

AGENDA

**CITY COUNCIL WORK SESSION
City of Garland
Work Session Room, City Hall
200 North Fifth Street, Garland, Texas
September 4, 2012**

Council will meet beginning at 5:00 p.m.

Executive Session

- 1. Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee. [Sec. 551.074, Tex. Gov't Code].**
 - a. Consider the recruitment/interview/selection process regarding the appointment of a City Secretary.**

DEFINITIONS:

Written Briefing: Items that generally do not require a presentation or discussion by the staff or Council. On these items the staff is seeking direction from the Council or providing information in a written format.

Verbal Briefing: These items do not require written background information or are an update on items previously discussed by the Council.

Regular Item: These items generally require discussion between the Council and staff, boards, commissions, or consultants. These items are often accompanied by a formal presentation followed by discussion.

**[Public comment will not be accepted during Work Session
unless Council determines otherwise.]**

NOTICE: The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

(1) Pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. Sec. 551.071, TEX. GOV'T CODE.

(2) The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.072, TEX. GOV'T CODE.

(3) A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.073, TEX. GOV'T CODE.

(4) Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Sec. 551.074, TEX. GOV'T CODE.

(5) The deployment, or specific occasions for implementation of security personnel or devices. Sec. 551.076, TEX. GOV'T CODE.

(6) Discussions or deliberations regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations; or

to deliberate the offer of a financial or other incentive to a business prospect of the sort described in this provision. Sec. 551.087, TEX. GOV'T CODE.

(7) Discussions, deliberations, votes, or other final action on matters related to the City's competitive activity, including information that would, if disclosed, give advantage to competitors or prospective competitors and is reasonably related to one or more of the following categories of information:

- generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
- bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
- effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
- risk management information, contracts, and strategies, including fuel hedging and storage;
- plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and
- customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies. Sec. 551.086; TEX. GOV'T CODE; Sec. 552.133, TEX. GOV'T CODE]

(5:30) 1. Written Briefings:

a. Abandonment of 15' Utility Easement to Garland Independent School District

South Garland High School is currently under expansion/renovation. Council is requested to consider abandoning a 15' utility easement located at the rear of South Garland High School at 600 Colonel Drive to Garland Independent School District to help facilitate this project. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

b. Easement Conveyance to Dallas Area Rapid Transit for the Blueline Light Rail Extension to Rowlett

During the preliminary design phase of the DART Blueline Extension, the City agreed to allow the encroachment by DART onto four parcels of City-owned land in exchange for architectural enhancements to the DART bridge over the Kansas City Railway near the Downtown Garland Station and enhancements to the Rainbow Estates neighborhood screening wall along the DART line extension. The enhancements and screening wall have been completed by DART. Council is requested to consider authorizing the Mayor to execute an easement agreement conveying the easement parcels to DART for the extension of the Blueline Light Rail to Rowlett. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

c. Participation in FDIC Insured Deposit Programs

The cash management program is requesting additional investment options in maintaining liquidity and diversification in the investment portfolios. Council is requested to consider authorizing the City's participation in FDIC insured deposit programs. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

d. Electric Utility System Commercial Paper Program

The construction of Electric Utility System transmission lines require cost effective financing. A commercial paper program provides a short-term funding mechanism for the Capital Improvement Program. Council is requested to authorize the implementation of a three-year commercial paper program for the Electric Utility System. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

e. Master Agreement with Dallas County for Major Capital Improvements Program

In 1999, Dallas County adopted their Major Capital Improvements Program that provides for a 50/50 cost share program between the County and each individual city in Dallas County to construct major transportation projects. The City signed its original Master Agreement with the County in 2002 for a ten-year term. Council is requested to consider authorizing the City to enter into another Master Agreement with Dallas County for another ten-year period. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

f. Texas Department of Transportation Selective Traffic Enforcement Program – Comprehensive Grant

Council is requested to consider authorizing the acceptance of a Texas Department of Transportation (TxDOT) – Selective Traffic Enforcement Program (STEP) – Comprehensive Grant to be used to save lives, reduce motor vehicle crashes and injuries, and change behavior related to driving habits. This will be accomplished by aggressively enforcing the laws of the State of Texas related to (1) red light and intersection violations, (2) seat belt violations, (3) speed violations, and (4) driving while intoxicated violations. This item is scheduled for formal consideration at the September 4, 2012 Regular Meeting.

Item	Key Person
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(5:45) 2. Verbal Briefing:

a. Audit Committee Report **R. Williams/Hametner**

Council will consider the following reports from the Audit Committee:

- *FY 2012 Audit by Deloitte & Touche LLP – (R. Williams)*
- *Hard Drive Disk Audit – (R. Williams)*
- *IT Access Control Follow-up Audit – (R. Williams)*
- *State Narcotic Seizure Fund Audit – (R. Williams)*
- *A/R – Cash Handling Audit – (R. Williams)*
- *Risk Management Liability Claims Audit – (R. Williams)*
- *Single Family Rental Registration Audit – (R. Williams)*
- *FY13 Annual Audit Plan Overview – (R. Williams)*
- *Draft FY Annual Audit Plan & Other Audit Info – (Hametner)*

3. Regular Item:

a. Discussion of 2012–13 Proposed Budget (Contingency Only) **Young**

This item is being posted in the event that Council wishes to continue discussions, deliberations, or staff presentations related to the 2012-13 Proposed Budget.

4. Discuss Appointments to Boards and Commissions **Council**

- *Manjula Shrivastava – Citizens Environmental and Neighborhood Advisory Committee (R. Williams)*

5. Consider the Consent Agenda **Council**

A member of the City Council may ask that an item on the consent agenda for the next regular meeting be pulled from the consent agenda and considered separate from the other consent agenda items. No substantive discussion of that item will take place at this time.

6. Announce Future Agenda Items

Council

A member of the City Council, with a second by another member, or the Mayor alone, may ask that an item be placed on a future agenda of the City Council or a committee of the City Council. No substantive discussion of that item will take place at this time.

(6:45) 7. Adjourn

Council

(Estimated time to consider)



Policy Report

ABANDONMENT OF 15' UTILITY EASEMENT TO GARLAND INDEPENDENT SCHOOL DISTRICT

ISSUE

Consider the abandonment of a 15' utility easement located at the rear of South Garland High School at 600 Colonel Drive to Garland Independent School District.

OPTIONS

1. Authorize the Mayor to execute a Deed Without Warranty abandoning the easement.
2. Take no action.

RECOMMENDATION

Approve Option 1 – Authorize the Mayor to execute a Deed Without Warranty abandoning the easement. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

COUNCIL GOAL

Sustainable Quality Development and Redevelopment
Consistent Delivery of Reliable City Services

BACKGROUND

On July 28, 1964, the City acquired two 15' Utility Easements (described as Strip No. 1 & Strip No. 2) from the Garland Independent School District as a part of the development of South Garland High School.

South Garland High School is currently under expansion/renovation and space is needed in the area of the old 15' Utility Easement (Strip No. 1). As a part of the expansion and renovation of South Garland High School, GISD relocated the existing sanitary sewer line, located in "Strip No. 1", to a new dedicated easement. Strip No. 1" is no longer required and contains no active utilities. Council action is required to abandon the easement.

CONSIDERATION

Abandon the Utility Easement (Strip No. 1 only) will help to facilitate the expansion of South Garland High School.

ATTACHMENTS

1. Location Map
2. Copy of original exhibit describing the easement "Strip No. 1".

Submitted By:

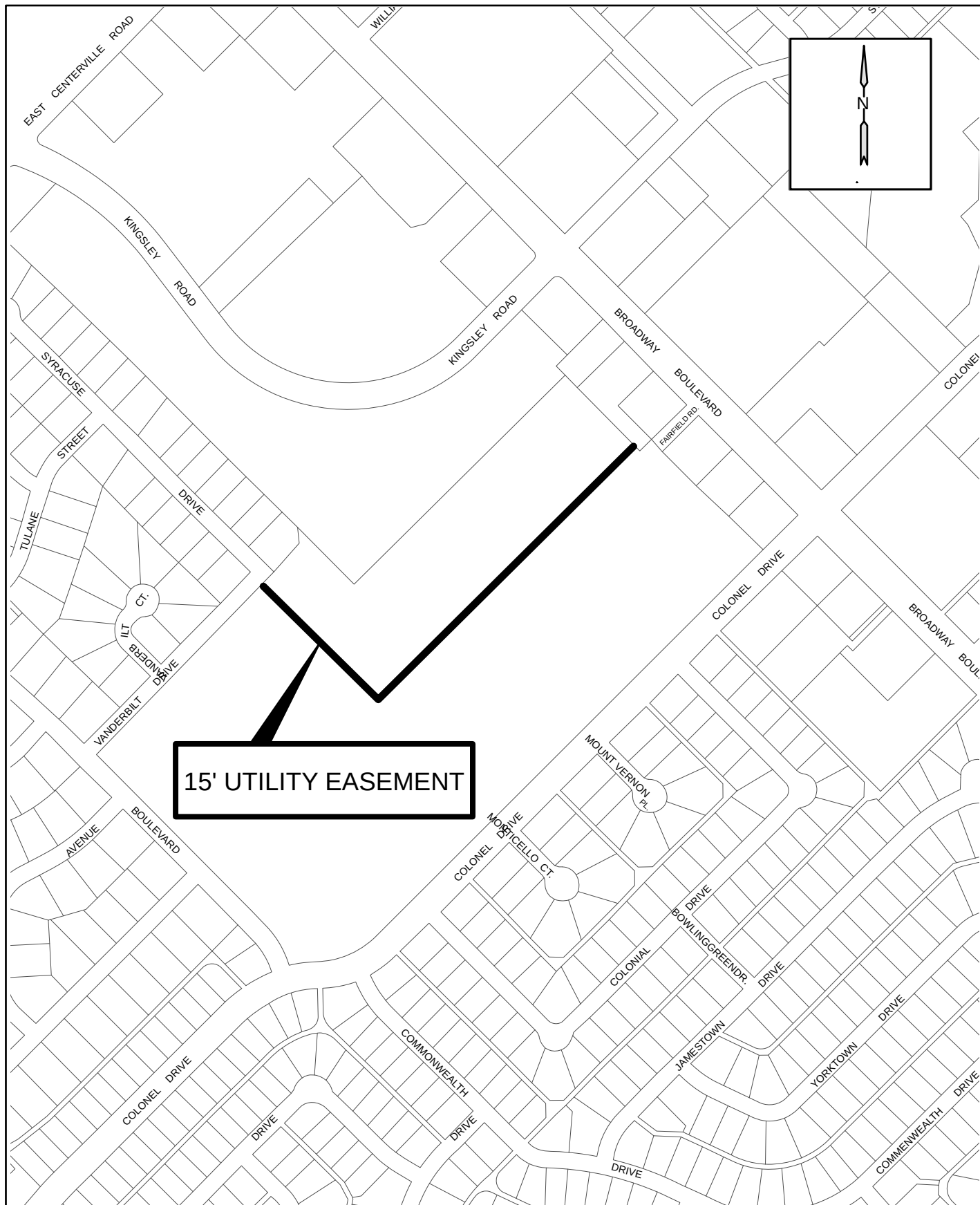
Michael C. Polocek
Director of Engineering
Engineering Department

Date: August 27, 2012

Approved By:

William E. Dollar
City Manager

Date: August 27, 2012



SOUTH GARLAND HIGH SCHOOL UTILITY EASEMENT ABANDONMENT

Scale: 1"=400'
File: SGHSesmt
Date: 08/14/2012
Drawn: jmk

SHEET
1
OF
1

EXHIBIT "A"

**15' UTILITY EASEMENT
ABANDONMENT**

BEING all of a 15' wide Utility Easement described as "Strip No.1", as conveyed to the City of Garland, Texas, and recorded in Volume 367, Page 378, Deed Records of Dallas County, Texas, it being the intent to abandon only that portion described as "Strip No. 1", and that "Strip No. 2" as described in said conveyance is hereby unaffected and is to remain.

