CITY OF BELLAIRE
CITY COUNCIL
Minutes of Meeting
Monday, May 4, 2009

REGULAR SESSION – 7:00 P.M.

A. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM – Mayor Cindy Siegel.

Mayor Cindy Siegel called the City Council of the City of Bellaire, Texas, to order at 7:01 p.m. on Monday, May 4, 2009. The Bellaire City Council met at that time and on that date in Regular Session in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401. Mayor Siegel announced that a quorum was present consisting of herself and the following members of City Council:

Councilman Will Hickman, Position No. 1;
Councilman James P. Avioli, Sr., Position No. 2;
Mayor Pro Tem Peggy Faulk, Position No. 3;
Councilman Phil Nauert, Position No. 4; and
Councilman Pat McLaughlan, Position No. 5.

Councilman John Jeffery, Position No. 6, was absent. Other officials present were City Manager Bernard M. Satterwhite, Jr., City Attorney Alan P. Petrov, and City Clerk Tracy L. Dutton.

B. INSPIRATIONAL READING AND/OR INVOCATION – Councilman James P. Avioli, Sr.

Councilman James P. Avioli, Sr., presented the inspirational reading, noting that his son had found it on the Internet and forwarded it to him and his wife. The reading was by an unknown author as follows:

The other day someone at a store in our town read that a Methamphetamine lab had been found in an old farmhouse in the adjoining county, and he asked me a rhetorical question, “Why didn’t we have a drug problem when you and I were growing up?”

I replied, “I had a drug problem. When I was young, I was drug to church on Sunday morning. I was drug to church for weddings and funerals. I was drug to family reunions and community socials no matter what the weather was. I was drug by my ears when I was disrespectful to adults.”
I was also drug to the woodshed when I disobeyed my parents, told a lie, brought home a bad report card, did not speak with respect, spoke ill of the teacher or the preacher, or if I didn’t put forth my best effort in everything that was asked of me.

I was drug to the kitchen sink to have my mouth washed out with soap if I uttered a profanity.

I was drug out to pull weeds in mom’s garden and flowerbeds and cockleburs out of dad’s fields.

I was drug to the homes of family, friends, and neighbors to help out some poor soul who had no one to mow the yard, repair the clothesline, or chop some firewood; and, if my mother had ever known that I took a single dime as a tip for this kindness, she would have drug me back to the woodshed.

Those drugs are still in my veins and they affect my behavior in everything I do, or say, or think. They are stronger than cocaine, crack, or heroin; and, if today’s children had this kind of drug problem, America would be a better place.

God bless the parents who drugged us.”

Councilman Avioli closed by asking God to bless the City of Bellaire and America.

C. PLEDGES TO THE FLAGS – Councilman James P. Avioli, Sr.

1. U.S. PLEDGE OF ALLEGIANCE.

2. PLEDGE TO THE TEXAS FLAG.

Councilman James P. Avioli, Sr., led the audience and City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.

D. PERSONAL/AUDIENCE COMMENTS.

Robert Riquelmy, 506 Winslow Lane, Bellaire, Texas:

Mr. Riquelmy addressed City Council and advised that there were many in government who thought that government was the problem, with “starve the beast” as the solution. In Bellaire, that had translated into shoestring budgets with scrambled priorities.

Mr. Riquelmy indicated further that the residents had been damaged by the City’s frugality. Unfortunately, Robbie Tolan and Officer Jeff Cotton were paying the price.
In closing, he thanked City Council for their attention.

Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council regarding the City’s Comprehensive Plan Update Project, noting that City Council would be getting a status report on the Comprehensive Plan Update Project by Gary Mitchell of Kendig Keast Collaborative later this evening.

Ms. McBee stated that she wished to present a rough timeline for the rest of the year in terms of where the Comprehensive Plan would be going. Beginning next Monday, May 11, 2009, the first presentation of a draft Comprehensive Plan Update would be presented to a Joint Workshop Session of City Council and the Planning and Zoning Commission. According to what Ms. McBee had read from Mr. Mitchell’s contract, City Council would be considering a strategy for executing the plan, particularly the highest priority initiatives.

The following evening, May 12, 2009, the Planning and Zoning Commission (“Commission”) would be getting its first look at the complete draft Comprehensive Plan Update (“Plan”). Over one-half of the Commission had never seen the Plan, as four of the members did not sit on the Comprehensive Plan Advisory Committee. For the remainder of May, the Commission would be tweaking the draft Plan or at least trying to understand it.

On June 9, 2009, the Commission would hold a public hearing on a proposed Plan. Thereafter throughout June of 2009, the Commission would probably hold several meetings to consider public input, make possible modifications to the Plan, and then prepare a written recommendation to City Council. Since term limits affected some of the Commission members at the end of June, there would possibly be a new composition of the Commission. The end of June was, therefore, a critical point in time for the Commission to finish their work.

Ms. McBee assumed that during the first meeting in July, the City Council would receive a recommendation from the Commission, as well as the “modified” Plan. City Council would need an opportunity to review it and determine when to call a public hearing for a second opportunity for the public to speak to the Plan. It would be up to the public to read the Plan and ready any comments the public might have for City Council.

After the second public hearing, City Council would need to consider what the final version should be and adopt the Plan hopefully by August of 2009. Ms. McBee noted that some of the members of City Council would be running
for re-election but, due to term limits on City Council, the composition of that body would change as well. Ms. McBee urged City Council to adopt a new Plan before November of 2009. She noted the importance of getting a Plan adopted and receiving public input, as well as the time constraints that existed before a change in board members and/or City Council occurred.

