



PUBLIC NOTICE
City Council Workshop 6:00 PM
City Council Meeting 7:00 PM
April 17, 2014
City Hall - 665 Country Club Road

Notice is hereby given that a Council Workshop & Council Meeting of the City Council of the City of Lucas will be held on Thursday, April 17, 2014. The Workshop will begin 6:00 PM and the Council Meeting will follow at 7:00 PM at the Lucas City Hall, 665 Country Club Road, Lucas, Texas, at which time the following agenda will be discussed.

Agenda

Call to Order

Call to Order
Roll Call
Determination of Quorum
Reminder to turn off or silence cell phones
Pledge of Allegiance

Workshop

- 1) Discuss and consider the creation of a Request for Qualifications to procure engineering services. **[Foerster]**
- 2) Discuss and consider the importance and benefits of a street inventory with an assessment of each street. **[Foerster]**
- 3) Discuss and consider right-of-way, street, and maintenance standards for arterials, collectors, and neighborhood streets. **[Foerster]**
- 4) Discuss and consider the prioritization of street maintenance, reconstruction, and repairs. **[Foerster]**

- 5) Discuss and consider the various funding sources, methods, and funding strategies for street maintenance, reconstruction, and repairs. **[Foerster]**

Citizens' Input

At this time citizens who have pre-registered by filling out a "Request to Speak" sheet and have submitted the sheet to the City Secretary before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on a future agenda and posted in accordance with law.

- 6) Citizens' Input.

Community Interest

- 7) Items of Community Interest.

- a) Discussion and update regarding the drought contingency plan, conservation efforts and watering restrictions as it pertains to the City of Lucas. **[Fisher/Foerster]**

Consent Agenda

The Consent Agenda is used to increase the efficiency of time. All items listed under the Consent Agenda may be considered by a single motion, second and passage by a majority vote of the Council present at the time of consideration. Any member of Council may remove an item from the Consent Agenda prior to a motion to act upon the agenda.

- 8) Consent and Approve:

- a) The minutes from the April 3, 2014 City Council Regular meeting. **[Wingo]**

Regular Agenda

- 9) Discuss and consider the filing all City of Lucas cases and citations with Collin County Justice Court 3-1 located in Plano, Texas. **[Clarke]**

- 10) Discuss and consider the reclassification of part-time Court Clerk (.50 FTE) and the creation of a part-time Purchasing Coordinator (.50 FTE) position for the formation of a full-time Purchasing Coordinator/Finance Assistant position using existing funds in the current FY 2013-2014 budget. **[Clarke]**
- 11) Discuss and consider the approval of an agreement between the City of Lucas and Konica Minolta concerning a thirty-six (36) month lease of a color copier/printer/scanner using existing funds in the current FY 2013-2014 budget. **[Wingo/Exum]**
- 12) Discuss and consider the approval of **Resolution # R-2014-04-00417** of the City Council of the City of Lucas, Texas, approving the agreement to contribute to right-of-way funds to the State of Texas through the Texas Department of Transportation for a transportation improvement project; and providing for an effective date. **[Foerster]**
- 13) Discuss and consider the proposed information technology telephone system project, provide guidance to staff regarding priorities, and identify funding strategies. **[Foerster]**
- 14) Discuss and consider the proposed information technology project to purchase a web filtering appliance, provide guidance to staff regarding priorities, and identify funding strategies, and the initial development of a social media policy. **[Foerster]**
- 15) Discuss and consider the proposed information technology project to upgrade our Microsoft Platform Licensing, provide guidance to Staff regarding priorities and email access, and identify funding strategies. **[Foerster]**
- 16) Discuss and consider the approval of **Ordinance # 2014-04-00776** an ordinance of the City Council of the City of Lucas, Texas, amending the Code of Ordinance by amending Chapter

13, "Utilities" by amending Article 13.03 "Drought Contingency Plan" by amending sections 13.03.001 through 13.03.002; by adopting the May 2014 Water Conservation Plan and the May 2014 Water Resource Management Plan; providing for the delayed effective date for the May 2014 Water Conservation and Water Resource Management Plan; providing a repealing clause; providing a severability clause; providing a savings clause; providing for a penalty or fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; providing for an administrative penalty applicable to non-single family water customers; and providing for an effective date. **[Foerster]**

17)Adjournment.