UTILITY EASEMENT

JUL-28-64 198047

LS--NO

2150

THE STATE OF TEXAS

COUNTY OF DALLAS

Board of

That Marion D. Williams, President, Trustees of Garland I.S.D., Dallas

County, Texas, for and in consideration of the sum of \$1.00

cash in hand paid to Garland Independent School District by the City of Garland, Texas, receipt of which is hereby acknowledged, and other good and valuable considerations, one of said considerations being the benefits to be derived by grantor on account of the construction, reconstruction and maintenance by the City of Garland of said utilities in and through those certain premises owned by the grantor, and which hereinafter described, do hereby give and grant to the City of Garland, a municipal corporation of Dallas County, Texas, the right to construct, reconstruct and perpetually maintain facilities upon and across the following described property.

Said easement consisting of land described as follows:

The 40 Acre Garland Independent School District Tract in the John Little Survey Abstract No. 761, City of Garland, Dallas County, Texas.

Being a 15' wide Utility Easement, 7.5' on either side of the centerline being described as follows:

STRIP NO. 1

Beginning at a point in the Northeast Line of the said tract, said point being N.45°02'W., 19.3' from the Northwest property line of Fairfield Drive.

THENCE, S.43°10'W., 1126.6' to a point for a corner;

THENCE, N.45°12'W., 516.2' to a point in the Northwest Line of the said tract, for the end of said easement.

STRIP NO. 2

Beginning at a point in the Northwest Line of the said tract, said point being S.44°15'W., 7.5' from the most Northerly point in the said tract,

THENCE, S.45°01'E., parallel with and 7.5' Southwest of the Northeast Line of the said tract, 222.0' to a point for a corner;

THENCE, N.44°58'E., parallel with and 7.5' Southeast of the Northwest Line of the said tract, 45.0' to a point for a corner;

THENCE, S.45°02'E., parallel with and 7.5' Southwest of the Northeast Line of the said tract, 130.0' to a point for a corner;

THENCE, S.44°58'W., parallel with and 7.5' Northwest of the Southeast Line of the said tract, 0.16' to a point for a corner;

THENCE, S.45°02'E., parallel with and 7.5' Southwest of the Northeast Line of the said tract, 202.5' to a point for the end of the said easement, said point being N.44°58'E., 7.5' to the Southeast Line of an existing alley.

TO HAVE AND TO HOLD the same perpetually to the City of Garland and its successors, together with the right and privilege at any and all times to enter said premises, or any part thereof, for the purpose of construction, reconstruction and maintenance of said utility facilities, and for making connections therewith; all upon the conditions that the City of Garland will at all times, after doing any work in connection

367 378

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EXHIBIT "A"

Utility Easement cont.

with the construction, reconstruction or repair of said Utility facilities, restore said premises to the condition in which same were found before such work was undertaken, and that in the use of said rights and privileges herein granted the City of Garland will not create a nuisance or do any act that will be detrimental to said premises.

WITNESS my hand this the 15th day of June
1964.

Marion D. Williams
President, Board of Trustees
Garland Independent School District

THE STATE OF TEXAS *

COUNTY OF DALLAS *

Before me, the undersigned authority, on this day personally appeared Marion D. Williams known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 15 day of June

1964.

Evelyn E. Ellis
Notary Public in and for
Dallas County, Texas



367 370

FILED
JAN. 6. 1964
COUNTY CLERK
DALLAS COUNTY

JAN 27 3 31 PM '64

STATE OF TEXAS COUNTY OF DALLAS
I hereby certify that this instrument was filed on the
date and time stamped herein by me and was duly re-
corded in the proper and legal of the record books
of Dallas County, Texas as shown herein by me.

JUL 29 1964



John E. Kelly
County Clerk, Dallas County, Texas

Copy of Certified

367 380

0380



Policy Report

EASEMENT CONVEYANCE TO DALLAS AREA RAPID TRANSIT (DART) FOR THE BLUELINE LIGHT RAIL EXTENSION TO ROWLETT

ISSUE

Consider whether to grant four easement parcels to Dallas Area Rapid Transit (DART) for the extension of the Blueline Light Rail to Rowlett.

OPTIONS

- A. Adopt a resolution authorizing the Mayor to execute an easement agreement conveying four easement parcels to DART.
- B. Take no action.

RECOMMENDATION

Option A: Adopt a resolution authorizing the Mayor to execute an easement agreement conveying four easement parcels to DART. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

COUNCIL GOAL

Quality Development and Redevelopment throughout Garland

BACKGROUND

In 2009, during the preliminary design phase of the DART Blueline Extension, DART requested to encroach onto City owned property with some of their fencing, grading and drainage improvements. Through discussions, the City agreed to allow the encroachment onto four parcels of City owned land in exchange for architectural enhancements to the DART bridge over the Kansas City Southern (KCS) Railway near the Downtown Garland Station and enhancements to the Rainbow Estates neighborhood screening wall along the DART line extension.

The aesthetic treatments to the bridge and screening wall have been completed. DART is requesting that the easement conveyance from the City be completed.

CONSIDERATIONS

Council action is required to authorize the City Mayor to execute the five easement documents. The easement documents have been reviewed by the City Attorney's Office.

ATTACHMENTS

- A. Location Map
- B. Parcel R1-41
- C. Parcel R1-54
- D. Parcel R1-92(E)
- E. Parcel R1-098

Submitted By:

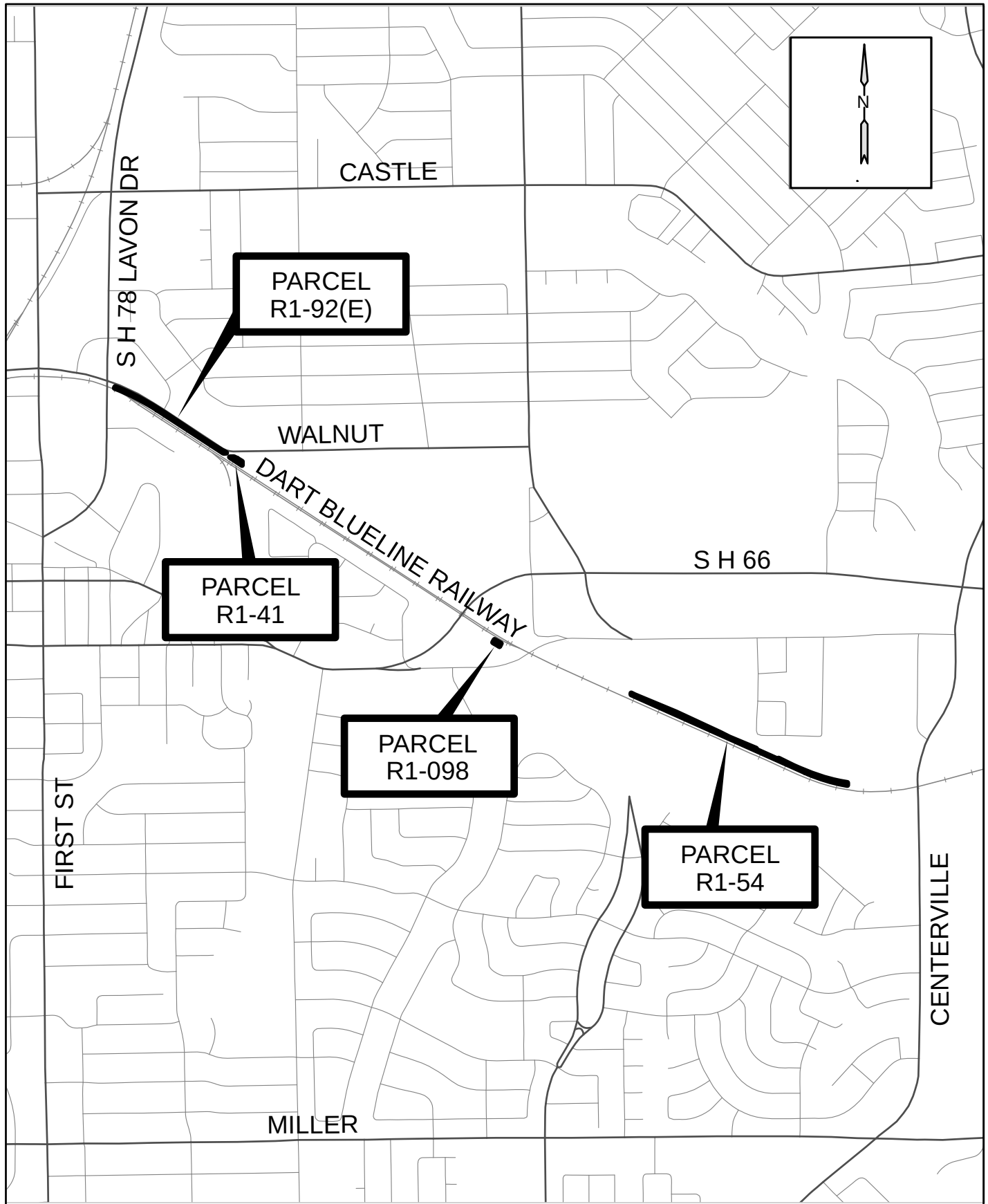
Michael C. Polocek, P.E.
Director of Engineering

Date: August 24, 2012

Approved By:

William E. Dollar
City Manager

Date: August 27, 2012





Policy Report

PARTICIPATION IN FDIC INSURED DEPOSIT PROGRAMS

ISSUE

The cash management program desires additional investment options in maintaining liquidity and diversification in the investment portfolios. Staff requests Council's authorization to participate in FDIC insured deposit programs.

OPTIONS

1. Authorize participation in FDIC insured deposit programs.
2. Continue with only previously authorized investment options.

RECOMMENDATION

It is recommended that Council authorize the City Manager by resolution to execute documents from time to time to participate in FDIC insured deposit programs. If so directed, staff will present the resolution for Council's consideration at the Regular Meeting on September 18, 2012.

COUNCIL GOAL

Financially Stable Government with Tax Base that Supports Community Needs - Approval of this request will add an investment option for cash management purposes. The selection of investment options is based upon meeting the investment objectives in the sequential order of preservation and safety of principal, liquidity and then yield.

BACKGROUND

In 1989, the Public Funds Investment Act authorized FDIC insured Certificates of Deposit issued by financial institutions as an allowable investment for state and local governments. FDIC insured Certificates of Deposit are authorized in the City Council adopted Statement of Investment Policy.

An FDIC insured deposit program is a cash management program which provides depositors with full FDIC insurance on principal and accrued interest. Liquidity and complete reporting are also desirable characteristics that are provided in the program. With an FDIC insured deposit program, deposits are invested in financial institutions

that meet established financial metrics of credit quality, capital adequacy and liquidity. Under FDIC rules, only the banks that are classified as “well capitalized” by FDIC may participate in an FDIC insured deposit program.