Secondly, Ms. McBee wished to address the Bellaire Fire Station. In 2005, the community approved $5.0 million for new construction of a Fire Station. In trying to track the costs, thus far, the architect for the preliminary design, PGAL, had been paid $371,000. The construction manager that City Council was about to employ this evening would get a flat fee of $15,000, plus 2.95% of the total construction cost, estimated at $4.1 million. This meant after this evening, the City would have incurred a total of $4.6 million on the proposed Fire Station, not to mention demolition, environmental mediation, temporary relocation of the Fire Department, etc. Ms. McBee advised that it was important for City Council to know where they were as compared to what had been expected four years ago.

E. REPORTS:

1. CITY MANAGER’S REPORT regarding public infrastructure/utilities (street and drainage projects update), quarterly indicators (crime and building permits), current issues/information (applications for boards, commissions, and committees), and upcoming meetings/events – Presented by City Manager Bernard M. Satterwhite, Jr.

City Manager Bernard M. Satterwhite, Jr., presented the City Manager’s Report to City Council.

Health, Safety, and Well-Being

City Manager Satterwhite referred to the swine flu outbreak that had been reported in the news media and advised that the City had placed information on the website. The information was also sent to the subscribers of the City’s “News and Information List Serve.” He recommended that anyone listening in should subscribe to the City’s list serve. He noted further that if anything important developed, the City tried to disseminate that information through the list serve.

The City had also been participating in the State of Texas’ emergency conference calls on a daily basis, and the City had been in contact and remained in contact with the Harris County Health Department. For example, when a student at Episcopal High School was confirmed to have contracted the swine flu, the Harris County Health Department
called the City of Bellaire immediately. It was noted that although the student attended Episcopal High School, that student did not live in Bellaire.

As a precautionary measure, the City had delayed the opening of the leisure pool until further notice. City Manager Satterwhite was hopeful that it could be opened sometime within the next few weeks. The stroke clinic and swim team would continue as scheduled.

Other programs the City decided to cancel until further notice were the Friday Night Live program and the open gym program. The participation in these programs was generally random in nature.

First responders were taking additional precautions against the possible exposure to swine flu, such as use of masks, gloves, and hand sanitizers. The Fire Department used a “fit tested” mask for department employees and a surgical mask for any patient who might exhibit respiratory complaints and would tolerate a mask. If the patient should need oxygen, it would be used on that patient.

The Communications Center of the Police Department had a set of questions to ask callers complaining of illness, and the Bellaire City Library had provided bottles of hand sanitizing gel and wipes at the front circulation desk for use by employees and patrons. Also, the general facilities in the City of Bellaire that experienced high public use were sanitized on a daily basis and this procedure was continuing.

City Manager Satterwhite indicated that the Mayor, who had a child that attended Episcopal High School, had stated that Episcopal High School would open its doors again on Wednesday, May 6, 2009. He noted further that residents could visit several websites for information regarding the swine flu as follows: Center for Disease Control, State of Texas, Harris County Public Health Department, and the World Health Organization. The links for each of the websites were listed on the City’s website.

**Public Infrastructure/Utilities**

With respect to public infrastructure, City Manager Satterwhite noted that the City was using its list serve more and more to announce street closures and other projects in the City. He noted that with different projects ongoing throughout the City, there were frequent street closures from time to time. With respect to situations, such as water outages, City Staff usually notified residents with letters that were hand delivered door to door in the affected areas.

The Newcastle Drive reconstruction project was progressing further south, with the street being impacted from Lula to Mildred Streets. The
project would also impact the 4500 blocks of Oleander, Evergreen and Verone Streets.

The traffic in the 4300 blocks of Lula, Betty, Jim West, Wendell, Verone, and Mildred Streets would be southbound only through the construction zone from Oleander Street to Mildred Street. Evergreen Street would remain closed at Newcastle Drive for the time being. Northbound traffic would detour east at Mildred Street and then north on Baldwin Avenue and west on Lula Street back to Newcastle Drive.

Traffic from the 4300 and 4400 blocks of Betty, Jim West, Wendell, and Verone Streets must enter and exit using Baldwin Avenue. Detour signage was in place and fences were up. If people followed the signage, the City would be in good shape.

There would be disruption of water service to the 5600 block of Evergreen Street on Tuesday, May 5, 2009, from 9:00 a.m. until 4:00 p.m. so that the City could move some water lines. All of the residents in the area had been notified of this disruption. Notification included the 5600 block of Evergreen Street, 800 block of Atwell Drive, and the 800 block of Carol Drive.

City Manager Satterwhite referred to some intermittent closures of South Rice Avenue at Bellaire Boulevard. He noted that a bank was under construction at the corner of South Rice Avenue and Bellaire Boulevard. The construction company was tying a four-inch (4") water line to the City’s main in the middle of the street for the bank’s fire suppression system. He believed that all of that work had been done and the construction company was cleaning up the parking lot now. The City was not involved in with this project, other than through the issuance of permits and a review of the construction company’s traffic control plan.

It was noted that the City’s sidewalk project was getting ready to start. A few members of City Council had asked City Staff to look at a few additions to that project. City Manager Satterwhite advised that City Staff should be able to bring the additions back to City Council on May 18, 2009, for consideration. The item would probably be brought to City Council in the form of a change order to the contract that had already been approved.

Finally, there would be some construction going on between the Fire Station and the Bellaire City Library involving minimal disruption. In a few weeks beginning May 18, 2009, the City would begin the process of removing the underground fuel storage tank in that area. The City had procured gasoline purchase cards for all of the departments that needed them. This program had been in effect for a few weeks now, possibly a month. The City vehicles could fill up at service stations
now, but received fuel at the contract price the City was paying with its underground fuel storage tank. Removing this tank would free the City from maintenance on the tank, as well as environmental issues.

For emergency purposes, the same fuel company that had supplied fuel for the City’s storage tank would bring fuel in a fuel tank on a skid. Within a day after Hurricane Ike, it was noted that cards could be used at filling stations in the Bellaire area.

