

RESOLUTION NO. 2009- 57 R

A resolution awarding a bid and authorizing the City Manager to execute a Memorandum of Understanding with All-Tex Construction and Remodeling, Inc. of Willis, Texas for minor rehabilitative construction services in the FY 2008-2009 CDBG Home Rehabilitation Program, in an amount not to exceed \$422,227.43; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Administration is authorized to accept the bid and the City Manager is authorized to execute a Memorandum of Understanding with All-Tex Construction and Remodeling, Inc. of Willis, Texas for minor rehabilitative construction services in the FY 2008-2009 CDBG Home Rehabilitation Program, in an amount not to exceed \$422,227.43, in the form attached hereto and as approved by the City Attorney, in accordance with the bid specifications.

2.

The Director of Development Services or his designated representative is authorized to execute change orders in an amount not to exceed the maximum amount authorized by Texas Local Government Code § 252.048.

3.

This resolution shall become effective immediately upon adoption.

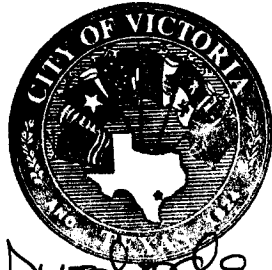
PASSED, this the 21st day of April, 2009.

AYES: 5

NAYS: 1

ABSTENTIONS: 0

APPROVED AND ADOPTED, this the 21st day of April, 2009.



ATTEST:

Scarlet Swoboda
SCARLET SWOBODA, City Secretary

Will Armstrong MAYOR
WILL ARMSTRONG, Mayor of the
City of Victoria, Texas *PROJECT*

APPROVED AS TO LEGAL FORM:

George E. Hyde
BY: GEORGE E. HYDE, City Attorney
DENTON, NAVARRO, ROCHA & BERNAL, P.C.

Distribution: Legal Department
Development Services

Copies Sent: April 22, 2009

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF VICTORIA, TEXAS
AND ALL-TEX CONSTRUCTION AND REMODELING
FOR MINOR REHABILITATIVE CONSTRUCTION SERVICES**

This Memorandum of Understanding (MOU) is entered into by the City of Victoria Texas, hereinafter referred to as "City" and All-Tex Construction and Remodeling, Inc., 12711 Woodcreek, Willis, Texas 77318, hereinafter referred to as "Contractor", for the purpose of providing minor rehabilitative construction services on the following homesites for the FY 2008-2009 Community Development Block Grant (CDBG) Program. This document constitutes a mutual understanding in which the Contractor will provide services to the homesite with the expectation of qualifying for payment under the CDBG Program administered by the City.

Minor Rehabilitative Services will be carried out on the following homesites (**Exhibit "A"**) in the following amounts:

206 S. Brown	\$24,805.00	2015 Oleander	\$24,936.00
2601 Mumphord	\$24,995.00	410 Berwick	\$23,620.00
2514 Thompson	\$24,985.00	2006 Anaqua	\$24,320.00
1202 Buena Vista	\$24,339.00	4810 Lone Tree	\$24,506.00
4702 Hyak	\$20,085.00	1601 Dudley	\$24,949.00
4704 Hyak	\$21,677.00	409 Lariat Lane	\$24,993.00
2209 Tibiletti	\$24,865.00	807 E. North St.	\$24,175.00
2105 Tibiletti	\$24,854.00	1503 Warren	deleted

This is not a contract and the City will have no obligation to pay Contractor until Contractor executes the related Contract for Rehabilitation with the homeowners of the aforementioned properties and performs the required work in accordance with Federal, state and City laws and regulations.

This MOU relates to the Contract for Rehabilitation between the homesite owner and Contractor whereby Contractor will complete all projects according to the agreed upon work write-ups.

City will:

1. Have the authority to inspect the homesites at any time to determine compliance with the contracts between the homeowners and the Contractor and all applicable state and federal laws.
2. Make timely inspections, final inspections and promptly advise Contractor of any required follow-up activity in anticipation of payment.
3. Make payment for rehabilitative services in up to 4 draws, beginning at 25% completion to 100% completion. Draws will be made after invoice is submitted, project is inspected, signed off on by City and Homeowner, and paperwork is submitted to City of Victoria Development Services.

Contractor will:

1. Not donate any item to any client without consulting the City and drawing up a waiver form before any transaction.
2. Comply with all applicable state and federal laws and terms contained in the related Contract for Rehabilitation between Contractor and homesite owner.