As authorized by Section 551.071 (2) of the Texas Government Code, the City Council may convene into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney regarding any item on the agenda at any time during the meeting.

Approval

Approved by: Mayor Rebecca Mark, April 11, 2014.

Certification

I hereby certify that the above notice of meeting was posted on the bulletin board at Lucas City Hall by 5:00 p.m. on or before Friday, April 11, 2014, as required in accordance with Government Code §551.041.

Kathy Wingo, TRMC, MMC
City Secretary

This building is wheelchair accessible. Any requests for sign interpretive services or other special requests for assistance of the hearing impaired must be made 48 hours in advance of the meeting. To make such arrangements, please call 972-727-8999 or email secretary@lucastexas.us.

LUCAS CITY COUNCIL

Meeting Date April 17, 2014

AGENDA ITEM:

- Call to Order

- Roll Call

Present

Absent

Mayor Rebecca Mark

Seat 1 CM Wayne Millsap

Seat 2 CM Jim Olk

Seat 3 CM Steve Duke

Seat 4 CM Philip Lawrence

Seat 5 CM Debbie Fisher

Seat 6 MPT Kathleen Peele

- Determination of Quorum
 - Reminder to silence cell phones
 - Pledge of Allegiance
-

Informational Purposes

City Manager Joni Clarke

City Secretary Kathy Wingo

Public Works Director Stanton Foerster

Finance Director Liz Exum

Fire Chief Jim Kitchens

Development Services Director Joe Hilbourn

City Attorney Joe Gorfida, Jr.

Administrative Assistant Jennifer Faircloth



City of Lucas Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Stanton Foerster

Prepared by: _____

Account Code #: _____

Date Prepared: _____

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Workshop

- 1) Discuss and consider the creation of a Request for Qualifications to procure engineering services. **[Foerster]**
- 2) Discuss and consider the importance and benefits of a street inventory with an assessment of each street. **[Foerster]**
- 3) Discuss and consider right-of-way, street, and maintenance standards for arterials, collectors, and neighborhood streets. **[Foerster]**
- 4) Discuss and consider the prioritization of street maintenance, reconstruction, and repairs. **[Foerster]**
- 5) Discuss and consider the various funding sources, methods, and funding strategies for street maintenance, reconstruction, and repairs. **[Foerster]**

RECOMMENDED ACTION:

SUMMARY:

MOTION:

I make a Motion to.....

APPROVED BY: _____ Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



**City of Lucas
Council Agenda Request**

Council Meeting: April 17, 2014

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Citizen's Input.

RECOMMENDED ACTION:

SUMMARY:

MOTION:

No action necessary.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



**City of Lucas
City Council Agenda
Request**

Council Meeting: April 17, 2014

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Items of Community Interest.

- a) Discussion and update regarding the drought contingency plan, conservation efforts and watering restrictions as it pertains to the City of Lucas.
[Fisher/Foerster]

RECOMMENDED ACTION:

SUMMARY:

MOTION:

No action necessary.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____



**City of Lucas
Council Agenda Request**

Council Meeting: April 17, 2014

Requestor: Kathy Wingo

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: April 9, 2014

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Consent and Approve:

- a) The minutes from the April 3, 2014, City Council meeting. **[Wingo]**

RECOMMENDED ACTION:

Approve as presented.

SUMMARY:

See attached.

MOTION:

I make a Motion to **approve/deny** the Consent Agenda as presented.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____



**City Council Regular Meeting
April 3, 2014, at 7:00 PM
City Hall - 665 Country Club Road
Minutes**

Call to Order

Mayor Rebecca Mark called the meeting to order at 7:00 p.m.