The construction project should not affect traffic too much, but would affect parking due to equipment needed to excavate and remove the tank.

**Indicators (Crime and Building Permits)**

City Manager Satterwhite stated that he did not have crime and building permit charts for this meeting. However, through the month of April, the City had only issued permits for 31 new homes. Last year and the year before at this time, between 85 and 90 new home permits had been issued. It appeared that the values of individual homes were down as well. City Staff was taking this into account when moving forward with the budget process.

**Current Issues/Information**

It was noted that the City was still accepting applications for boards, commissions, and committees through May 22, 2009. The City had received more applications since the last City Council meeting, but the City would certainly like to receive as many applications as possible for all boards, commissions, and committees. The applications were available online or at City Hall, and the terms would begin on July 1, 2009. It was anticipated that City Council would make board, commission, and committee appointments on June 15, 2009.

**Upcoming Meetings/Events**

With respect to upcoming meetings/events, City Manager Satterwhite noted the following:

There would not be a May 11, 2009, Joint Workshop Session, and he was not certain when the timeline would be. After discussing available times for City Council with the Mayor, he threw May 11, 2009, into the mix before checking everyone’s availability. This was the only available Monday in May for City Council. The City could either find another night in May for the Workshop Session or June 8, 2009, was available for City Council and for the consultants.
The next Regular Session for City Council would be held on May 18, 2009. The first Regular Session for City Council in June would be held on June 1, 2009. This Thursday at noon was National Day of Prayer and a ceremony would be held at noon in Bellaire Zindler Park at the gazebo.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend: A – Answer; C – Comment; Q – Question; R – Response}

Q: Councilman Phil Nauert inquired as to whether the City had any problems with leakage or contamination associated with the underground fuel storage tank to be removed.

A: City Manager Satterwhite indicated that the City did not know for certain. The contract included removal of contaminated soil if any were to be found. City Staff believed that there would be no contaminated soil as the tank was constructed of fiberglass and was not old in age.

Q: Councilman James P. Avioli, Sr., asked for confirmation that the City Council would not discuss the Comprehensive Plan Update until after the Planning and Zoning Commission had an opportunity to review it. He noted that the Planning and Zoning Commission was scheduled to review it on May 14, 2009.

A: City Manager Satterwhite stated that City Council would still have a Joint Workshop Session with the Planning and Zoning Commission at some point.

C: Councilman Avioli indicated that as a matter of semantics, the Planning and Zoning Commission should go over the Comprehensive Plan first.

R: City Manager Satterwhite suggested that City Council check with Gary Mitchell of Kendig Keast Collaborative during his report.

Q: Mayor Cindy Siegel referred to the repairs to the Recreation Center roof as a result of Hurricane Ike. She inquired as to whether that project was almost completed.

A: Facilities Management Director Karl Miller advised that the anticipated completion date for that project was June 1, 2009.

C: Mayor Siegel spoke to the residents and the news media that were present asking them to get the word out regarding the
City’s news and information list serve and the importance of subscribing to it.

**MOTION TO ACCEPT REPORT INTO THE RECORD:**

A motion was made by Councilman Pat McLaughlan and seconded by Councilman Will Hickman to accept the City Manager’s Report as presented by City Manager Bernard M. Satterwhite, Jr., into the record.

**VOTE ON MOTION TO ACCEPT REPORT INTO THE RECORD:**

Motion carried unanimously on a 6-0 vote as follows:

**FOR:** Siegel, Cindy  
Hickman, Will  
Avioli, James P., Sr.  
Faulk, Peggy  
Nauert, Phil  
McLaughlan, Pat

**OPPOSED:** None

**ABSENT:** Jeffery, John

2. **COMPREHENSIVE PLAN PROJECT UPDATE** – presentation and discussion on the status of the City of Bellaire’s Comprehensive Plan Project, to include the status of the project timeline and deliverables, considerations addressed to date by the Comprehensive Plan Advisory Committee, and the next steps in the project update process – Item submitted by Director of Community Development John McDonald; Presentation by Gary Mitchell of Kendig Keast Collaborative.

Gary Mitchell, Kendig Keast Collaborative, provided a report on the status of the City of Bellaire’s Comprehensive Plan Project to date. He began by presenting a slide to City Council indicating the original timeline or schedule, noting that the City was currently approaching the one-year point. The review was begun just prior to summer. Due to the fact that it would be difficult to get public input during the summer, Kendig Keast Collaborative (“KKC”) did some of their background work, including a mapping of the existing community, first.

In the fall, there was a turnover in the Community Development Department. The community outreach portion of the project really did not happen until December, January and February versus during the fall as originally planned.
KKC did continue to meet with the City Council-established Comprehensive Plan Advisory Committee (Committee) from August until last month in April. As far as the Committee process was concerned, the timeline was exceeded only by one month. A meeting was added in April so that the Committee could complete their discussions.

The activities completed since last fall included a series of “living room” sessions (meetings hosted by Committee members and/or members of the Planning and Zoning Commission ("Commission")). A public meeting was held in January at City Hall and 60 people were present. Approximately 60 more people were reached during the “living room” sessions. The purpose of the sessions was to validate that everything being done with the Committee and KKC’s observation was on track.

KKC met with the Committee nine times, beginning last fall. The Committee had completed its work and the plan was now moving on to the Commission. It would come to City Council through the Joint Commission and City Council Workshop Session in early June.

Mr. Mitchell presented some slides depicting what the plan would look like, noting that it would be one-half the length of plans for many of the City's KKC worked with. KKC had direction from City Council to make the plan more of a strategic document versus piling on detail and background for the community.