Complete all projects no later than:

- April 24, 2009 for first set of 6 homes, with a 65 day target completion date;
- June 18, 2009 for second set of 6 homes, with a 65 day target completion date; and
- August 17, 2009 for the final 4 homes, with a 65 day target completion date.

3. If construction extends over **October 20, 2009**, the Contractor will pay Liquidated Damages in the amount of \$100.00 a day until work is completed, unless the delay is verified by documented severe weather conditions.

Indemnity—Contractor agrees to defend, release, indemnify, and hold the City whole and harmless against any and all claims, suits and actions for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by or from any negligent act, error or omission of Contractor or any officer, agent, servant, employee or subcontractor of Contractor in the execution or performance of the related Contract for Rehabilitation. In the event of notice of a claim to which this indemnity might apply, so much of the money due Contractor under the related Contract for Rehabilitation as shall be reasonably considered necessary by the City may be retained for the use of the city until all suits, actions, and

claims shall have been settled and satisfactory evidence to that effect furnished the City. The contractor further expressly agrees to release from, defend, indemnify and hold harmless the City, its officers, agents, and employees from liability accruing to contractor or any of contractor's officers, agents, employees, or contractors regardless of whether the injury or damage is caused in whole or in part by any hidden or apparent condition of the aforementioned property. This indemnity shall not apply to any claim to the extent to which contractor is prohibited from indemnifying a governmental entity pursuant to Tex. Local Gov't Code § 271.904 or other law.

Insurance: Until all activities under this MOU are completed, Contractor shall maintain the insurance described in the attached Insurance Requirements and shall notify the City of Victoria if any provision thereof is altered or modified in any way. Contractor shall furnish to the City a Certificate of Insurance from a reputable insurance company or companies acceptable to the City from such companies licensed to write insurance in the State of Texas showing that the Contractor is covered by the insurance and shall maintain such insurance during the term of the related contracts. Contractor shall comply with all conditions of the Insurance Requirements.

IN WITNESS WHEREOF, the parties have executed this MOU by signatures of the duly authorized representative of each on the dates indicated. This MOU is effective upon the last signature date.

City of Victoria

All-Tex Construction and Remodeling, Inc.

Charles E. Windwehen, City Manager

(Title)

Date: _____

Date: _____

Attest:

Attest:

Scarlet Swoboda, City Secretary

Form Approved:

George E. Hyde, City Attorney

Insurance Requirements

1. Workers' Compensation Insurance Coverage

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor code, Section 401.011 (44) for all employees of the contractor providing services on the project, for the duration of the project.

C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project; and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, shown as follows, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