Present or (Absent):

Mayor Rebecca Mark
Councilmember Wayne Millsap
Councilmember Steve Duke
Councilmember Debbie Fisher

Mayor Pro Tem Kathleen Peele
Councilmember Jim Olk
Councilmember Philip Lawrence

Staff Present:

City Manager Joni Clarke
City Attorney Joe Gorfida
Public Works Director Stanton Foerster
City Secretary Kathy Wingo
Development Services Director Joe Hilbourn
Fire Chief Jim Kitchens

It was determined that a Quorum was present.
Everyone was reminded to turn off or silence cell phones.
Public Works Director Stanton Foerster led everyone in saying the Pledge of Allegiance.

Citizens' Input

1) Citizens' Input.

There was no one present who wished to speak during Citizens' Input.

Community Interest

2) Items of Community Interest.

Fire Chief Jim Kitchens came forward and stated as of midnight on April 1st the department began running EMS calls. The new ambulance will have it final inspection on Monday. It should be here by April 17th.

Councilmember Debbie Fisher said that the projections are that Stage 3 Water Restrictions continue. Area lakes supplying our drinking water remain extremely low. North Texas Municipal Water District (NTMWD) is continuing Stage 3 water

restrictions. Watering of lawns and landscape will be allowed once every 14 days, the same schedule as this winter, until further notice. Absolutely NO watering is allowed between 10 AM and 6 PM under any circumstances. Using treated water in ornamental fountains is not allowed. Starting in July, we could be going to Stage 4 water restrictions. You cannot use treated water for landscaping, no washing of vehicles (except safety), and no permitting of pools, there could be a restriction of how much water the City could actually receive. Lake Lavon is currently down 13 feet.

Regular Agenda

- 3) Discuss and Consider the proposed information technology projects, provide guidance to Staff regarding priorities, and identify funding strategies. Projects identified for consideration by the City's IT Consultant, Baxter IT, include web filtering appliance; Microsoft Platform Licensing upgrade; Terminal Services for internal and remote users; managed KVM switch; internal communication server; new modern telephone system; and replacement of the Laserfiche scanner. **[Foerster]**

City Manager Joni Clarke met with Baxter IT representative William Baxter to discuss the proposed projects and have identified two priority projects which include the Microsoft platform licensing upgrade and the a new telephone system.

Our current licensing agreement allows for 75 licensed users and this is a priority project because the City is not in compliance with its licensing agreement and will need to move towards a solution should the City Council want to continue to allow those parties listed in the attached user list to continue to use City-owned software. We have a total of 45 licenses acquired with an additional 30 licenses budgeted for this fiscal year but the City would still be out of compliance even if it purchased the additional 30 licenses. We would be able to apply the \$3,200 on license fees that were budgeted for the current fiscal year and towards the cost of the Microsoft Platform Licensing Upgrade.

The replacement of the City's current telephone system is a priority project because of the inefficiencies identified in the current system. All incoming calls go to a main line which is answered by a staff member and then forwarded to the appropriate department or staff member. It is not an effective use of resources to screen and filter all incoming calls. Our citizens and customers should have direct access and the ability to reach a department or staff member without being transferred.

The Laserfiche scanner replacement is not being considered at this time because of the upcoming replacement of the existing copiers to a copier that will have the ability to scan along with other features.

Bill Baxter, President of Baxter IT, came forward to address some of the issues facing the City of Lucas.

Several councilmembers were in agreement to the web filtering, Microsoft licensing issue, and upgrading the phone system, which would include the fire department.

Staff will come back with a final presentation to include final cost(s) of the phone system, explaining features with breakdown; licensing issues and costs.

Due to the weather conditions it was requested that Council break for a few minutes to allow those who wished to do so to call home; the time was 8:02 p.m.

- 4) Discuss and Consider the approval of a limited, specific contract between the City of Lucas and Brockdale Community LLC, a Hillwood Development, regarding the maintenance of Brockdale Park Road and authorize the Mayor to execute said contract. **[Foerster]**

City has responsibility to maintain the road. Hillwood Development wants to repair the road, the City will have the say as to how and what they do.

MOTION: Councilmember Debbie Fisher made a Motion to approve the limited, specific contract between the City of Lucas and Brockdale Community LLC, a Hillwood Development, regarding the maintenance of Brockdale Park Road and authorize the City Manager to execute said contract, if Hillwood Development does not agree the agreement will be brought back for further consideration by the Council. Mayor Rebecca Mark seconded the Motion. Motion carried. Vote: 6-1, Councilmember Wayne Millsap voting NAY.