He continued and noted that in each chapter there was some upfront discussion regarding the key issues being dealt with for various topics, such as land use and transportation, utilities issue, and commercial development. Parks were included within the land use chapter. Each chapter had a table that consisted of a foldout page. The foldout page contained a goal statement at the top and then a set of guiding principles (priorities) and then a series of topics or main challenges identified through public discussions and Committee discussion. Next were a series of columns meant to be the various types of actions or ways that issues could be tackled. There was a column on regulations, a column on capital investments, a column on partnerships and coordination, and a column with recommendations for further study. There were some specialized plans that were recommended through the overall Comprehensive Plan for the City.

The Comprehensive Plan was also folding in other documents and studies that had been performed for the City in recent years. The final chapter was an implementation chapter, which set the direction for where to go from here and how to keep the document up-to-date with an annual review process through periodic updates with City Staff.
In summary, Mr. Mitchell noted that the plan was on the right track with things that were coming up as challenges and opportunities for the next 5-10 years and beyond. What the plan would help to validate was through the “living room” and public discussions, people agreed that the plan represented the direction that the City should focus on.

Mr. Mitchell advised that next Tuesday (May 12, 2009), KKC was meeting with the Commission. Three members of the Commission served on the Committee. The remaining members of the Commission would provide a fresh set of eyes, as well as their experience on the Commission. He noted further that the Commission was really meant to be the “keeper” of the Comprehensive Plan once it was adopted. The Commission would be the one making annual reports and recommendations to City Council in the future with respect to the Comprehensive Plan.

A date had been set in early June for a public hearing before the Commission on the proposed Comprehensive Plan for the purpose of receiving public input. Following that there would be a public hearing before City Council and then final consideration and possible adoption.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend: A – Answer; C – Comment; Q – Question; R – Response}

Q: Councilman Will Hickman inquired as to the effect of the Comprehensive Plan on the City Council, City, and Commission. In other words, what was the purpose?

A: Mr. Mitchell indicated that the Comprehensive Plan was similar to a “business plan.” The plan looked at what trends were affecting the City, as well as opportunities, challenges, and priorities. In other words, things the City wanted to focus on going forward.

Having said that, if a City had zoning in Texas, the zoning statutes referred to a Comprehensive Plan. The Comprehensive Plan was a city’s public policy basis for when zoning decisions were made, starting with the initial ordinance and map. As zoning changes and amendments were made, those changes and amendments should flow from the Comprehensive Plan.

Q: Councilman Hickman stated that he did not recall the City Council looking at the previous Comprehensive Plan when considering amendments to the Zoning Code. He inquired as to whether this was something the City Council should be doing.
A: **City Attorney Alan P. Petrov** indicated that it was something that was always done. The Comprehensive Plan provided the underpinning for the zoning regulations. The zoning regulations were theoretically adopted to implement the Comprehensive Plan. Whenever amendments to the zoning regulations were considered, City Staff looked at whether or not those amendments were consistent with the Comprehensive Plan and/or helped move the plan forward. These were generally included in discussions at the Commission level when they looked at forming a recommendation to City Council.

Q: **Councilman Hickman** inquired as to whether City Council would be foreclosed from doing something in opposition to the Comprehensive Plan.

A: **City Attorney Petrov** advised that Councilman Hickman was correct. If something were done in opposition to the Comprehensive Plan, the City’s zoning regulations could be challenged due to inconsistency.

**Mr. Mitchell** noted that he highly recommended the annual report because City Staff and the Commission could keep track of variances and zoning change requests. This was also an indicator as to whether the Comprehensive Plan or zoning regulations were steering away from the direction that the markets were going.

**MOTION TO ACCEPT REPORT INTO THE RECORD:**

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Phil Nauert to accept the Comprehensive Plan Project Update as presented by Gary Mitchell of Kendig Keast Collaborative into the record.

**VOTE ON MOTION TO ACCEPT REPORT INTO THE RECORD:**

Motion carried unanimously on a 6-0 vote as follows:

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Avioli, James P., Sr.
- Faulk, Peggy
- Nauert, Phil
- McLaughlan, Pat

**OPPOSED:** None

**ABSENT:** Jeffery, John
F. NEW BUSINESS:

1. PROCLAMATION:

Emergency Medical Services Week

PROCLAMATION issued by Mayor Cynthia Siegel for the Bellaire Fire Department Emergency Medical Services designating the week of May 17-23, 2009, as Emergency Medical Services Week in the City of Bellaire, Texas, and encouraging the community to observe this week with appropriate programs, ceremonies and activities – Item submitted by City Clerk Tracy L. Dutton on behalf of the Bellaire Fire Department Emergency Medical Services.

Mayor Cindy Siegel read in its entirety the proclamation she issued for the Bellaire Fire Department Emergency Medical Services designating the week of May 17-23, 2009, as Emergency Medical Services Week as follows:

Whereas, emergency medical services is a vital public service; and

Whereas, the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

Whereas, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

Whereas, the emergency medical services system consists of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, educators, administrators and others; and

Whereas, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

Whereas, it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week;

Now, Therefore, I, Cynthia Siegel, Mayor of the City of Bellaire, Texas, in recognition of this event do hereby proclaim the week of May 17-23, 2009, as Emergency Medical Services Week, in the City of Bellaire, Texas, with the theme, EMS: A Proud Partner in Your
Community, and encourage the community to observe this week with appropriate programs, ceremonies, and activities.

In Witness Whereof, I have hereunto set my hand and caused the seal of the City of Bellaire, Texas, to be affixed this 4th day of May, 2009.

Cynthia Siegel, Mayor
City of Bellaire, Texas

Mayor Siegel presented the proclamation to Fire Chief Darryl Anderson, who accepted on behalf of the Bellaire Fire Department Emergency Medical Services.

2. CONSENT AGENDA:

Approval/Correction of Minutes

a. APPROVAL of minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held Monday, April 20, 2009 – Item submitted by City Clerk Tracy L. Dutton.