With an FDIC insured deposit program, City funds would be transferred to a program custodian. The program custodian then spreads the funds among multiple financial institutions that participate in the program. At all times, all City funds are FDIC insured. An investment broker provides access to the network of financial institutions participating in an FDIC insured deposit program.

CONSIDERATION

The current economic slowdown has created an extremely low interest rate environment. The available options for investing idle cash in short-term instruments have decreased. The use of FDIC insured deposit programs will provide an additional source of liquidity and diversification for the cash management program.

ATTACHMENT

None

Submitted By:

David Schuler
Managing Director for Financial Services

Date: August 28, 2012

Approved By:

William E. Dollar
City Manager

Date: August 28, 2012



Policy Report

ELECTRIC UTILITY SYSTEM COMMERCIAL PAPER PROGRAM

ISSUE

The construction of Electric Utility System transmission lines require cost effective financing. A commercial paper program provides a short-term funding mechanism for the capital improvement program (CIP). Staff requests Council's authorization to implement a three year commercial paper program for the Electric Utility System.

OPTIONS

1. Authorize an Electric Utility System commercial paper program.
2. Do not authorize an Electric Utility System commercial paper program.

RECOMMENDATION

Option 1 – Authorize an Electric Utility System commercial paper program. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012

COUNCIL GOAL

Financially Stable Government

BACKGROUND

Commercial paper (CP) is a variable rate, short-term debt instrument that can be used to fund portions of the CIP. CP can be issued with maturities ranging from 1 to 270 days. CP interest is paid periodically as each CP note matures; principal is carried forward. At the expiration of the commercial paper program, principal and outstanding interest is refinanced with long-term debt.

Commercial paper will be issued only when needed to meet cash flow requirements instead of in advance like fixed rate bonds. Thus, a commercial paper program is cost effective because it minimizes the total amount of debt outstanding while construction of the improvements is taking place.

COMMERCIAL PAPER PROGRAM

Page 2

Because commercial paper is a short-term debt instrument, it is issued at very favorable short-term interest rates. Commercial paper interest rates are currently 0.20% to 0.30%. Fixed rate, long-term debt has interest rates currently in the range of 3.80% to 4.50%.

Issuance of commercial paper is an alternative debt instrument to finance improvements to the Electric Utility System. CP does not require voter authorization.

Electric Utility System commercial paper will be used to finance Competitive Renewable Energy Zone (CREZ) transmission lines and the Olinger Power Plant to Greenville transmission lines. Estimated construction costs for the combined projects is \$135 million. Upon completion and initialization of the transmission lines, the Electric Utility will realize a return on its investment. To earn the return, the transmission lines must be in service and a rate increase request must be made before the Public Utility Commission of Texas. CP allows the Electric Utility flexibility to time its rate request with the start of the long-term debt service thus minimizing delays in cost recovery.

The City has executed a Preliminary Terms and Conditions (Term Sheet) document with Wells Fargo and Sumitomo Mitsui Banking Corporation (the Banks). The Term Sheet defines the credit and liquidity support commitments and is preliminary to the creation of a commercial paper program. The Banks will participate equally in the \$135 million direct pay letters of credit. The term of the agreement will be for three (3) years.

The Preliminary Terms and Conditions and the proposed length of the commercial paper program currently being discussed satisfy the funding needs required by the Electric Utility. The Term Sheet is the foundation for the ordinance authorizing the Electric Utility System commercial paper program.

CONSIDERATION

The benefits from the implementation of an Electric Utility System commercial paper include:

- Principal debt service is deferred until fixed rate long-term debt is issued;
- Commercial paper is issued in intervals to meet cash flow requirements;
- Commercial paper is issued at short-term interest rates, which are much lower than fixed rate long-term debt;
- Preliminary Terms and Conditions and proposed length of agreement meet all Electric Utility requirements.

ATTACHMENT

Summary of Preliminary Terms and Conditions

COMMERCIAL PAPER PROGRAM

Page 3

Submitted By:

David Schuler
Managing Director for Financial Services

Date: August 29, 2012

Approved By:

William E. Dollar
City Manager

Date: August 29, 2012



Proposal to Provide a Letter of Credit Facility to:

**City of Garland, Texas Electric Utility System
August 15, 2012**

**Summary of Preliminary Terms and Conditions ("Term Sheet")
(For Discussion Purposes Only – Not a Commitment to Lend)**

Obligor: City of Garland, Texas ("Obligor").

Issue: Electric Utility System Revenue Tax-Exempt Commercial Paper Notes, Series 2012 (the "Notes").

Facility and Purpose: Two direct pay letters of credit (the "Letter of Credit" or "LOC") providing credit and liquidity support for the Notes and issued pursuant to two nearly identical, bilateral reimbursement agreements (the "Reimbursement Agreements" and, together with the LOCs, the "Facility").

Banks: Wells Fargo Bank, National Association ("Wells Fargo") and Sumitomo Mitsui Banking Corporation ("SMBC"), acting through its New York Branch (each, a "Bank", and collectively, the "Banks").

Term: Three (3) years from the effective date of the Facility.

The term of the Facility may be extended on an annual or multi-annual basis. Any renewal will be at the sole and absolute discretion of each Bank. A failure of the Banks to respond to any request for renewal will be deemed a denial of such request.

<u>Facility Principal Amount:</u>	<u>Bank</u>	<u>Principal Amount</u>
	Wells Fargo:	\$ 67,500,000
	SMBC:	\$ 67,500,000
	Total:	\$135,000,000

The total facility amount will include additional exposure relating to an interest coverage component covering a 15% maximum interest rate for 270 days based on a 365 day year.

Designated Subseries: Separate tranches or subseries of Notes supported individually by each Bank.

Pro-Rata Issuance:

Although each Bank will support a separate subseries of Notes, the Banks will require that the issuance of one subseries not exceed issuance of the other subseries by more than \$5,000,000.

Security:

The Obligor's obligations to the Banks under the Facilities and the Notes will be secured by a lien on and pledge of the net revenues of the Electric Utility System, subordinate only to the currently outstanding Electric Utility System Revenue Bonds (the "Outstanding Senior Bonds"). The Obligor shall provide for the closure of the lien created by the Ordinance under which the Outstanding Senior Bonds were issued and secured, and shall agree that no additional bonds or other obligations may be issued and secured by a lien on the net revenues of the Electric Utility System senior to the lien securing the Notes and the obligations to the Banks under the Facilities.

FACILITY FEES:

Facility Fee :

Term	Facility Fee
3 Years	80.0 bps per annum

Downgrade
Pricing:

The above pricing is subject to the maintenance of the current unenhanced ratings assigned to the Outstanding Senior Bonds (AA- by S&P and Fitch) or other obligations secured on parity with such bonds (the "Senior Debt"). Should the ratings of any Senior Debt change, the Facility Fee will be adjusted as reflected below:

Credit Rating (S&P/Fitch)	Facility Fee
AA- to A+	+ 20 bps
A+ to A	+ 20 bps
A to A-	+ 20 bps
A- to BBB+	+ 25 bps

In the event of a split rating, the lower rating will prevail. If one or more of the underlying ratings are withdrawn or suspended for any reason, any rating falls below BBB+, or an event of default occurs, the Facility Fee will be adjusted to be the sum of (i) an amount equal to the Facility Fee which would apply if any rating assigned to the Obligor's Senior Debt is BBB+ plus (ii) one hundred basis points (1.00%) per annum.

All of the foregoing pricing increases shall be cumulative.

References above are to rating categories as presently determined by the rating agencies, and in the event of the adoption of any new or changed rating system or a "global" rating scale by any such rating agency, the ratings categories shall be adjusted accordingly to a new rating which most closely approximates the ratings currently in effect.

OTHER FEES AND EXPENSES:

Banks' Domestic
Counsel:

Estimated at \$50,000 plus fees and expenses with respect to Ashurst LLP for representing the Banks collectively, subject to increase if the transaction is not closed within 60 days, if the security or structure of the transaction changes materially, or if other complexities develop

Foreign Counsel (in the
case of SMBC):

Foreign counsel fees for the firm providing SMBC's Japanese legal counsel opinion will be capped at \$5,000.

Termination/Reduction
Fee:

If the Facility is terminated for any reason within the first year following its delivery, on the date of termination, the Obligor will be required to pay (i) all amounts then due and owing to the Banks and (ii) one year of Facility Fees (Facility Fee multiplied by Facility Amount), less the Facility Fee amount already paid.

No Termination Fee shall apply to a Bank's Facility in the event that such Bank's short-term ratings fall below A-1 and F1, respectively, from S&P and Fitch, respectively.

If the Facility is permanently reduced within the first year following its delivery, the Obligor will be required to pay all amounts due to the Banks to such date relating to such reduced amount plus an amount equal to the Facility Fee that would have been payable through the remainder of the first year on such reduced amount.

Advance and Related
Fees:

Obligor shall pay to the Banks the following additional fees: (i) a Draw Fee of \$300.00 per draw to each related Bank at the time of each draw under the Facility; (ii) an amendment fee or transfer fee in a minimum amount of \$2,500.00 per the related Bank plus associated legal expenses.

Out-of-Pocket Expenses:

Capped at \$5,000 per Bank to the extent actually incurred.

Increased Costs and
Capital Adequacy;
Taxes:

Standard increased costs and capital adequacy provisions will be provided for in final documentation.

PAYMENT OF FEES AND EXPENSES:

Timing / Computation of Payments:

All fees are non-refundable. Any Bank Counsel fees and expenses are payable at closing in immediately available funds. The Facility Fee is based on the Facility Amount, payable quarterly in arrears at the end of each calendar quarter.

Any Termination Fee or Reduction Fee is payable on the date of the Facility's termination or reduction, as applicable.

Obligor shall be responsible for all out of pocket costs and expenses of the Banks incurred in connection with the negotiation, execution, delivery, administration and enforcement of the Facility, including, without limitation, the legal fees and expenses of counsel to the Banks, whether or not the Facility closes.

INTEREST RATES:

Base Rate:

The greatest of:

- (i) the related Bank's Prime Rate plus 1.00%;
- (ii) the Federal Funds Rate plus 2.00%; or
- (iii) 1 month LIBOR + 3%
- (iv) SIFMA + 3%
- (v) 7.00%

Bank Rate:

Days 1 – 180: Base Rate.

Thereafter: Base Rate plus 1.00%.

Default Rate:

Base Rate plus 3.00%.

Maximum Rate:

The Reimbursement Agreements will provide that in no event shall the Index Rate, Bank Rate or Default Rate exceed the lesser of (i) 15.00% per annum or (ii) the maximum rate permitted by applicable law.

Clawback Amounts:

The Reimbursement Agreements will include customary interest recapture ("clawback") language allowing Banks to recover interest in excess of any maximum interest rate imposed by law.

REPAYMENT OF ADVANCES:

Interest Rates on Advances:

The Obligor will deliver a promissory note to the Banks at closing (the "Bank Notes") to evidence unreimbursed advances made by the Banks. The Facilities shall permit an Issuing and Paying Agent acceptable to Banks to request a drawing to pay the principal of and interest on maturing Commercial Paper Notes which have met the conditions

precedent for a drawing (each, an "Advance"). The portion of each Advance under the Facility to pay accrued interest on the Notes shall be due and payable on the date advanced and, if not paid when due, shall bear interest at the Default Rate (as defined above). The portion of each Advance under the Facility to pay principal on the Notes will bear interest at the Bank Rate (as defined above).