JOB SITE NOTICE

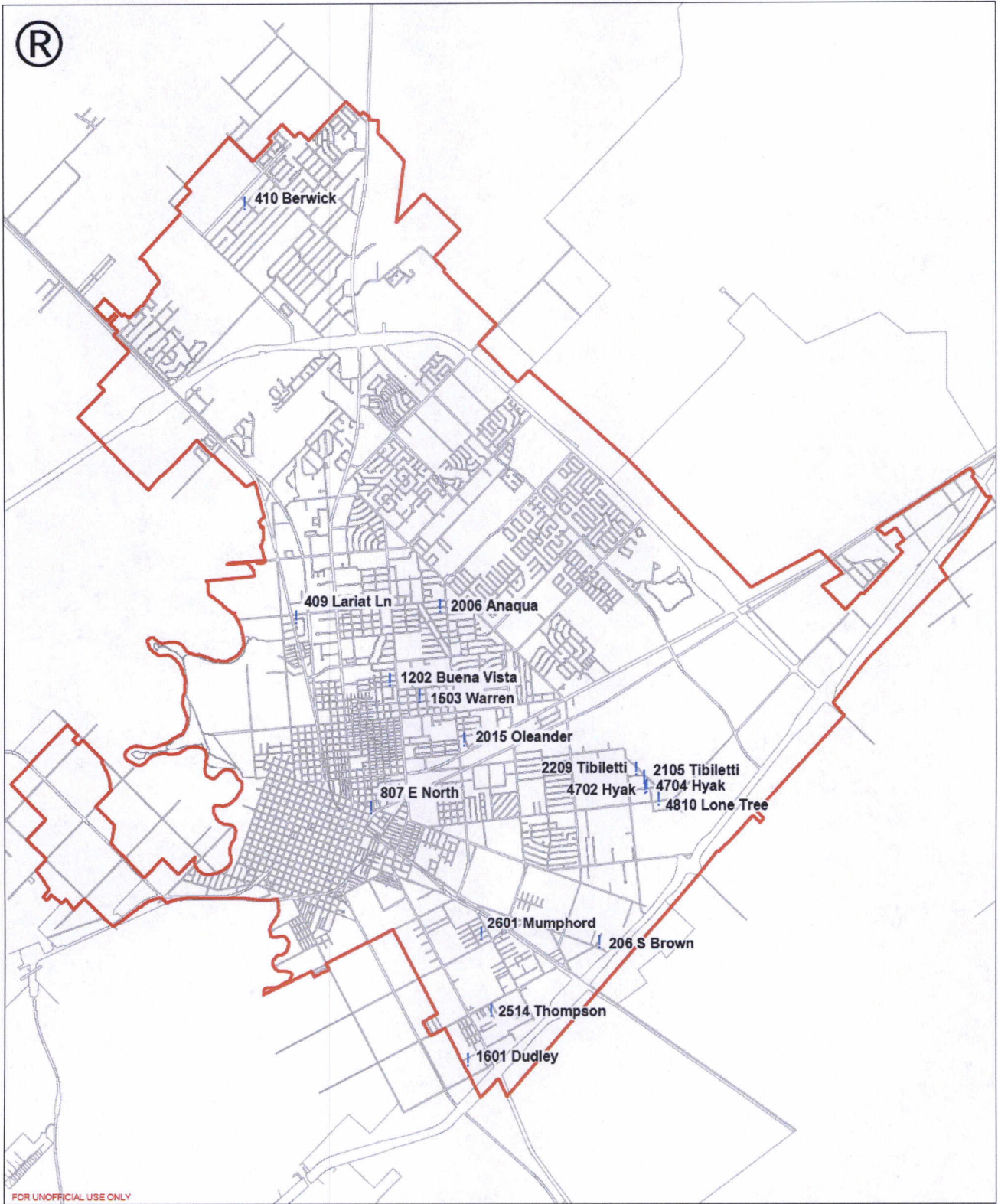
REQUIRED WORKERS COMPENSATION COVERAGE

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

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

- I. The contractor shall contractually require each person with whom it contracts to provide services on a project to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) Obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) A certificate of coverage, prior to the other person beginning work on the project; and
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

****2. Other Insurance -** Until all activities under this contract are completed, the Contractor shall continuously maintain the Insurance shown on the **Certificate(s) of Insurance** attached hereto and shall notify the City of Victoria if any provision thereof is altered or modified in any way.



City of Victoria 2008 Rehab



700 MAIN CENTER, SUITE 201 CITY OF VICTORIA
702 N. MAIN STREET DEVELOPMENT SERVICES
VICTORIA, TEXAS 77901 P.O. BOX 1758
361-485-3360 VICTORIA, TEXAS 77902-1758

FY2008-09 CDBG Rehabilitation Bid Analysis

Name	Address	Org. Estimate	All-Tex Bldg.	Adjusted
Andrea Williams	2006 E. Anaqua	\$21,746.76	\$27,405.00	\$24,320.00
Julie Posey	410 Berwick	\$19,080.42	\$23,620.00	\$23,620.00
Francisca Trevino	206 S. Brown	\$24,339.66	\$27,195.00	\$24,805.00
Yolanda Cantu	1202 Buena Vista	\$21,431.62	\$34,329.00	\$24,339.00
Alfred & Evelyn Ramirez	1601 Dudley	\$25,771.52	\$30,765.00	\$24,949.00
Agnes Casillas	4702 Hyak	\$16,799.60	\$20,085.00	\$20,085.00
Henry Chacon Sr.	4704 Hyak	\$25,567.29	\$21,177.00	\$21,677.00
Elizabeth Duckworth	409 Lariat Ln.	\$25,754.02	\$33,770.00	\$24,993.00
Ysidro & Selina Castillo	4810 Lone Tree	\$22,360.49	\$28,571.00	\$24,506.00
Gilberto Garza	2601 Mumphord	\$25,274.65	\$32,285.00	\$24,995.00
Juan & Nancy Monreal	807 E. North	\$23,835.74	\$24,175.00	\$24,175.00
Arthur & Cora Franklin	2015 Oleander	\$25,957.13	\$31,080.00	\$24,936.00
Robert Bell	2514 Thompson	\$25,091.31	\$31,415.00	\$24,985.00
Billy & Marian Oeltjen	2105 Tibiletti	\$25,616.95	\$33,104.00	\$24,854.00
Juana Lopez	2209 Tibiletti	\$25,128.14	\$32,305.00	\$24,865.00
TOTALS		\$353,755.30	\$431,281.00	\$362,104.00