Agreements and Contracts

b. CONSIDERATION of and possible action on a request from the Bellaire Fire Department Emergency Medical Services for approval for the Mayor of the City of Bellaire, Texas, to execute a Life Flight Release from Liability Agreement for the purpose of releasing, indemnifying, and holding harmless Memorial Hermann Hospital, its insurers and all persons employed by Memorial Hermann Hospital as a result of Life Flight’s participation in the City of Bellaire’s Emergency Medical Services Day in the City of Bellaire, Texas, on Saturday, May 16, 2009 – Item submitted by Fire Chief Darryl Anderson.

Bid Award(s)/Rejection(s)

c. CONSIDERATION of and possible action on a recommendation from the Director of Communications Technology Services to award Bid No. 09-018, Installation and Testing of an Outside Plant Structured Cable System, to AT&T for the materials and installation labor of a fiber optic network to connect the Bellaire Police and Municipal Court Building, Bellaire City Library, Bellaire City Hall, and Bellaire Parks and Recreation Center in the amount of $64,167.83 and adoption of an
ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, for and on behalf of the City of Bellaire, Texas, a Standard Form of Agreement with AT&T for said fiber optic network – Item submitted by Director of Communications Technology Services Larry Parks.

Councilman Will Hickman requested individual consideration of Consent Agenda items b. and c.

MOTION TO APPROVE A PORTION OF THE CONSENT AGENDA:

A motion was made by Councilman Phil Nauert and seconded by Councilman James P. Avioli, Sr., to approve a portion of the Consent Agenda dated May 4, 2009, as follows:

- Approval of minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held on Monday, April 20, 2009.

VOTE ON MOTION TO APPROVE A PORTION OF THE CONSENT AGENDA:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

INDIVIDUAL CONSIDERATION OF CONSENT AGENDA ITEM B.:

Agreements and Contracts

b. CONSIDERATION of and possible action on a request from the Bellaire Fire Department Emergency Medical Services for approval for the Mayor of the City of Bellaire, Texas, to execute a Life Flight Release from Liability Agreement for the purpose of releasing, indemnifying, and holding harmless Memorial Hermann Hospital, its
insurers and all persons employed by Memorial Hermann Hospital as a result of Life Flight’s participation in the City of Bellaire’s Emergency Medical Services Day in the City of Bellaire, Texas, on Saturday, May 16, 2009 – Item submitted by Fire Chief Darryl Anderson.

MOTION TO APPROVE EXECUTION OF AGREEMENT:

A motion was made by Councilman Will Hickman and seconded by Councilman James P. Avioli, Sr., to approve a request from the Bellaire Fire Department Emergency Medical Services for the Mayor of the City of Bellaire, Texas, to execute a Life Flight Release from Liability Agreement for the purpose of releasing, indemnifying, and holding harmless Memorial Hermann Hospital, its insurers and all persons employed by Memorial Hermann Hospital as a result of Life Flight’s participation in the City of Bellaire’s Emergency Medical Services Day in the City of Bellaire, Texas, on Saturday, May 16, 2009.

DISCUSSION:

Councilman Will Hickman inquired as to whether the Life Flight Release from Liability Agreement under consideration by City Council was the same agreement that had been entered into in previous years.

City Attorney Alan P. Petrov indicated that the agreement was the same as had been entered into in previous years.

VOTE ON MOTION TO APPROVE EXECUTION OF AGREEMENT:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
       Hickman, Will
       Avioli, James P., Sr.
       Faulk, Peggy
       Nauert, Phil
       McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

{Motion Document No. 2009-005 was subsequently issued for this action}
INDIVIDUAL CONSIDERATION OF CONSENT AGENDA ITEM C.:

Bid Award(s)/Rejection(s)

c. CONSIDERATION of and possible action on a recommendation from the Director of Communications Technology Services to award Bid No. 09-018, Installation and Testing of an Outside Plant Structured Cable System, to AT&T for the materials and installation labor of a fiber optic network to connect the Bellaire Police and Municipal Court Building, Bellaire City Library, Bellaire City Hall, and Bellaire Parks and Recreation Center in the amount of $64,167.83 and adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, for and on behalf of the City of Bellaire, Texas, a Standard Form of Agreement with AT&T for said fiber optic network – Item submitted by Director of Communications Technology Services Larry Parks.

MOTION TO AWARD BID AND ADOPT ORDINANCE:

A motion was made by Councilman Will Hickman and seconded by Councilman Pat McLaughlan to award Bid No. 09-018, Installation and Testing of an Outside Plant Structured Cable System, to AT&T for the materials and installation labor of a fiber optic network to connect the Bellaire Police and Municipal Court Building, Bellaire City Library, Bellaire City Hall, and Bellaire Parks and Recreation Center in the amount of $64,167.83 and to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Standard Form of Agreement with AT&T for said fiber optic network.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend:  A – Answer; C – Comment; Q – Question; R – Response}

Q: Councilman Will Hickman referred to previous discussions regarding City facilities and where those facilities might be located. He inquired as to the City’s ability to modify this network later to accommodate any facility relocations.
A: **Director of Communications Technology Services (CTS) Larry Parks** stated that as the City moved forward and made decisions to move a building or a facility, the City would have to run a new line from the current facility, such as City Hall, to the new facility being relocated. It was possible to make that modification between buildings.

Q: **Councilman Hickman** advised that he did not really understand the difference between the City’s specifications and the proposal submitted by AT&T.

A: **Director of CTS Parks** indicated that in the initial bid, the City asked for new conduit and fiber to be laid between all of the facilities in the campus area (i.e., City Hall, Recreation Center, Police and Municipal Court Building, and City Library). AT&T proposed that the City could reuse some of the conduit already in existence between some of the buildings in the campus area. In doing so, the City would realize a cost savings. The City felt confident that there would be no problems with the suggestion and proposal made by AT&T.

Q: **Councilman Hickman** inquired as to the major need or problem that brought about this particular project.

