compatible to Motorola Privacy Plus Smartnet systems for interoperability with other agencies.

d. **Patching.** Cross connecting or patching of radio, talk groups to talk groups or channels on other radio systems shall be done only as necessary for a specific event or emergency. Continuous patching to other systems or agencies requires the prior written approval of the coordinating committee.

5.02 Joint System Priorities. The Parties agree that radio transmission for the Joint System is as follows from highest to least priority:

1. Emergency Activation
2. Community Warning Systems
3. Police/Fire/EMS
4. Non Public Safety – Special Events
5. Non Public Safety – Schools
6. Non Public Safety

VI. ACQUISITION/DISPOSITION OF ASSETS

Except as otherwise provided herein, assets acquired under this Agreement by each Party must be acquired and disposed of in accordance with applicable law and the Parties' respective City Charters. Proceeds for assets shall be divided in accordance with the same procedure required for cost sharing applied to the Parties at the time the asset was acquired. For example, each Party shall receive a percentage of the proceeds. The percentage received by each Party shall be based upon the amount of money paid by such Party, individually, after the initial investment identified in this Agreement. This amount would be proportionate to the total amount of money paid by the Parties after such initial investment.

Each Party paying for assets to be acquired or making any type of payment pursuant to this Agreement shall make such payments from current revenues legally available to that respective Party.

VII. SYSTEM MANAGEMENT AND OPERATION

The City of Plano shall perform the day-to-day operation and management of the Joint System. Policies and procedures for specific management issues shall be pre-determined and approved by the Coordinating Committee. The Coordinating Committee shall make all decisions regarding matters other than the day-to-day operation and management of the Joint System.

VIII. TERMINATION OF THE AGREEMENT

8.01 This Agreement shall be automatically renewed annually for a period of ten (10) one year terms in order to allow each Party the opportunity to recover its investment, unless terminated earlier as provided herein. Should circumstances exist that require one or more Parties to terminate this Agreement, then such termination shall be with the following conditions:

8.02 This Agreement may be terminated upon one (1) year written notice from the Party seeking termination to the other Party. Upon termination, the Party terminating shall be entitled to seek an FCC license with the same frequencies which the Party had prior to the execution of this Agreement.

8.03 Upon termination, Plano will receive ten (10) 700Mhz or 800 Mhz and Allen will receive two (2) 700Mhz or 800 Mhz radio frequency channels from the joint use system.

8.04 Reimbursement. The Party terminating this Agreement shall reimburse the remaining Parties for reconfiguring of the system such as microwave realignment and licensing fees'.

IX. RELEASE AND HOLD HARMLESS

Each of the Parties does hereby agree to waive all claims against, release, and hold harmless the other Party and their respective officials, officers, agents, representatives, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys' fees, and costs, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with the acts or omissions of their respective officials, officers, agents, representatives, and employees related to or arising out of the performance of this Agreement. In the event that a claim is filed, each Party shall be responsible for its proportionate share of liability. The Parties agree that each shall be liable only for damages, including attorneys' fees and costs, related to or arising out of the

intentional or negligent act or omission of their respective officials, officers, agents, representatives, and employees in the performance of this Agreement.

X. 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, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

XI. ASSIGNMENT AND SUBLETTING

The Parties shall not assign, sublet, subcontract or transfer any interest in the Agreement without the prior written consent of the other Parties. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of the Parties.

XII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Plano and Allen and supersedes all prior negotiations, representations and/or agreements, either written or oral with regard to the subject matter hereof. This Agreement may be amending and modified only by written instrument signed by all Parties.

XIII. NOTICES

Unless notified otherwise in writing in accordance with this section, all notices required to be given to any Party hereto shall be in writing and delivered in person or sent by certified mail, return receipt requested, to the respective Parties at the following addresses:

Allen Representative:
Chief of Police
Allen Police Department
205 W. McDermott
Allen, Texas 75013
(214) 509-4200

Plano Representative:
Director of Public Safety
Communications
1520 K Avenue, Suite 010
Plano, TX 75074
(972) 941-7930

XIV.
AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. Plano has executed this Agreement pursuant to duly authorized action of the City Council on June 22, 2009. Allen has executed this Agreement pursuant to duly authorized action of the City Council on May 12, 2009.