Advance Amortization:

So long as no event of default shall have occurred and is continuing and all representations and warranties are true and correct on the date of the related Advance, the principal portion of each Advance shall be repaid in full by the earliest of: (i) the third anniversary of the date of such Advance, (ii) the third anniversary of the expiration date of the Facility, (iii) the date that a substitute facility replaces the subject Facility, or (iv) the amount of the Facility is otherwise reduced to zero.

Subject to the foregoing, each Advance will amortize in equal quarterly payments commencing 180 days from the date of Advance.

Calculation and
Payment of Interest:

Interest on the Bank Note will be calculated on the basis of the actual number of days elapsed in a 365-day year and payable monthly in arrears and upon receipt of the proceeds of rollover Notes.

Default Interest will be calculated on the basis of the actual number of days elapsed in a 365-day year and payable on demand.

Conditions Precedent
To Funding Under
The Facility:

Timely delivery of duly completed request for Advance and the absence of delivery of a no-issuance notice.

Prepayment:

The Principal Portion of each Advance may be prepaid at any time without penalty.

EVENTS OF DEFAULT:

Events of Default:

Each Reimbursement Agreement will contain customary events of default, including (without limitation) nonpayment, breach of representations and covenants (including, but not limited to, a breach of the rate covenant or additional debt covenant described below under the heading "DOCUMENTATION AND COVENANTS – Financial Covenants" or "– Additional Debt"), cross-default (including, without limitation, to the Ordinance and to any other related documents, any Senior Debt or parity debt, and other designated contracts), bankruptcy and insolvency events with respect to Obligor, ERISA events, environmental matters, judgments, ratings downgrade of the Senior Debt below BBB+ by either S&P or Fitch, or invalidity or contest of Obligor's obligations.

REMEDIES UPON EVENT OF DEFAULT:

Remedies Upon Event of Default:

Remedies upon default shall include the Banks' right to stop the issuance of Notes, the termination of the Banks' commitment under the Facilities (with notice), and the requirement that the obligations of the Obligor under the Facility become due and payable immediately, subject to the availability of Electric System revenues to make such payment in accordance with the Ordinance, as well as all other applicable legal and equitable remedies.

DOCUMENTATION AND COVENANTS:

Documentation:

Documentation will include a Reimbursement Agreement and Letter of Credit (collectively the "Agreements") between each Bank and the Obligor, and two (2) Fee Letters. Documentation for each Bank's Facility shall include identical terms to the extent possible. The documentation will include, but not be limited to, the terms and conditions outlined herein as well as provisions that are customary and standard with respect to conditions precedent, representations and warranties, covenants, events of default and remedies (including acceleration of the Obligor's obligations under the Facility).

Conditions Precedent To Closing:

Usual and customary for this type of financing, including without limitation:

1. Affirmation from each of S&P and Fitch that the senior unenhanced long term credit ratings on the Outstanding Senior Bonds shall be not less than AA-;
2. Absence of any material adverse change in the business condition, operations, performance of the Obligor since release of the financial statements for fiscal year ending September 30, 2011;
3. Absence of any change in any law, rule or regulation (or their interpretation or administration), that, in each case, may adversely affect the consummation of the transaction, to be determined at the sole discretion of the Banks;
4. Disclosure of any pending or threatened litigation (with such pending or threatened litigation acceptable to the Banks);
5. Payment of accrued fees and expenses;
6. A certified copy of the Ordinance and execution and delivery of all other Financing Documents and all certificates, authorizations and opinions requested in form and substance satisfactory to the Banks, with legal opinions to cover such

matters as the Banks may require;

7. Receipt of any necessary governmental and regulatory approvals or consents;
8. A certificate of covenant compliance in form and substance satisfactory to the Banks;
9. Receipt of Opinion of Bond Counsel acceptable to the Banks and Bank Counsel; and
10. Receipt of the Opinion of Obligor Counsel acceptable to the Banks, Bank Counsel and Trustee.

The Banks shall have reviewed to their satisfaction any additional documentation and financial information they find relevant.

CUSIP Numbers and
Ratings Assigned to
Bank Note:

Prior to the issuance of the Facilities, the Obligor will, at its sole expense, provide or cause to be provided:

- 1) Ratings for the Bank Notes from each of S&P and Fitch;
- 2) Unique CUSIP numbers for the Bank Notes; and
- 3) Any additional documentation that will allow the Bank Notes to be pledged as collateral pursuant to federal banking regulations.

Financial Covenants:

In addition to the financial covenants contained in the Obligor's other debt instruments, the Banks shall require that the covenant regarding rates and charges of the Electric Utility System contained in Section 13 of the Ordinance be included in the Reimbursement Agreement with a revision to require that the Electric Utility System shall produce Net Revenues (as defined herein) for each fiscal year in an amount reasonably estimated to be not less than 1.25 times the annual principal and interest requirements with respect to any outstanding debt of the Obligor that is (i) senior to the Notes, (ii) the Notes, and (iii) on parity with the Notes. The Banks shall also receive the benefit of all existing and subsequent covenants, defaults and remedies which are agreed to by the Obligor with any other lender, liquidity provider or credit provider supporting any senior or parity obligations of the Obligor or any such liquidity or other covenants that are mutually agreeable, including any additional events of default (but not including any events resulting in an immediate termination or suspension of the Banks' obligations to purchase Bonds).

Additional Debt:

The Obligor shall not issue any additional bonds or other indebtedness secured by a senior lien on the net revenues of Obligor's Electric Utility System. Any additional debt issued by the Obligor on parity with the Notes will be subject to an additional bonds test included in the Reimbursement Agreement requiring the Net Revenues of the Electric Utility System for either the completed fiscal year next preceding the date of the additional bonds or a consecutive twelve-month period out of the last fifteen months next preceding the date of the additional bonds are equal to at least 1.25 times the annual principal and interest requirements (calculated on a fiscal year basis at the time of the issuance of additional bonds) with respect to (i) any outstanding debt of the Obligor that is (a) senior to the Notes, (b) the Notes, and (c) on parity with the Notes, and (ii) the additional bonds, if such additional bonds are on parity with the Notes, which will be outstanding after the issuance of the proposed additional bonds.

Net Revenues

For the purposes of the tests included under the headings "Financial Covenants" and "Additional Debt" above, "Net Revenues" shall mean the gross revenues of the Electric Utility System, including money transferred from the Obligor's electric rate mitigation fund, less the expenses of operation and maintenance, including all salaries, labor, materials, repairs and extensions necessary to render efficient service, provided, however, that only such repairs and extensions as in the judgment of the City Council of the Obligor, reasonably and fairly exercised are necessary to keep the Electric Utility System in operation and render adequate service to the Obligor and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any obligations payable from and secured by a lien on the net revenues of the Electric Utility System shall be deducted in determining "Net Revenues". Depreciation shall not be considered an operation or maintenance expense of the Electric Utility System.

Reporting Requirements:

Usual and customary for a transaction of this nature, including but not limited to; delivery of audited annual financial statements and certificate of no default within 180 days of fiscal year-end, annual budgets, notices of default and material litigation proceedings.

Dealer:

The Obligor shall at all times cause a dealer to be in place, which dealer shall be acceptable to the Banks. The trust indenture, bond resolution and/or dealer agreement shall provide that (a) the dealer may not resign except upon 60 days prior written notice, (b) the dealer shall use its best efforts to place the Notes and (c) the dealer shall place the Notes at rates up to and including the maximum rate permitted under the documents

without regard to the rate paid to the Banks. If at any time the dealer shall fail to perform its duties or shall fail to place the Notes for a period of 30 successive days, the Obligor shall, at the direction of the Banks, appoint a successor dealer acceptable to the Banks.

CHOICE OF LAW / JURY TRIAL / VENUE:

Governing Law:

This Term Sheet, the Agreement and any other documents to which the Banks shall become a party will be governed by the laws of the State of New York; provided that the obligations of the Obligor under the relevant documents shall be governed by the laws of the State of Texas.

Jury Trial:

The Obligor agrees to waive a jury trial in any proceeding involving the Banks.

MISCELLANEOUS:

Bank Credit Ratings:

Wells Fargo Bank, National Association

	Long-Term Ratings	Long-Term Outlooks	Short-Term Ratings
Moody's	Aa3	Stable	P-1
S&P	AA-	Negative	A-1+
Fitch	AA-	Stable	F1+

Sumitomo Mitsui Banking Corporation

	Long-Term Ratings	Long-Term Outlooks	Short-Term Ratings
Moody's	Aa3	Stable	P-1
S&P	A+	Negative	A-1
Fitch	A-	Stable	F1

Bank Contacts:

Wells Fargo

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Indemnification: The proposed Facilities will include customary indemnification of the Banks in all cases except where the Banks have proven to have been guilty of gross negligence or willful misconduct, and only to the extent permitted by applicable law.

Participations: The Banks reserve the right in their sole discretion to sell participations in the Facility without the consent of or notice to the Obligor, and such participants shall have the benefit of the obligations of the Obligor regarding increased costs and capital adequacy, taxes and indemnification, but only to the same extent the Banks are entitled to such increased costs, capital adequacy, taxes and/or indemnification.

Future Modifications: The terms, conditions and pricing are subject to revision in the event that (i) the Facility Amount changes, (ii) the transaction deviates materially from what was initially described, (iii) the proposed financing does not close (other than as a result of action/inaction by the Banks) within 75 days of the execution of the Term Sheet or (iv) events occur resulting in a material disruption of the market.

Confidentiality: This Term Sheet is confidential and proprietary and may not be disclosed without the written consent of both Banks, except to your professional advisors in connection with the Facilities who agreed to be bound by such confidentiality requirements, or as may be required by law.

AGREEMENT BY THE OBLIGOR:

This Term Sheet is not a commitment. It represents willingness by the Banks to seek a credit decision for a proposed transaction based upon the terms and conditions outlined in this Term Sheet, subject to documentation acceptable to the Banks.

We anticipate the credit process will take approximately 15 business days from receipt of this document and possession of all materials necessary to undertake a full credit analysis.

Please evidence your acceptance hereof by signing and returning a copy to the Banks.

Unless this term sheet is earlier rescinded, it shall expire automatically without further action or notice by Banks on 30 days from the date hereof unless a signed counterpart of this Term Sheet shall have been delivered to the Banks.

ACCEPTED AND AGREED TO:

BY: David Schuler DATE: 8/16/12



Policy Report

MASTER AGREEMENT WITH DALLAS COUNTY FOR MAJOR CAPITAL IMPROVEMENTS PROGRAM

ISSUE

Consider whether to enter into a Master Agreement with Dallas County (County) for Major Capital Improvements Program (MCIP) projects.

OPTIONS

- A. Adopt a resolution which authorizes the City Manager to execute the attached Master Agreement with the County for MCIP projects.
- B. Take no action.

RECOMMENDATION

Option A: Adopt a resolution authorizing the City Manager to execute a Master Agreement with Dallas County for Major Capital Improvements Program projects. If Council concurs, this item will be scheduled for formal consideration at the September 18, 2012 Regular Meeting.

COUNCIL GOAL

Quality Development and Redevelopment throughout Garland

BACKGROUND

In 1999, the County adopted their Major Capital Improvements Program (MCIP) which provides for a 50/50 cost share program between the County and each individual City in Dallas County to construct major transportation projects.

As part of the County's program, each individual City is required to execute a Master Agreement with the County. This establishes the governing and general financial responsibilities for each agency with respect to the design, right-of-way acquisition and construction of individual projects.