A: **Director of CTS Parks** advised that the City currently had a copper network in place. The City had a capacity issue in that it was oversubscribed on its network and the network was very slow due to the large amount of data being moved over it. As a consequence, the City had applications right now that could not be run on some of the computers in various City facilities. With the fiber network in place, the City would have all the capacity it needed presently as well as for quite some time in the future. The data would move at a much greater speed as well.

Q: **Councilman James P. Avioli, Sr.,** inquired as to whether there were additional hook-up charges or modifications that would have to be made to tie the buildings onto the new fiber optic network.

A: **Director of CTS Parks** advised that there were a number of firms that would agree to go out and lay the network and charge on a monthly basis. The City decided that the City could construct the network itself, put in the necessary equipment, and manage the
network on a monthly basis without incurring any additional charges.

Q: Councilman Avioli stated that he was trying to ensure whether or not there would be additional costs later down the road.

A: Director of CTS Parks advised that the only additional cost that would come into play was if the City needed to replace any equipment, such as a router. Once the equipment was in place, the City was good to go for a number of years.

Q: Councilman Avioli referred to the diagram included in the specifications for the campus network. He also referred to the fact that the City was proposing to build a new Fire Station. He inquired as to whether it would be prudent to go ahead and run a line over to the existing location to be hooked up later.

A: Director of CTS Parks advised that the City currently had empty conduit in place. Once the building was in place, the City would basically be running the fiber itself.

Q: Councilman Avioli noted that the Public Works Service Center was not a part of this project. He inquired as to what might be planned for that facility.

A: Director of CTS Parks indicated that the Public Works Service Center was quite some distance from the campus area. It would continue to be connected with a T1 circuit line, which was currently in place. Since there would be less traffic on that line as the remaining City facilities would be on fiber, the Public Works Service Center should realize a speed increase as well.

Q: Councilman Hickman inquired as to the budgeted amount for this project as compared to the amount of the bid award.

A: City Manager Bernard M. Satterwhite, Jr., advised that the budgeted amount for the project was $150,000.00.
VOTE ON MOTION TO AWARD BID AND ADOPT ORDINANCE:

Motion carried unanimously on a 6-0 vote as follows:

FOR:       Siegel, Cindy
Hickman, Will
Avioli, James P., Sr.
Faulk, Peggy
Nauert, Phil
McLaughlan, Pat

OPPOSED:    None

ABSENT:    Jeffery, John

{Ordinance was subsequently numbered: 09-025}

3. ADOPTION OF ORDINANCE:

CONSIDERATION of and possible action on a recommendation from the Department of Facilities Management to award RFP No. 09-01, Construction Manager Services for the City of Bellaire Fire Station, to Gilbane Building Company for preconstruction and construction services for the Bellaire Fire Station in the amount of $15,000.00 for preconstruction services and in an amount not to exceed 2.95% of actual cost of work associated with the construction phase of the Bellaire Fire Station and to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an American Institute of Architects Document A121 CMc-2003 and AGC Document 565, Standard Form of Agreement Between Owner and Construction Manager, for said preconstruction and construction services.

SUMMARY:

Karl Miller, Director of Facilities Management, stated that the item before City Council this evening for consideration was to enter into a preconstruction and construction agreement with Gilbane Building Company. He noted that in December of 2008, the City Council and City entered into an agreement with Pierce Goodwin Alexander & Linville (PGAL) for architectural and engineering services for the Bellaire Fire Station. With that understanding, City Staff began to move forward with the “construction manager at risk” process of hiring a construction manager.
At the last City Council meeting, Jeff Gerber of PGAL presented some schematic designs for City Council’s review. The goal was to bring the schematic designs back to City Council on May 18, 2009, for final review and possible selection.

Once City Council approved the final schematic design and the City had a construction manager on board, the construction manager at that time would begin a review process and prepare more accurate cost estimates, which would allow the City to make any final adjustments, if necessary, to the design.

He next identified some of the advantages associated with a construction manager at risk. By entering into this type of process, it created a collaborative partnership between the architect, the construction company, and the City and allowed all parties to begin working together during the preconstruction phase. The expertise of all parties would be utilized early on. This process would also help the City identify any potential construction problems that might exist early in the process, which, in turn, would help eliminate change orders.

In regards to procurement, this process was flexible, but required the construction manager to follow all steps in the City’s procurement process that were currently in place. This process also expedited the construction phase of the project and provided a guaranteed maximum price down the road.

City Staff would return to City Council with a guaranteed maximum price where the financial risk would then fall upon the construction manager. The process was also very transparent. All documentation would be available for the City’s review.

In preparing to come before City Council with the recommendation this evening, City Staff went through an extensive process of reviewing the proposals submitted for a construction manager at risk. Requests for qualification (RFQs) were advertised and sent out to potential interested parties. Eight very qualified submittals were received in response to the City’s request. A review committee was formed of City Staff and criteria were set forth in reviewing the proposals or RFQs.

After review of the RFQs submitted, six companies were selected and invited for an interview. Once again, criteria were set for the interview process. The review committee consisted of City Staff, as well as Jeff Gerber of PGAL. Mr. Gerber did not rate or score the companies, but he did provide professional assistance or guidance during the interview process.
At the conclusion of the process, Gilbane Building Company ended up first in the ranking, both at the RFQ submittal process level, as well as the interview process level.

Gilbane Building Company was noted to have been in business for over 100 years. They were a national company and in 2008, the company did over $4 billion in construction. The company had constructed numerous fire stations throughout the State of Texas. In addition, they currently had two underway for the City of Houston. Gilbane built the City of Houston’s Emergency Operations Center and the Houston TranStar.

In the past ten years, Gilbane had zero Occupational Safety and Health Administration (OSHA) citations. The company had also implemented a very strong safety program, and had constructed numerous “Leadership in Energy and Environmental Design” (LEED) certification facilities.