XV.
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 to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, any Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

XVI.
VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the Parties hereto, shall be governed by the laws of the State of Texas. The Parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XVII.
INTERPRETATION OF AGREEMENT

This is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that the terms and provisions of this Agreement shall not be construed more favorable for or strictly against any Party.

XVIII.
REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XIX.
SUCCESSORS AND ASSIGNS**

The Parties bind themselves, their respective successors, executors, administrators and assigns, to the other Parties to this contract. References in this Agreement to Plano and Allen whether individually or collectively, includes the successors and assigns of each of the respective Parties.

**XX.
DISPUTE RESOLUTION**

In the event of a dispute regarding any aspect of this Agreement, the Coordinating Committee shall act as mediator. If the Coordinating Committee is unable to agree on a resolution, then the issue shall be referred to a joint meeting of the City Managers of each of the Parties. If the matter continues to remain unresolved after this process, the Parties shall refer the matter to outside mediation for resolution prior to engaging in litigation.

**XXI.
GOVERNMENTAL FUNCTION**

The Parties have determined by their execution of this Agreement that this Agreement and the obligations of the Parties contained herein are in discharge of a governmental function as set forth in the Interlocal Cooperation Act, and participation in this Agreement by one Party shall not be construed as creating any kind of agency relationship, partnership, or joint enterprise between the Parties.

**XXII.
HEADINGS**

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

**XXIII.
DUPLICATE ORIGINAL DOCUMENTS**

This Agreement will be executed in duplicate counterparts, each of which shall be deemed an original for all purposes.

(signature page to follow)

EXECUTED this 24 day of June, 2009.

CITY OF PLANO, TEXAS

BY: Thomas H. Muchlenbeck
Thomas H. Muchlenbeck
City Manager

APPROVED AS TO FORM:

Diane E. Wetherbee
Diane E. Wetherbee, City Attorney

EXECUTED this 13th day of May, 2009.

CITY OF ALLEN, TEXAS

BY: Peter H. Vargas
Peter H. Vargas
City Manager

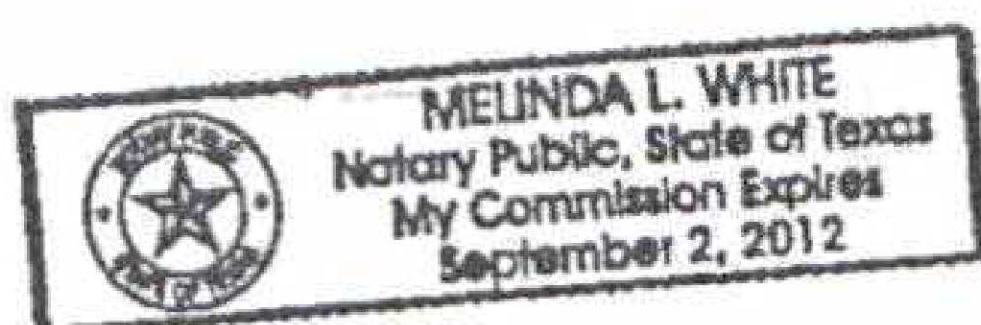
APPROVED AS TO FORM:

Peter G. Smith
Peter G. Smith, City Attorney
(3653)

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF COLLIN)

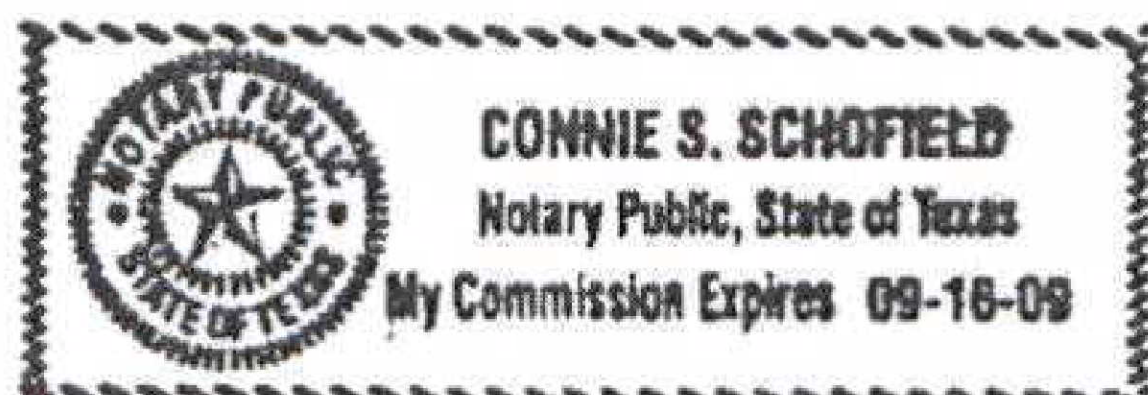
This instrument was acknowledged before me on the 24 day of June, 2009, by **THOMAS H MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipality, on behalf of such corporation.