The City signed its original Master Agreement with the County in 2002 for a ten-year period. A new Master Agreement is needed for an additional ten-year period.

CONSIDERATIONS

Council action is required to authorize the City Manager to sign the Master Agreement with the County. The Master Agreement has been reviewed by the City Attorney's Office.

ATTACHMENT

- MCIP Master Agreement

Submitted By:

Michael C. Polocek, P.E.
Director of Engineering

Date: August 17, 2012

Approved By:

William E. Dollar
City Manager

Date: August 27, 2012

**MASTER AGREEMENT GOVERNING
MAJOR CAPITAL IMPROVEMENT PROGRAM**

THIS MASTER AGREEMENT is made by and between the City/Town of _____, Texas, hereinafter called "City" or "Town", and Dallas County, hereinafter called "County", acting by and through its duly authorized officials, which desire to enter into an Interlocal Agreement, hereinafter called Master Agreement, for the purpose of Transportation Improvements on roads inside Dallas County that are on the North Central Texas Council of Government's Regional Thoroughfare Plan.

WITNESSETH

WHEREAS, pursuant to Court Order _____, dated _____, County Commissioners Court approved participation in Transportation Major Capital Improvement Program within the cities inside Dallas County; and

WHEREAS, the approved project lists may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis; and

WHEREAS, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal agreements; and

NOW THEREFORE, THIS AGREEMENT is hereby made and entered into by City/Town and County for the mutual consideration stated herein:

ARTICLE I. DEFINITIONS

The following definitions are incorporated into this agreement for all purposes.

- A. **AMENDMENT** shall mean a written document executed by all parties detailing changes, additions or deletions in the Master Agreement.
- B. **AMENITY** shall mean Project features not included in the Standard Basic Project Design including but not limited to street pavers, colored concrete, planters, irrigation, decorative lighting, special signage, or any other feature above and beyond the Standard Basic Project Design or any increase in capacity in excess of County determined requirements based on anticipated future traffic flow.
- C. **CITY/TOWN** shall mean the City/Town of _____, Dallas County, Texas.
- D. **CONTEXT SENSITIVE SOLUTIONS (CSS)** is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and mobility. CSS is an approach that considers the total context within which a transportation improvement project will exist. CSS principles include the employment of early,

continuous and meaningful involvement of the public and all stakeholders throughout the project development process. It is the intent of Dallas County Public Works Department to use the essential elements of CSS in all approaches to deliver the project. Some projects will dictate very intense use of CSS, while others will only use a few of the elements, but the County will always consider CSS.

- E. **COUNTY** shall mean County of Dallas, State of Texas.
- F. **DIRECT PROJECT and PROGRAM COSTS** shall mean those costs that can be identified specifically with a particular project or program cost objective. These costs generally include compensation of employees for the time devoted and identified specifically to the performance of the project or program, cost of materials acquired, consumed or expended specifically for the purpose of the project or program; equipment changes; damage claims and other approved capital expenditures; change orders; travel expenses incurred specifically to carry out the project including, but not limited to, design, right-of-way, road or street drainage, utility relocation and adjustment and construction. Direct Cost does not include either City/Town or County general overhead.
- G. **EFFECTIVE DATE** shall mean the date of the signature of the last person necessary for this **Master Agreement** to become effective.
- H. **EXTRA TERRITORIAL JURISDICTION- (ETJ)** shall mean the unincorporated area outside the incorporated boundaries of the municipality as determined in Chapter 42 of the Texas Government Code, as amended.
- I. **FIVE PHASE PROJECT DELIVERY SYSTEM** shall mean the process for delivering a project from conception to completion as detailed in Exhibit A, attached hereto and as well as any additions or supplements thereto. The five phases of the project delivery system are planning, design, right of way, utility clearance, and construction.
- J. **FUNDING AGREEMENT** shall mean the agreement between the County and a City/Town to establish a preliminary proposed budget for a project. As design is completed and the engineering estimate is refined, the funding agreement shall be incorporated into the Project Specific Agreement.
- K. **INDIRECT COSTS** shall mean those costs that benefit more than one project and cannot be readily identified with a particular final project or program cost objective. Their precise benefits to a specific project are often difficult or impossible to trace.
- L. **IN-HOUSE PROJECT DELIVERY COSTS** shall mean all costs associated with the development of the Major Capital Improvement Program (MCIP) "Call for Projects", selection of projects, scoping of projects, project design, property acquisition and construction of projects. Cost Accounting shall include but is not limited to employee time reimbursement, materials, equipment and other expenditures necessary for the management and continuation of the MCIP.
- M. **INTERLOCAL AGREEMENTS** shall mean contracts or agreements entered into between City/Town and County in accordance with Texas Government Code Chapter 791.
- N. **LEAD AGENCY** shall mean that entity responsible for project management, including, but not limited to planning, design, right-of-way acquisition, approved utility relocation or adjustment and construction unless otherwise designated.
- O. **MASTER AGREEMENT** shall mean this document including all incorporated documents, attachments, and exhibits.

- P. **MEMORANDUM OF AGREEMENT (MOA)** shall mean a written document which incorporates the results of the Preliminary Design Charrette.
- Q. **MULTI-MODAL CONNECTIVITY IMPROVEMENTS** shall mean projects which comply with the concepts in the 2005 SAFETEA-LU Act, any amendments, or any future federal transportation acts which increase safety, accessibility, flexibility, efficiency, and enhance the integration and connectivity of the transportation system, across and between modes throughout the County for motorized and non-motorized users.
- R. **ORPHAN ROADS** shall mean all or part of a street or road right of way which are outside the incorporated limits of a municipality (or municipalities) and the incorporated area of the municipality (or municipalities) abuts or extends into the right of way. These roadway segments have, in effect, been “orphaned” by the abutting City/Town (or cities) that they serve in that they have been left unincorporated. Thus the County has primary responsibility for maintenance, operation, enforcement, police and/or emergency services within these unincorporated rights of way.
- S. **PARCEL OR PARCELS** shall mean those portions or part of land and improvements located either wholly or partially thereon, identified by County, City/Town or other Stakeholder as required for right-of-way requirements of the Project. Such right-of-way shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- T. **PRELIMINARY CONCEPT CHARRETTE (PCC)** shall have the same meanings and purposes as the Preliminary Design Charrette, but be conducted very early in the design start, before substantial design is underway. The conditions for which a PCC is appropriate will be determined by the lead agency, but will usually be a greater uncertainty of what the road improvement will involve, the purposes, varying contexts (e.g. Transit Oriented Development, Recreational Oriented Development, Industrial Oriented Development, etc.). Use of CSS will usually mean that a PCC will be conducted, since its use fits perfectly into CSS concepts. Other conditions encountered may dictate the use of a PCC, such as poor soils, presence of unconsolidated solid waste dumps, innovative integration of master planning with project delivery, unusual ROW challenges, budgetary constraints (thus calling for significant Value Engineering efforts), etc. The results of properly using a PCC will be that early consensus will be achieved on a basic approach to the project design and construction, thus avoiding wasted design funding and loss of momentum for project delivery.
- U. **PRELIMINARY DESIGN CHARRETTE (PDC)** shall mean a meeting of decision making stakeholders and other members of the project team for the purpose of discussing feasible design alternatives, forging strong consensus among all stakeholders for the selected alternative, and entering into a MOA for the overall estimate, alignment and scope of the project. The PDC will be scheduled when the preliminary design is complete or near completion. This means horizontal and vertical alignment alternatives have been designed, ROW requirements are at least approximately known for each alternative, and the design is 40% to 60% complete. The result of a PDC that is conducted with all the stakeholders present is that the strong consensus achieved will help assure the project is able to overcome any challenges with design completion, ROW acquisition, utility design and relocation, and finally, road construction.
- V. **PROJECT MANAGER** shall mean the person appointed by the Lead Agency who is assigned the primary duty for assuring Project Team coordination and timely project delivery. There will be only one Project Manager assigned to a Project.

- W. **PROJECT TEAM** shall mean representatives from County, City/Town, and other Stakeholders as may be mutually agreed upon by County, City/Town and Stakeholders or otherwise with responsibility for delivering the completed Project.
- X. **PROJECT(S)** shall mean the proposed thoroughfare and multi-modal connectivity improvements approved by the Commissioners Court for inclusion in the Transportation MCIP and approved by the City/Town.
- Y. **PROJECT DURATION** shall mean the active life of the project. Project shall commence with the application for a project by the City/Town and acceptance by the Dallas County Commissioners Court. Project shall be considered complete when construction has been fully completed and the one year maintenance period has expired or the project has been terminated in accordance with Article IV of this Agreement.
- Z. **PROJECT SPECIFIC AGREEMENT or PROJECT SUPPLEMENTAL AGREEMENT (PSA)** shall mean a written agreement subsequent to this document which is entered into to establish the contractual rights and responsibilities of the City/Town and County as it relates to a particular Project. A PSA supersedes the MOA or Funding Agreements.
- AA. **RIGHT OF WAY (ROW)** is a strip of land that is granted, through a ROW deed, an easement or other mechanism, for the Project. ROW shall mean that real property or property interest identified by County or City/Town, as necessary for the construction of the Project which shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- BB. **SCOPING SHEETS** shall be attached to each PSA. These sheets will set forth the design criteria to be used for the project, including the alignment, appropriate specifications, typical section and other parameters of the project. As project goals and needs are more clearly defined the Scoping Sheets shall be updated and revised by the project manager to reflect current construction goals.
- CC. **STANDARD BASIC PROJECT DESIGN** shall mean the standard County-approved City/Town criteria for paving, bridges, drainage and appurtenances, traffic control items including pavement marking, warranted uniform signals, street light foundations, pull boxes, conduit, sidewalks, medians, storage/turn lanes, access, required structural retaining walls and standard driveways excluding road or street amenities, or such design criteria as may be mutually agreed upon in a project Scoping Sheets.
- DD. **TxDOT** shall mean the Texas Department of Transportation.
- EE. **UTILITIES** shall mean each City/Town utility, public utility, common carrier, governmental or quasi-governmental facility, fiber optic facility, or other facility located within the limits of the Project by virtue of Texas or Federal Law or agreement between the entity and the City/Town, County, or State of Texas.
- FF. **CITY/TOWN UTILITY** shall mean those owned or operated by City/Town which requires relocation or adjustment for the purpose of the construction of the Project as identified by Project plans.
- GG. **UTILITY IN PUBLIC RIGHT-OF-WAY** shall mean all UTILITIES located within the limits of any governmental entity including but not limited to Oncor, GP&L, Verizon, Time Warner, Farmers Electric, Atmos and AT&T

HH. **UTILITY IN PRIVATELY OWNED RIGHT-OF-WAY** shall mean all Utilities, including but not limited to Oncor, GP&L, Verizon, Time Warner, Farmers Electric, Atmos, and AT&T but excluding City/Town Utilities, whose facilities are located within a private easement.

II. **UTILITY BETTERMENT** shall mean any increase in the capacity of any Utility's Facility adjusted or relocated as a part of the PROJECT as compared to the existing Facility, or any upgrading of the Utility's Facility above the standard practices, devices or materials, specified by the Utility and customarily used by City/Town or Utility on projects solely financed by City/Town or Utility. Provided, however, that any adjustments necessary to successfully accomplish the Project shall not be considered a Betterment, and further, that any increase in the capacity of the Utility Facility resulting solely from the replacement of devices or materials no longer regularly manufactured, processed or installed shall not be considered a Betterment, provided that such replacement shall be only to the standard devices or materials currently used on other projects financed solely by City/Town or Utility. This meaning shall apply to utilities that are part of the project as well as the standard basic street components (See "STANDARD BASIC PROJECT DESIGN").