By entering into an agreement with Gilbane Building Company, the company would provide consultation for materials, building system, construction feasibility, actions to minimize adverse effects or conditions, timeline procurement, construction recommendations for alternative materials, scheduling of preliminary costs and economies of purchasing. Gilbane would also provide administrative and managerial responsibility, as well as a guaranteed maximum price. Any costs that exceeded the guaranteed maximum price would become Gilbane’s financial risk. Any savings associated with the price going below the guaranteed maximum price would come back to the City.

Gilbane would secure all procurements associated with the construction and were responsible for ensuring that local, state, and federal laws, codes, ordinances, etc., were met. Gilbane was responsible for ensuring that the LEED documentation for certification was processed. Gilbane would also provide any insurance or bonds identified in the contract.

Not only was Gilbane Building Company the most qualified to do the job in the opinion of the review committee, but Gilbane also offered the lowest proposal. The preconstruction costs for the eight submittals ranged from $8,500 to $37,000. Gilbane Building Company was at the low end of that scale at $15,000. The construction costs for the eight submittals ranged from 2.95% to 5%, with Gilbane Building Company proposing 2.95% for construction costs.

Director of Facilities Management Miller also recommended that City Council enter into the AIA (American Institute of Architects A201 Agreement and General Conditions, which the City Attorney had reviewed and worked closely with City Staff on. Director of Facilities
Management Miller was very excited to make the recommendation to City Council, as he and the review committee believed that Gilbane Building Company was the most qualified company that was interested in the City’s project, as well as provided the best financial opportunity to the City. He recommended that City Council enter into an agreement with Gilbane Building Company for preconstruction and construction services for the proposed Bellaire Fire Station. By entering into that agreement this evening, Gilbane Building Company, PGAL, and City Staff would be able to begin a collaborative process and finalize the design of the Fire Station.

**MOTION TO AWARD RFP AND ADOPT ORDINANCE:**

A motion was made by Councilman Phil Nauert and seconded by Councilman James P. Avioli, Sr., to award RFP No. 09-01, Construction Manager Services for the Bellaire Fire Station, to Gilbane Building Company for preconstruction and construction services for the Bellaire Fire Station in the amount of $15,000.00 for preconstruction services and in an amount not to exceed 2.95% of actual cost of work associated with the construction phase of the Bellaire Fire Station and to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, an American Institute of Architects Document A121 CMc-2003 and AGC Document 565, Standard Form of Agreement Between Owner and Construction Manager, for said preconstruction and construction services.

**QUESTIONS/COMMENTS FROM CITY COUNCIL:**

{Legend: A – Answer; C – Comment; Q – Question; R – Response}

Q: Councilman Phil Nauert inquired as to where the Gilbane Building Company construction management office would be located.

A: Director of Facilities Management Miller advised that City Staff was looking at a site on the parking lot between the Bellaire City Library and existing Fire Station. The exact details as to where the trailer (serving as an office) would be positioned had not been completely ironed out.

Q: Councilman Nauert inquired as to whether Gilbane Building Company had a permanent office in the Houston area.

A: Director of Facilities Management Miller advised that they had an office located in downtown Houston.
Q: **Councilman Nauert** inquired as to how and by what method Gilbane Building Company planned to interface with the City of Bellaire.

A: **Director of Facilities Management Miller** stated that he had met with Gilbane Building Company on several occasions thus far and the company had been great to work with. The company was very open and excited about the project. Director of Facilities Management Miller indicated that he believed that Gilbane Building Company was open to meeting with Fire Department and/or Administrative City Staff as much or as often as the City would like to meet with them.

Q: **Councilman Will Hickman** referred to the preconstruction process and noted that it seemed that the schedule was a little off. He had assumed that the final design would be completed before hiring a construction manager. He asked if the construction manager helped with the design in the preconstruction phase.

A: **Director of Facilities Management Miller** stated that PGAL was responsible for the design. Once Gilbane Building Company entered the process, they would start reviewing the project by looking at it from their viewpoint (i.e., the constructability of the design, as well as actual construction and material costs). By bringing the construction manager on upfront, potential change orders could be eliminated down the road.

He noted that one of the most recent jobs that Gilbane Building Company had done had zero change orders, which was very surprising.

Q: **Councilman Hickman** referred to the agreement and inquired as to whether there were any incentives built in to lower costs. In other words, would Gilbane Building Company receive a bonus if the construction costs were actually lower than the guaranteed maximum price?

A: **Director of Facilities Management Miller** advised that there were no bonuses included for lower construction costs. With this process, the City would receive a guaranteed price or a “not to exceed.” Through the procurement requirements, Gilbane Building Company still had to go out and seek competitive bids.
Q: Councilman Hickman inquired as to whether Director of Facilities Management Miller would recommend some type of bonus structure for being under budget.

A: Director of Facilities Management Miller stated that he did not believe the City needed one. He felt that the way the process was set up, the construction project would more than likely come in under budget.

Q: Councilman Hickman stated that it appeared that the architect became involved in the progress payment process and would verify that everything was done for each phase or stage.

A: Director of Facilities Management Miller advised that Councilman Hickman was correct.

Q: Councilman Hickman stated that it appeared in the contract that the City could terminate the agreement for any reason.

A: Director of Facilities Management Miller advised that the reason would need to be justifiable, but Councilman Hickman was correct.

Q: Councilman James P. Avioli, Sr., referred to Appendix A and the discussion of labor costs and wages other than the construction manager, as well as some living expenses. All of concerns then went away when he read page 11 of Appendix A, which stated that the total cost would be a certain amount. He inquired as to whether he had read that correctly—in other words the other costs listed were subject to the final cost?

A: Director of Facilities Management Miller advised that Councilman Avioli was correct.