- 5) Discuss and Consider the approval of the minutes from the March 20, 2014, City Council meeting. **[Wingo]**

MOTION: Councilmember Jim Olk made a Motion to approve the minutes from the March 20, 2014, City Council meeting. Councilmember Philip Lawrence seconded the Motion. Motion carried. Vote: 7-0.

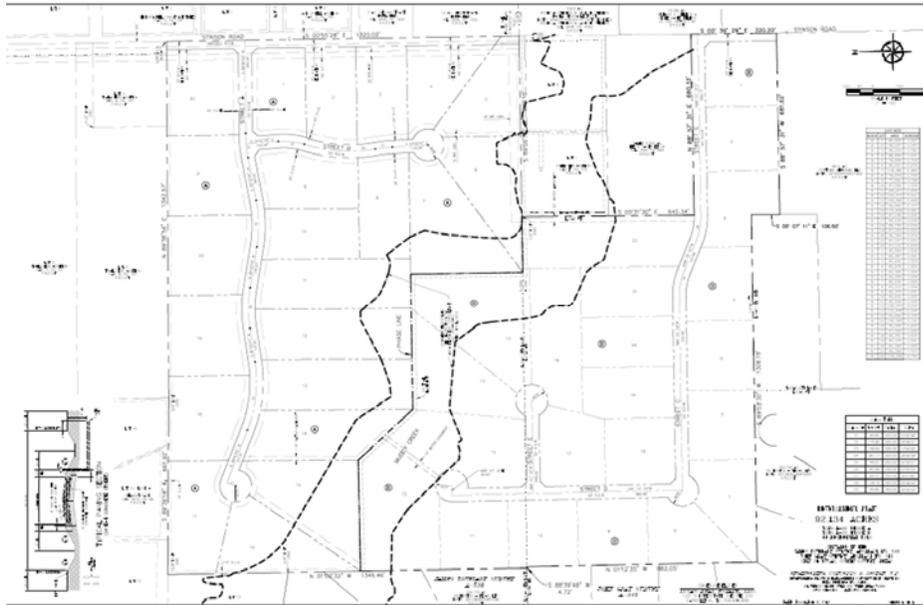
- 6) Discuss and Consider a preliminary plat for a tract of land situated in the James Lovelady Survey Abstract number 538. This is the second phase of Oakbrook Subdivision 44.089 acres out of a total of a 92 ± acre tract of land, consisting of twenty-two (22) lots; lots in the city are currently zoned R-1.5; and lots in the county conform to R-1.5. **[Oakbrook Estates Phase II] [Hilbourn]**

Development Services Director Joe Hilbourn presented the facts to the members of the commission.

Todd Winters, on behalf of Liberty Bank, has submitted an application for a preliminary plat for a 92 acre parcel of land on Stinson Road known as Oakbrook Estates.