ARTICLE II. PERIOD OF THE AGREEMENT

This Master Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed (The "Effective Date"). This Master Agreement shall expire ten years from the Effective Date unless terminated in accordance with Article IV.

ARTICLE III. AMENDMENTS

This Master Agreement may be amended with the mutual consent of the City/Town and County. Any amendment must be in writing and approved by the parties' respective governing bodies through either a Court Order from Commissioners Court or a City/Town Council Resolution.

ARTICLE IV. TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE

A. TERMINATION

a. This Master Agreement may be terminated by any of the following conditions:

1. By expiration of term of the agreement.
2. By either party, by notice in writing establishing the effective date of termination to the other party as consequence of the party being in default of the provisions of this Agreement or any supplemental agreement or failure to timely provide funding, with proper allowances being made for circumstances beyond the control of the defaulting party.
3. By either party with ninety days written notice to the other party.

b. Should either party terminate this Master Agreement as herein provided, all existing, fully executed supplemental agreements made under this Master Agreement shall not be terminated and shall automatically incorporate all the provisions of this Master Agreement.

- c. In the event that any supplemental agreement is terminated prior to completion of the Project, no additional Costs shall be incurred other than Costs due and payable at the time of termination for services actually performed or that shall become due and payable due to such termination. The Lead Agency, to the extent permitted, may terminate all project contracts, unless written notice is given by either party to the other of its intent to complete the Project, and prepare a final accounting for the Project.
- d. If the Project is terminated by the City/Town prior to the award of any construction contract and the Project is located within the City/Town limits, City/Town shall pay to County the full amount expended by County on the project and County shall transfer to City/Town its rights and all deliverables that it may be entitled to receive under the existing professional services or other project contracts or agreements. Such amount shall be included in the final accounting for the Project. Such amount shall be due and payable in full ninety (90) days subsequent to the termination, or thirty days subsequent to delivery of final accounting.
- e. Once the construction contract has been awarded by the governing body of the Lead Agency, the PSA for that Project cannot be terminated until completion of the construction.
- f. In the event that a Project is terminated prior to the award of the construction contract, either party may, upon written notice, take over the project and prosecute the work to completion by contract or otherwise at its sole cost and expense. In the event that the party completing the work is not the Lead Agency, it is agreed that the Project Manager will furnish to the Completing Party a listing of current records pertaining to any outstanding obligations or other records or information required by any project contract, including any Work Order, or requested in writing by Completing Party in either printed or electronic format or both. The Lead Agency agrees to cooperate with the Completing Party. The Lead Agency will use its best efforts to transfer to the Completing Party all contracts. Obligations under such contracts shall become the sole obligation of the Completing Party upon transfer. Completing party agrees to timely pay all future obligations under such contract as they become due and payable. Completing Party hereby releases the Lead Agency from any and all liability under such assigned contracts subsequent to date of transfer, effective upon the transfer date. Lead Agency shall exercise reasonable efforts to insure a transition of services without interruption.

Either party shall have the right to retain copies of all data, information, engineering, studies, or other items produced to the date of termination.

- g. Provisions b through g of this section shall survive the termination of this Master Agreement and any PSA and shall be a continuing obligation until the transition of services, all payments made and the Projects are complete. All items listed or required in this provision shall be furnished by Lead Agency to Completing Party without additional cost or expense to completing party.

B. FORCE MAJEURE:

Neither County nor City/Town shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reason of, for or through strikes, stoppage of labor, riot, fire, flood, invasion, insurrection, accident, order of court, judge or civil authority, an act of God, or any cause reasonably beyond the party's control and not attributable to its neglect. In the event of such an occurrence the time for performance of such obligations or duty shall be suspended until such time that such inability to perform, shall be removed. The party claiming the suspension shall give notice of such impediment or delay in performance to the other party within ten (10) days of the knowledge of such occurrence. Each party shall make all reasonable efforts to

mitigate the effects of any suspension. The provisions of this Article IV section B shall survive the termination of this Master Agreement.

ARTICLE V. LIABILITY FOR ACT AND OMISSIONS

County and City/Town agree that both County and City/Town shall each be responsible for their own negligent acts or omissions or other tortuous conduct in the course of performance of this Master Agreement without waiving any sovereign or governmental immunity available to either County or City/Town under Texas law and without waiving any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. The provisions of this Article V shall survive the termination of this Master Agreement.

ARTICLE VI. LEAD AGENCY

- A. Lead Agency shall be that entity which is responsible for the project from conception through to completion of construction. City/Town and County may choose for County to manage project through design and construction and for City/Town to acquire ROW.
- B. In the event that the City/Town is Lead Agency the City/Town shall:
 - a. Provide project management and leadership from project selection to construction completion following the 5 Phase Project Delivery System as detailed in Exhibit A, attached hereto and as well as any additions or supplements thereto;
 - b. Lead Agency shall be responsible for hosting the Preliminary Concept Charrettes and or Preliminary Design Charrettes and Neighborhood Public Workshops;
 - c. Acquire ROW necessary for project;
 - d. Enter into or obtain whatever agreements or permits necessary for project completion;
 - e. Provide County with opportunity for significant input in plan development and periodic progress reviews; and
 - f. Provide records for periodic auditing for either financial accounting or engineering accounting or both.
- C. For City/Town-led projects in which the City/Town is considering to specify transportation infrastructure elements exceeding the Standard Basic Project Design criteria, County funding will only be eligible to the Standard Basic Project Design criteria unless the City/Town and County have arrived at mutual agreement through involvement of County during the initial design phases including the Design Partnering Kick-off Meeting and as necessary the Preliminary Concept Charrette and Preliminary Design Charrette meetings.

ARTICLE VII. CITY/TOWN COVENANTS AND AGREES AS FOLLOWS:

- A. To execute with reasonable promptness the necessary agreements for the implementation of design and construction of the Projects mutually agreed upon and incorporated herein by PSA.

- B. To provide City/Town Council Resolution adopting approved preferred alignment, proposed estimated budget, and commitment to meet Project funding for each milestone as specified herein or in the Funding Agreement and/or PSA.
- C. To provide City/Town Council Resolution adopting the subdivision regulation in the ETJ as defined in Article XVII below.
- D. City/Town agrees to share the funding of each Project with County on an equal share basis of 50%/50% or as otherwise agreed cost sharing arrangement as specified in a Funding Agreement and/or PSA with the following exclusions:
 - a. City/Town shall bear the entire cost of:
 - 1. City/Town owned utilities relocation or adjustment such as water and sanitary sewer facilities, except utility adjustments directly attributable to storm sewer improvement conflicts;
 - 2. Amenities approved by City/Town including but not limited to street pavers, colored concrete, planters, decorative lighting, special signage, or any other feature over the Standard Basic Project Design;
 - 3. Utility Betterments
 - 4. Direct costs of City/Town which is fulfilling the role of Lead Agency, shall be totally funded by City/Town unless supported by a detailed hourly accounting system equal to County's accounting system.
 - 5. City/Town Indirect Costs.
- E. When mutual written agreement has been reached as to Projects' concepts, design elements and limits by County and City/Town at the PDC, City/Town agrees to acquire ROW required for designated projects by voluntary dedication, the subdivision platting process and/or other legal means, to the maximum extent possible, and to ensure through the building permitting process that setback requirements are imposed to limit encroachment upon the required ROW. City/Town agrees to fund ROW not acquired, but reasonably expected to be acquired. City/Town also agrees to fund the removal of improvements that are encroachments within existing or proposed ROW areas.
- F. In the event of any proposed use of the Project ROW that will conflict with the proposed Project and City/Town is unable to obtain such ROW as described above, City/Town shall notify County of such conflict. County and City/Town shall determine if the acquisition of the conflicting parcel would be in the best interest of the Project. In the event that agreement is reached and the parcel is acquired such cost shall be included in the pro rated cost of the project in the agreed upon proportions.
- G. City/Town hereby grants the County authority to enter into eminent domain proceedings within the City/Town limits on each specific ROW alignment and/or project as approved by the City/Town and County.
- H. To require all Utilities located within or using the present public ROW on all designated transportation projects within City's/Town's municipal limits to adjust and/or relocate said Utilities as required by the proposed improvement of the designated transportation Project. City/Town Utilities shall be relocated or adjusted at no cost to County except as may be specifically set forth in this Master Agreement.

- I. City/Town agrees to be cooperative on issues relating to billboards, advertising signs, non-conforming uses, zoning and similar restrictions and to exercise its best efforts to provide variances when possible to minimize cost and delay of Project. Additional Project cost caused or contributed to by City/Town ordinance, zoning, non-conforming use determination or other requirement shall be paid in full by City/Town.
- J. City/Town shall require the adjustment and/or relocation of Utilities to be accomplished and finalized, as expeditiously as possible after approval of final plans to prevent Project schedule delays. Notwithstanding anything contained herein to the contrary, all Utilities shall be adjusted or relocated and the ROW clear for construction not later than thirty (30) days prior to the award of the construction contract. City/Town will notify the County and other Stakeholders when utility conflicts would impact progress of the project completion. County and City/Town agree to work in partnership and with all Stakeholders to solve the problem; to include engaging elected officials in the problem resolution with the goal to prevent delays in the commencement or prosecution of construction on the Project.
- K. Where planned roadway improvements (including, but not limited to storm drainage,) are in conflict with City/Town owned water and sanitary sewer systems, that could otherwise remain in place, the actual costs of the necessary adjustment of City/Town water and sewer utilities shall be pro rated at the overall percentage agreed to by City/Town and County for cost sharing. City/Town shall be responsible for funding one hundred percent (100%) of any Betterment; as well as 100% of any relocation that is caused by City/Town installation during the Project Duration. Except as provided herein, all costs for adjustment and/or relocation of utilities in the public ROW shall be the responsibility of the Utility Owner or of the City/Town Utility. Any Project delay or other damages caused by City/Town Utility failure to timely relocate or adjust the facility shall be at the entire cost of City/Town.
- L. To provide for continuing surveillance and control of ROW to prevent the construction, placement, storage or encroachment of any signs, personal property or other appurtenances in the existing or proposed ROW. In the event that the aforementioned features are allowed by City/Town to encroach on necessary ROW during the duration of the project, City/Town shall bear the entire cost of removal or relocation of said encroachment.
- M. To provide to County for County's or County's designee's use, at no cost, adequate copies of all construction standards, codes, (specifically including zoning and development codes), plats, specifications, guidelines, standards or any other pertinent information as determined by County to be required for the completion of the Project. Additionally, City/Town shall furnish County, at no cost, such documents as necessary to keep all items previously furnished to County current.
- N. Actively participate and provide authorized representation with decision making power at PCC and/or PDC, preconstruction meeting, partnering meetings and project team meetings which are necessary to project development/completion and fiduciary relationships.
- O. City/Town agrees to provide timely review of interim submittals. "Timely review" will be agreed upon during the PCC and/or PDC as a part of the Project schedule. City/Town further agrees that if no review notes are submitted by City/Town in writing to County on a timely basis, plans are approved as submitted.
- P. When City/Town is Lead Agency City/Town agrees to allow forty-five days for County review of submittals and any comments shall be incorporated into final document.
- Q. City/Town agrees that it will pay all additional project cost for any City/Town requested discretionary change, including, but not limited to Amenities and Utility Betterments, in or addition

to the design or construction of the project subsequent to the City/Town opportunity to review the sixty five percent (65%) design plans.