Q: Councilman Avioli asked for confirmation that the City was looking at a final cost of roughly of $137,631.50 based on a construction value of $4.1 million.

A: Director of Facilities Management Miller stated that Councilman Avioli was roughly correct. Once the City received a final guaranteed maximum price, City Staff would return to City Council for consideration.

Q: Councilman Avioli inquired as to whether this was a one-year or two-year project.

A: Director of Facilities Management Miller stated that the City believed it was a one-year project.
C: **Councilman Avioli** stated that he would like to see an agenda item or some analysis or comparison to what other cities did. In other words, it might be beneficial for the City to hire an in-house construction manager or city engineer. He advised that the City had many things going on and he certainly did not want to hold up the Fire Station. He felt that the City really needed to look and see whether the economics warranted some addition to the City Manager’s staff. He respectfully asked that City Council look at that as an agenda item.

R/Q: **Mayor Cindy Siegel** asked the City Manager if he would look into that as the City was nearing the time it would begin to budget for the next fiscal year.

She continued and referred to Gilbane Building Company’s long history with such projects. She inquired as to whether Bellaire’s project was too little as compared to others that Gilbane had seen.

A: **Randy Lowrance, Senior Vice President, Gilbane Building Company**, advised that Gilbane specifically constructed projects ranging from $500,000 and larger. Gilbane liked to focus on the communities in which their employees lived and worked. Gilbane currently had two projects underway that were very similar to Bellaire’s in the City of Houston—Fire Station 37 and Fire Station 90. Fire Station 37 was located at Stella Link around the corner from Bellaire. It was noted further that Gilbane was a family-owned company and was founded in 1873.

Q: **Councilman Hickman** inquired as to whether Gilbane found that projects were often under budget with the construction manager at risk process.

A: **Mr. Lowrance** stated that the company had often constructed project that were under budget. Their preference on public projects was not to have a bonus component for constructing under budget. As was mentioned, bids were submitted by subcontractors and reviewed in an open forum with the architects and representatives of the City. Generally when Gilbane had seen bonus structures, the structures were done on how far below the guaranteed maximum price the company could get. Gilbane did not want to ever be accused of somehow raising the guaranteed maximum price artificially to build in a bonus program.

As a policy on public projects, Gilbane had decided not to enter into a bonus structure. They had seen bonus programs done
on a performance matrix approach and had been pleased and successful with those. Private sectors entering into a construction manager at risk process with sophisticated staff that could look at the guaranteed maximum price carefully had been successful. However, Gilbane generally did not have many bonus programs.

Q: **Councilman Hickman** asked if it were fair to say that most public projects came in at the guaranteed maximum price.

A: **Mr. Lowrance** advised that it was not fair to make that statement. Most of the times the projects came in under the guaranteed maximum price.

Q: **Mayor Siegel** referred to the next step in the process and asked for confirmation that City Council would be discussing and considering a final design for the proposed Fire Station. She asked if Gilbane would have had time to become involved in that process and be present if City Council had questions.

A: **Director of Facilities Management Miller** indicated that the timing would work very well. He would hope City Council would be voting and making some final decisions at the next meeting with respect to the design. He stated further that when he was checking references, he spoke with the City of Houston. In the last project Gilbane did for the City of Houston, the overall project cost was $200,000 under budget.

**DISCUSSION:**

**Councilman Pat McLaughlan** stated that he would be voting against this agenda item, but wished to provide an explanation for his vote. He certainly had no problem with the proposed construction manager. He knew that Gilbane was a great company and felt that the construction manager at risk process was a great one as well. The reason that he would vote against this agenda item was that he simply had a problem with the proposed Fire Station design.

**Mayor Siegel** asked Councilman McLaughlan for clarification, noting that City Council would be voting on the final design in two weeks.

**Councilman McLaughlan** indicated that he did understand that.

**Councilman Will Hickman** stated that he missed the Workshop Session where City Council discussed the design of the Fire Station. He inquired as to how final it was and what the status of it would be.
Mayor Siegel advised that some questions were asked and suggestions made during the Workshop Session, such as the location of the bays. In order for the architects to move forward, City Council needed to give its blessing on a final design.

Councilman Hickman asked if it were fair to say that PGAL brought a preliminary design to City Council and then made some changes based on comments made. Now, a revised design would be presented to City Council.

City Manager Bernard M. Satterwhite, Jr., indicated that Councilman Hickman was correct. He noted further that a number of different elevations were shown during the Workshop Session. All of those options would be shown again prior to a decision on the final design. There were some architectural features to some of the designs that City Council might or might not like. Those could be discussed and changed. There was a point in time when the design would be "etched in stone," but that would be later down the road. City Staff needed to get to a point where the size, shape, and features of the building were generally known.

Mayor Siegel noted that Councilman Hickman could obtain a DVD-Rom of the Workshop Session and review it if he so desired.

VOTE ON MOTION TO AWARD RFP AND ADOPT ORDINANCE:

Motion carried on a 5-1 vote as follows:

FOR: Siegel, Cindy
Hickman, Will
Avioli, James P., Sr.
Faulk, Peggy
Nauert, Phil

OPPOSED: McLaughlan, Pat*

ABSENT: Jeffery, John

*Councilman Pat McLaughlan opposed the motion to award RFP No. 09-01 and adopt an ordinance authorizing execution of an agreement with Gilbane Building Company due to a problem he had with the proposed design of the Fire Station.
G. ADJOURNMENT.

MOTION TO ADJOURN:

A motion was made by Councilman Pat McLaughlan and seconded by Councilman James P. Avioli, Sr., to adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 8:10 p.m. on Monday, May 4, 2009.

VOTE ON MOTION TO ADJOURN:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

Respectfully submitted,

___________________________
Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas

Approved:

___________________________
Cynthia Siegel, Mayor
City of Bellaire, Texas