Melinda L. White
Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the 13th day of May, 2009, by **PETER H. VARGAS**, City Manager, of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such Municipality.



Connie Schofield
Notary Public, State of Texas

RESOLUTION NO. 2822-5-09(R)

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE ATTACHED INTERLOCAL COOPERATION AGREEMENTS BY AND AMONG THE CITIES OF ALLEN AND PLANO; AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENTS BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and,

WHEREAS, the City Council has been presented with the attached Interlocal Cooperation Agreement ("Agreement") by and among the Cities of Allen and Plano for the joint ownership of the 700/800 MHz trunked radio system; and,

WHEREAS, the attached Agreements serve a valid public purpose of governmental services including public safety in that the use of the radio system allows emergency personnel to communicate thereby protecting the health, safety and welfare of residents; and,

WHEREAS, upon full review and consideration of the attached Agreements, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions of the attached Agreements should be approved, and that the City Manager should be authorized to execute the attached Agreements on behalf of the City of Allen.

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

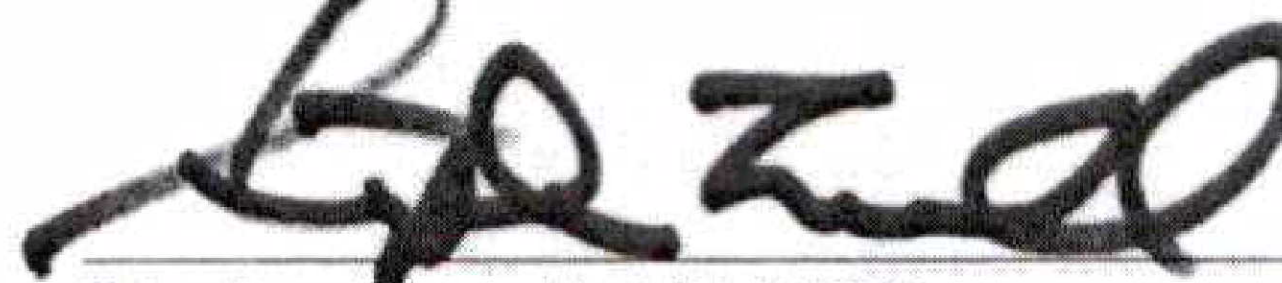
SECTION 1. The terms and conditions of the attached Agreements having been reviewed by the City Council of the City of Allen, Texas, and are hereby in all things approved.

SECTION 2. The City Manager is hereby authorized to execute the attached Agreements and all other documents in connection therewith on behalf of the City of Allen, Texas.

SECTION 3. This Resolution shall become effective from and after its passage.

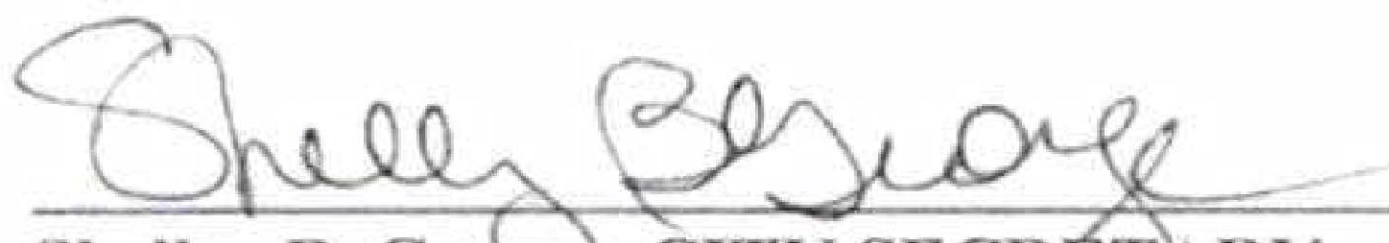
DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 12TH DAY OF MAY, 2009.

APPROVED:



Stephen Terrell, MAYOR

ATTEST:



Shelley B. George, CITY SECRETARY