- R. Provide at City's/Town's cost for the continuing maintenance of all the Project ROW, such as mowing, drainage, trash removal, etc., during the period between acquisition and construction.
- S. During the construction of the Project and after completion of the Project, City/Town will be responsible for the control, operation, police enforcement and/or emergency services, without cost or contribution from the County.
- T. After the completion of a Project and the one year maintenance period, the City/Town will be responsible for all future maintenance without cost or contribution from the County.
- U. Bear the entire cost of design, construction and administration for landscaping, streetscaping, streetlighting, as such items are not included in the Standard Basic Project Design and other amenities specified or requested by City in excess of Standard Basic Project Design.
- V. It is the intent of this Master Agreement that the County will be the Lead Agency. In the event that the City/Town and County agree in writing that City/Town will manage and administer one or more Projects, City/Town and County will enter into a PSA as to that project(s). In such instance, City/Town agrees to assume all Lead Agency responsibilities except as may be set forth in the PSA as determined by mutual consent.

ARTICLE VIII. UTILITY IMPACTS.

- A. In cases where a Utility is located in a Privately Owned ROW, and it is necessary to relocate the facility or make adjustments by reason of the widening or improvement of the designated project, the County (or City/Town if acting as the Lead Agency) will, after submission by utility company of ROW documentation and cost estimates acceptable to the City/Town, County and other Stakeholders, assign the actual costs for the relocation and/or adjustment of said utility to the Project.
- B. In cases where a Utility in Public ROW, excluding City/Town Utilities, occupies any portion of the Project ROW by Texas or Federal Law or by agreement with the City/Town that allows or permits the City/Town to cause the relocation of the utility for the construction of the project, the City/Town shall timely require and enforce the relocation or adjustment requirement at no cost to the project. In the event that the City/Town has no legal or contractual right to cause the relocation, the relocation or adjustment shall be relocated or adjusted and all cost shall be a Project Cost. City/Town shall take reasonable steps necessary to insure that such relocation or adjustment shall not conflict with or delay the Project schedule.

ARTICLE IX. COUNTY COVENANTS AND AGREES AS FOLLOWS:

- A. To provide as a Project Cost preliminary engineering which will define project details, e.g., location, scope of work and specific right of way alignment for each improvement. Such preliminary engineering shall be submitted to the City for approval, prior to proceeding with the final design and any right of way acquisition.
- B. To provide as a Project Cost for the construction of transportation improvements based upon design criteria conforming to Standard Basic Project Design in conformity with applicable City ordinances and standards, to the extent of Commissioners Court approved program funding. Scope of work shall include the agreed upon design standards as the basis for improvement criteria.

Deviations from mutually agreed upon application of City/Town standards and/or design criteria shall require prior approval of City/Town. Where City/Town standards do not exist, TxDOT standards as of the Effective Date of this Master Agreement shall be utilized unless otherwise mutually agreed by PSA.

- C. To actively participate and provide authorized representation at Predesign Charrette, preconstruction meeting, partnering meetings and project team meetings which are necessary to project development and completion and fiduciary relationships.
- D. To provide project management of each Project where County is Lead Agency from commencement to completion of construction. City and County may further agree by mutual consent to redefine project management roles as beneficial to the Project as defined in the MOA and supplemental agreements.
- E. Upon receipt of written request detailing the information requested, to provide information related to the Project to City/Town or City's/Town's designee at no cost to the City.
- F. County agrees to provide review of interim submittals within forty-five days and hereby agrees that if no review notes are submitted by County (if City/Town is filling the role as Project Manager) in writing to City/Town, plans are approved as submitted.
- G. To submit final engineering plans for review and written approval by City/Town at least thirty (30) days prior to advertising for construction.
- H. To provide for the acquisition, including acquisition by Eminent Domain as approved by the City/Town, of the necessary additional ROW, on designated projects, in accordance with minimum standard requirements and utilizing existing public ROW to the maximum extent possible as a Project cost.
- I. To require all contractors to secure all necessary permits required by City/Town on said construction projects.
- J. To furnish record drawings of construction plans for the permanent records of City/Town within twelve (12) months upon completion and acceptance of the transportation improvement Project.
- K. To transfer the real property or property interest acquired by County and used for the Project to City/Town.
- L. In the event County and City agree in writing that City will be the Lead Agency for the agreed upon Project, County will reimburse City for agreed costs as detailed in Article XIII. (Funding) in an amount not to exceed the Project cost as approved by Dallas County Commissioners Court and incorporated in the PSA. All County payments shall be in accordance with County Policies and Procedures or as may be mutually agreed between the parties and incorporated in a PSA.

ARTICLE X. PRELIMINARY DESIGN CHARRETTE (PDC), PRELIMINARY CONCEPT CHARRETTE (PCC)

- A. City/Town and County, as specified in Articles VII and X, respectively, will designate officials or representatives to participate in a PCC and/or PDC to be conducted on a mutually agreeable date and location. At least part of this meeting will be conducted on the Project site.
- B. Results from PCC will identify the general project scope, the basic approach and concepts to be taken with the project, the elements of CSS that will be included, and some ideas for alignments alternatives. Lead agency will already have been determined, and as well as project administration

and management roles, to include the Project Manager. Key project team participants shall be introduced to stakeholders at the PCC and or PDC. Results from the PDC will identify the preferred alignment of the project which all stakeholders can support and build momentum behind, and provide all stakeholders a commitment for project delivery schedules and project budgets.

ARTICLE XI. FISCAL FUNDING

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein. City/Town shall have no right of action against the County as regards this Master Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of City/Town funding for each item and obligation contained herein. County shall have no right of action against the City/Town as regards this Master Agreement, specifically including any funding by City/Town of the Project in the event that the City/Town is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City/Town, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

A. ARTICLE XII. FUNDING

A. City/Town and County mutually agree to proportionately fund the Direct Project and Program costs as agreed by the parties in a PSA. Unless otherwise specified in the PSA, County shall bear fifty percent (50%) of the total Direct Project and Program costs excluding the Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, Funding Agreement or any PSA. County shall not be responsible for any amount of funding in excess of the Project not-to-exceed amount as shown in the PSA. Unless otherwise specified in the PSA, City/Town shall bear fifty percentage (50%) of all Direct Project and Program costs. In addition, City/Town agrees to fund all other City cost as provided herein, including, but not limited to, Amenities, relocation or adjustment of City/Town Utilities, Utility Betterment, Indirect Cost, Direct Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, Funding Agreement or any PSA.

B. Unless otherwise stated in a PSA, the milestones for each project shall be (1) preliminary and primary design (2) ROW acquisition and utility relocation or adjustment and (3) construction. The Lead Agency shall prepare an estimated cost for each milestone. Upon approval of the cost by the

other party, each party shall fund its share of the respective milestones by placing that amount of money in an escrow account or otherwise encumber the funds to insure that the Lead Agency will have sufficient funding available from current revenue for the timely payment of Project milestone costs. The Lead Agency may bill the other party for periodic payments for the actual amount of work completed toward the completion of the milestone. Upon completion of the milestone, the non-management party will be furnished a notice that such work has been completed and the amount of funding that may be utilized to pay subsequent milestone Project cost. Notwithstanding any other term or condition contained herein or in any PSA, neither party will be required to award any contract until written certification has been received that funding has been placed in escrow or encumbered for the payment of the non-awarding party's portion of the Project cost.

C. In the event that the cost of the Project shall exceed the not-to-exceed amount, City/Town and County agree to either reduce the scope of construction or seek additional funding to complete the Project at the agreed upon cost share percentages. At the termination of the Project, the Lead Agency will do a final cost accounting of the Project. In the event that the amount paid by either party exceeds its portion of the actual cost, the difference will be remitted to such party. In the event that additional funds are due, the Lead Agency will bill the other party who agrees to pay such funds within thirty (30) days of receipt of such billing.

D. If City/Town elects to manage Project, County will reimburse City/Town based on invoices for actual costs expended as supported by documentation approved by County Auditor. Any and all supporting documentation required by County Auditor shall be included with invoice from City/Town.

E. Upon execution of a PSA, City/Town shall escrow an amount adequate for initial project costs which County may use to pay for initial professional services required for scoping, preliminary, and primary design.

F. City/Town and County shall enter into Funding Agreement and/or PSA to establish commitments as required for each project. Suggested timeframes for Funding Agreements, PSAs and/or any amendments are:

- a. As soon as project accepted by Commissioners Court and as a result of the kick off partnering meeting, a Funding Agreement to establish Lead Agency for preliminary engineering and general funding responsibilities and procedures for reimbursement by Participating Agency; or
- b. When the preliminary engineering plans are at 60% complete; or
- c. After construction bids are opened.

ARTICLE XIII. NO THIRD-PARTY BENEFICIARY ENFORCEMENT.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all right of action relating to such enforcement shall be strictly reserved to City/Town and County and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person on this Agreement. It is the express intention of City/Town and the County that any entity other than City/Town or the County receiving services or benefits under this agreement shall be deemed an incidental beneficiary only. This Agreement is intended only to set forth the contractual right and responsibilities of the agreement parties.

ARTICLE XIV. RIGHT OF ENTRY

The City/Town agrees that County shall have the right to enter upon the Project area for the time period necessary for the completion of the Project. City/Town agrees to furnish such police or other City/Town personnel as requested by County for traffic control or other public safety matters at no cost to the Project or County.

ARTICLE XV. LIST OF PROJECTS

City/Town agrees that it has been furnished with a list of the potential Projects as approved by the Dallas County Commissioners Courts, subject to the agreement between the parties of a PSA. City/Town stipulates and agrees that the Commissioners Court Order approving the projects identifies the potential Project location and describes the type of project in sufficient detail that the City/Town is fully aware of the location and type of projects being considered.

ARTICLE XVI. ORPHAN ROAD POLICY;

The County encourages all cities adjacent to orphan roads in the county to develop, commit to and submit a plan to the County for completing the annexation of the orphan road segments and assuming full responsibility for these roadways. In instances where two cities abut the same orphan road segment, the County encourages the two cities to jointly develop a plan of the annexation of that segment. The County offers its assistance to the cities in developing such plans.

- A. The County, at the discretion of the Commissioners' Court, may give additional selection value to projects in cities that have submitted a specific plan for the annexation of orphan roads when the County selects, approves and schedules projects for funding in the County's major MCIP. Such preference may also be given in approving projects for road and bridge district participation (Type "B" work).
- B. The County, at the discretion of the Commissioners Court, may also refuse to participate in discretionary projects, such as road and bridge district projects or MCIP projects, in a City/Town that elects not to pursue the annexation of orphan road segments that abut its boundaries. Failure to notify the County of the City's/Town's intent to annex and/or failure to submit a plan for annexation in a timely manner shall be construed by the County as the City's/Town's election not to pursue annexation.
- C. The County, at the discretion of the Commissioners Court, may select specific orphan road segments for improvement when a City commits to annexation of the segment upon completion of the project. However, the specific plan for annexation of orphan roads submitted by the City/Town will not be limited to annexation upon completion of improvements by the County. The County improvements may be made as road and bridge projects or as MCIP projects (subject to other MCIP criteria including regional thoroughfare plan designation and City/Town cost participation.)
- D. This policy application is prospective and projects selected by the County and approved by the Commissioners Court prior to the date of the adoption of this policy shall not be impacted by this policy.
- E. The County shall provide written notification of the adoption of, and future revisions of, this policy to the cities abutting orphan road segments.