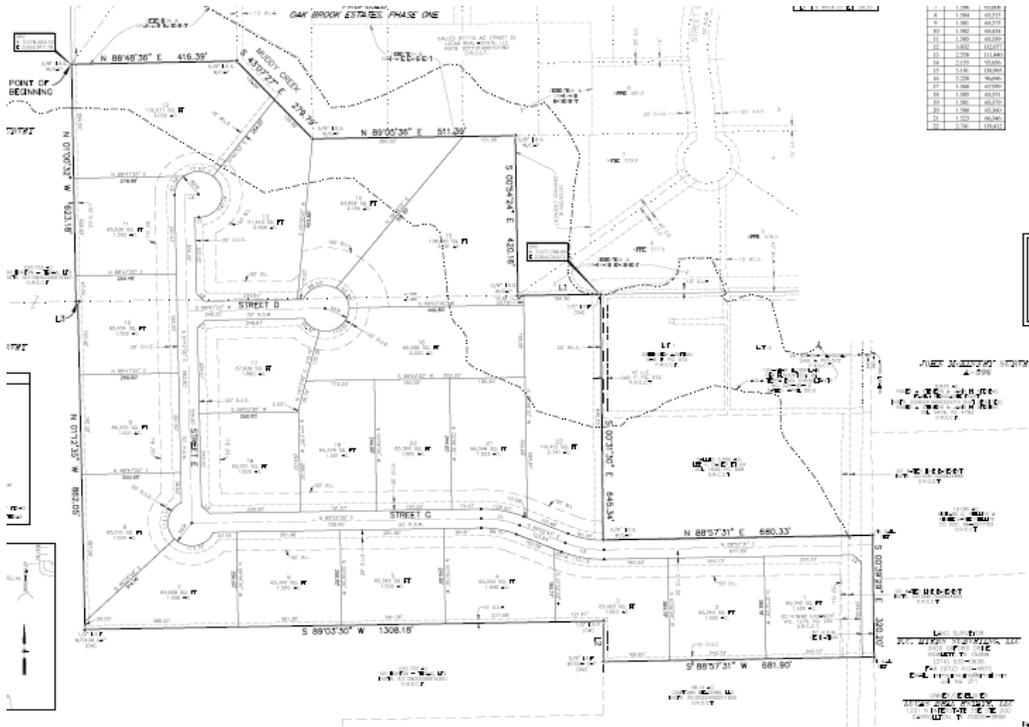
This parcel has an approved development agreement with an approved concept plan that gives consideration to the number of lots. The original property size included 87 acres, currently the size is 92 ± acres. The property is currently zoned R-1.5 and R-2, the five additional acres are zoned R-1.5. The developer will extend part of a city water line project in lieu of impact fees.

Approved Concept Plan:



Phase II Preliminary Plat:

See the next page.



This is an administrative approval, therefore, Staff recommends approval. On March 18, 2014, the Planning & Zoning Commission voted to recommend approval as well..

MOTION: Councilmember Jim Olk made a Motion to approve the preliminary plat for of a tract of land situated in the James Lovelady Survey Abstract number 538. This is the second phase of Oakbrook Subdivision 44.089 acres out of a total of a 92 ± acre tract of land, consisting of twenty-two (22) lots; lots in the city are currently zoned R-1.5; and lots in the county conform to R-1.5 Councilmember Debbie Fisher seconded the Motion. Motion carried. Vote: 6-0, Councilmember Philip Lawrence had stepped away from the meeting.

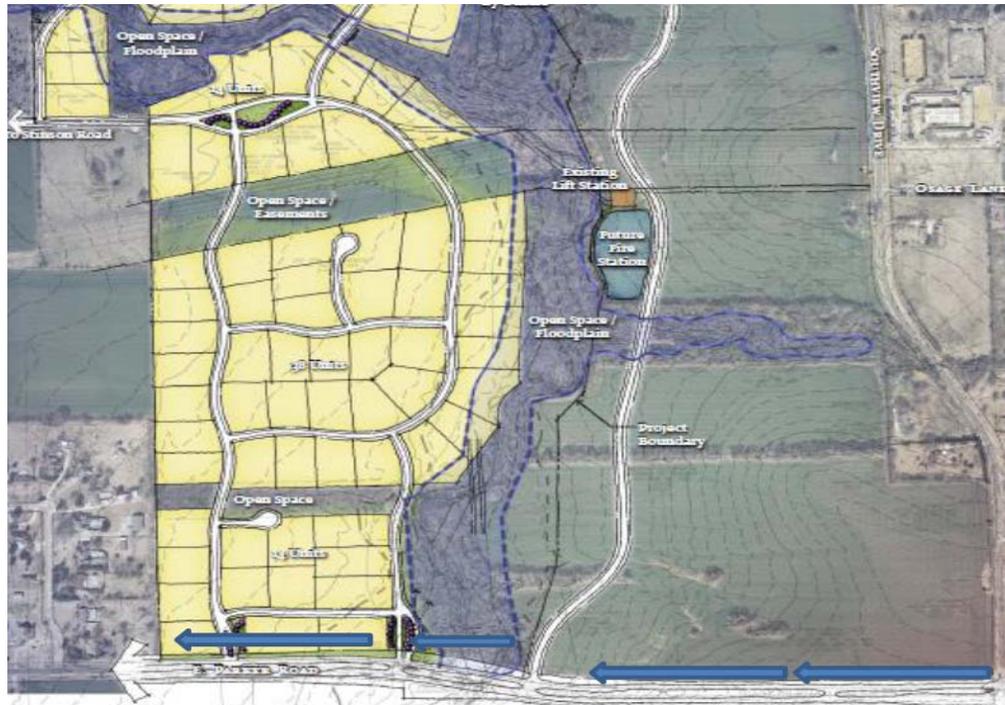
- 7) Discuss and Consider the approval of a preliminary plat for of a tract of land situated in the L & G N Survey Abstract Number 1060, and the John McKinney Survey Abstract Number 596 being 41.527 acres out of 232.162 acre tract of land. This is the first phase in a proposed 120 ± lots subdivision located off of Parker Road, more commonly known as the Hunt property. **[Hilbourn]**