F. The provisions of this Article XVI shall survive the termination of this Master Agreement.
(Ord. No. 2002-637; Ord. No 2006-1171)

ARTICLE XVII. SUBDIVISION REGULATIONS IN THE EXTRA TERRITORIAL JURISDICTION

County and City/Town agree that Dallas County is the office that is authorized to: (1) accept plat applications for tracts of land located in the extraterritorial jurisdiction; (2) collect all applicable plat application fees; (3) provide applicants one response indicating approval or denial of the plat application; and (4) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land. The provisions of this Article XVII shall survive the termination of this Master Agreement.

ARTICLE XVIII. MISCELLANEOUS GENERAL PROVISIONS

A. **Applicable Law.** This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Agreement is expressly made subject to County's and City/Town's Sovereign Immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.

B. **Entire Agreement.** This Agreement, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

C. **Severability.** If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

D. **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

E. **Federal or State of Texas Funding.** In the event that any work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City/Town agrees to timely comply therewith without additional cost or expense to County.

F. **Headings.** The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this Agreement and shall not be deemed to affect the interpretation or construction of such provision.

G. **Number and Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

H. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

I. **Notice.** Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business

days after being deposited in the United States Mail, postage prepaid, certified, returned receipt requested, or registered addressed as follows:

To County: County of Dallas
Alberta Blair, P.E
Director of Public Works
Dallas County
Administration Building
411 Elm Street, Fourth Floor
Dallas, Texas 75202-3389

To City/Town: City of Garland, Texas
Michael C. Polocek, P.E.
Director of Engineering
P.O. Box 469002
Garland, Texas 75046-9002

Either party may change its address for notice by giving the other party notice thereof.

The City/Town of _____, State of Texas, has executed the Agreement pursuant to duly authorized City/Town Council Resolution _____, Minutes _____ Dated the ____ day of _____, 20____.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number _____ and passed on the ____ day of _____, 20____.

CITY/TOWN OF _____

COUNTY OF DALLAS

BY _____
William E. Dollar, City Manager

BY _____
Clay Lewis Jenkins, County Judge

DATE _____

DATE _____

ATTEST _____
CITY SECRETARY \ ATTORNEY

APPROVED AS TO FORM:

*Gordon R. Hikel, Chief, Civil Division
Dallas County District Attorney

*By law, the District Attorney’s Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).



Policy Report

TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) COMPREHENSIVE GRANT

ISSUE:

Council is requested to consider accepting a Texas Department of Transportation (TxDOT) – Selective Traffic Enforcement Program (STEP) – Comprehensive Grant

OPTIONS:

1. Accept TxDOT STEP Grant Funding. If the City Council concurs, the City Manager will execute the contracts.
2. Do Not Accept TxDOT STEP Grant Funding.

RECOMMENDATION:

Accept TxDOT Grant Funding for the Selective Traffic Enforcement Program (STEP) Comprehensive Grant for FY 2012-2013. This item is scheduled for formal consideration at the September 4, 2012 Regular Meeting.

COUNCIL GOAL

Safe, Family-Friendly Neighborhoods – By accepting the STEP Grant, the City Council will augment the ability of the Garland Police Department to provide an even greater level of traffic safety for the citizenry of the City of Garland by potentially changing the driving habits of those who violate the laws related to the four enforcement modules within the grant.

BACKGROUND:

The Garland Police Department has successfully participated in STEP enforcement grants for many years. The purpose of this grant is to save lives, reduce motor vehicle crashes and injuries, and change behavior related to driving habits. This is accomplished by aggressively enforcing the laws of the State of Texas related to red

**TEXAS DEPARTMENT OF TRANSPORTATION SELECTIVE TRAFFIC
ENFORCEMENT COMPREHENSIVE GRANT**

Page 2

light and intersection violations, seat belt violations, speed violations and driving while intoxicated violations.

The enforcement activities will also be supplemented by additional public information and education campaigns conducted throughout the enforcement period. These efforts will be focused throughout the City of Garland.

CONSIDERATION:

The grant for the FY 2012-2013 is in the amount of \$507,651.97. If accepted, TxDOT will reimburse the City of Garland \$249,360.00. The grant requires the City to provide \$258,291.97 in matching funds. This will be accomplished in part through fringe benefits expenditures, TMRS contributions, vehicle mileage costs, and administrative time spent on grant related paperwork. Consequently, the City can satisfy the contractual match requirements without expending any additional funds.

ATTACHMENT:

None

Submitted By:

Mitchel L. Bates
Chief of Police

Date: August 27, 2012

Approved By:

William E. Dollar
City Manager

Date: August 27, 2012



City Council Item Summary Sheet

☒ **Work Session**

Date: September 4, 2012

☐ **Agenda Item**

Audit Committee Report

Summary of Request/Problem

Council will consider the following reports from the Audit Committee:

- FY 2012 Audit by Deloitte & Touche LLP - Williams
- Hard Drive Disk Audit- Williams
- IT Access Control Follow-up Audit - Williams
- State Narcotic Seizure Fund Audit - Williams
- A/R - Cash Handling Audit - Williams
- Risk Management Liability Claims Audit - Williams
- Single Family Rental Registration Audit - Williams
- FY 13 Annual Audit Plan Overview - Williams
- Draft FY Annual Audit Plan & Other Audit Info - Hametner

Recommendation/Action Requested and Justification

Council discussion.

Submitted By:

Approved By:

William E. Dollar
City Manager

**CITY OF GARLAND
INTERNAL AUDIT DEPARTMENT**

**ANNUAL INTERNAL AUDIT PLAN
FISCAL YEAR 2013**

BASIS FOR PLAN

The basis for the plan comes from a variety of factors. Some of those factors are as follows:

- auditor observations
- inquired with management
- examined recurring audits
- considered follow-up audits
- monitored a municipal news service
- monitored industry periodicals

Additionally, we examined the available resources to complete audits. We estimated the hours required to perform the identified audits. After considering current Internal Audit staffing levels and hours that are unavailable for audits due to paid time off, administrative duties, required training, meetings, and other time off, the net available hours for audit are determined.

Combining available hours and audits yielded the annual audit plan.

Available hours are 5 staff members time for the full year which is 10,400.

Administrative hours which include numerous items such as: Audit Committee Meetings, Audit Committee Preparation, Audit Manual, Budget, Computer Issues, HR Issues, Meetings, Training, Time Entry & Approval, Invoice Entry & Approval, Performance Evaluations, Order Supplies and United Way are estimated at 1,900 hours.

Time-Off includes vacation, sick, holidays, FMLA and other available absences. This is estimated at 1,500 hours.

This leaves 7,000 hours available for:

- Audits
- Investigations, Special Projects or Requests, Advisements
- External Audit Assist
- Follow-up Audits

INTERNAL AUDIT PLAN FY 2013

AUDITS

Purchasing Risk – Professional Service Contracts – 550 Hours

- Determine the City's governance and controls over Professional Service Contracts

Purchasing Risk – Single Source/Sole Source/Emergency Procurement – 400 Hours

- Determine compliance with the applicable authoritative pronouncement

Contract Monitoring – Recyclables Processing and Marketing Agreement – 400 Hours

- Determine contract compliance with this agreement

IT Risk – Utility Billing Security Testing – 400 Hours

- Evaluate whether only authorized employees have access to the Utility Billing System
- Evaluate whether access is appropriately segregated for Utility Billing users
- Evaluate whether vendors utilized for remote payments provide adequate controls to secure customer data

Transactional Risk – ERCOT Settlements – 500 Hours

- Determine whether GP&L has an adequate process in place to ensure that ERCOT fees and revenues are accurate and complete

IT Risk – IT Access Controls to the Financial Accounting System – 450 Hours

- Evaluate whether only authorized employees are accessing the Financial Accounting System and whether segregation of duties is in place.

Asset Management Risk – GP&L Warehouse Inventory – 300 Hours

- Determine if Inventories are properly accounted for in the City financial system
- Ensure Inventories are properly marked, and kept in assigned and locked facilities
- Determine if access to inventories is closely monitored. Only authorized and current employees have access to the inventories
- Evaluate if the inventory is at an appropriate level
- Evaluate if there is excessive obsolescence.

Regulatory Risk – Sales Tax Compliance – 400 Hours

- Assess the city's compliance with State Sales Tax Laws

Revenue Management – Building Inspection – 450 Hours

- Assess management controls over the collection of fees

IT Risk – Security Administration for Municipal Court System – 250 Hours

- Determine if controls provide reasonable assurance that access to the Municipal Court System is secured and restricted to authorized individuals

Requested Audit(s) – 125 Hours

- These are unassigned hours at this time

Total Audit Hours = 4,225 Hours

NONAUDIT SERVICES, INVESTIGATIONS, SPECIAL PROJECTS OR REQUESTS, ADVISEMENTS, RISK ASSESSMENT/ANNUAL AUDIT PLAN, ANNUAL MONITORING REPORT

Nonaudit Services – Firewheel – 100 Hours

- Advisement on Business Processes

Investigations, Special Projects or Requests, Advisements, Committees, Risk Assessment/Annual Audit Plan, Annual Monitoring Report = 500 Hours

Total Nonaudit Services, Investigations, Special Projects or Requests, Advisements, Risk Assessment/Annual Audit Plan = 600 Hours

EXTERNAL AUDIT ASSIST

Deloitte – 300 Hours

Total External Audit Assist = 300 Hours

RECURRING AUDITS

Cash Count Audit – 75 Hours

- Perform petty cash/cash drawer counts

Kraft Retention Agreement - 60 Hours

- Determine compliance with agreement.

Fuel/Warehouse Inventories – 40 Hours

- Observe inventory taking and perform test counts

Total Recurring Audits = 175 Hours

FOLLOW-UP AUDITS

Cayenta Interface Audit – 100 Hours

Backup and Recovery Audit – 100 Hours

Scofflaw Audit – 100 Hours

Verizon Franchise Fee Audit – 100 Hours

Time Warner Franchise Fee Audit – 100 Hours

Wastehauler Franchise Fee Audit – 100 Hours

Fleet Services Audit – 100 Hours

Oncor Franchise Fee Audit – 100 Hours

Security of Hard Drive Data in Copiers/Printers Audit -100 Hours

Total Follow-Up Audits = 900 Hours

FY13 AUDIT HOURS NEEDED TO COMPLETE FY12 AUDITS

Privacy Risk Audit – 200 Hours

Physical Security of City Property – 200 Hours

Firewheel Mixed Beverage Law Compliance – 100 Hours

Accounts Payable Audit – 300 Hours

Total FY13 Audit Hours Needed to Complete FY12 Audits = 800 Hours

TOTAL AUDIT HOURS = 7,000 Hours



City Council Item Summary Sheet

☒ Work Session

Date: September 4, 2012

☐ Agenda Item

Discussion of 2012-13 Proposed Budget (CONTINGENCY ONLY)

Summary of Request/Problem

This agenda item is being posted in the event the City Council wishes to continue discussions, deliberations, or staff presentations related to the 2012-13 Proposed Budget.

Recommendation/Action Requested and Justification

Council direction regarding the 2012-13 Budget.

Submitted By:

Ron Young
Director of Budget and Research

Approved By:

William E. Dollar
City Manager