Development Services Director Joe Hilbourn presented the facts to the members of the commission.

Matt Dorsett, with Spires Engineering, has filed an application on behalf of CTMTG Lucas for preliminary plat approval for 30 lots of a proposed 120 lot subdivision, commonly known as the Hunt property.

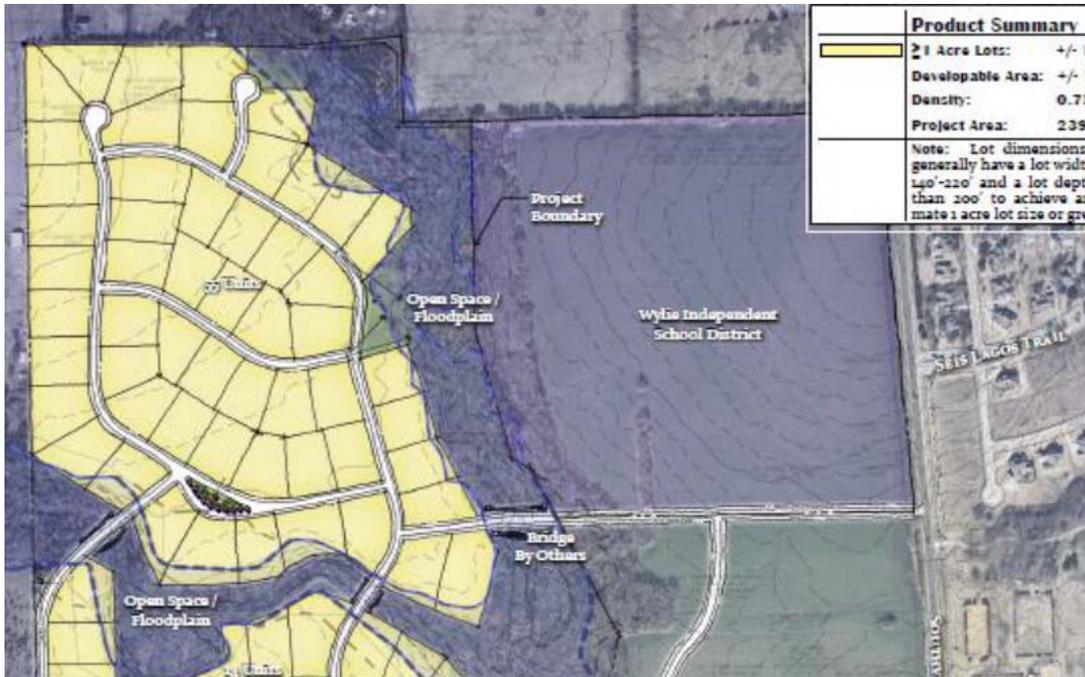
The property has an approved development agreement with an approved concept plan. The property currently is zoned R-1 with a total of 120 ± lots. Phase I of the subdivision is approximately 30 lots. All lots meet with the city's subdivision regulations. There is approximately 239± acres giving an overall density to the subdivision of 1.99 acres per lot. The lot density for Phase I is approximately 1.38 acres per lot gross and 1.15 acres net.

Approved, southern half of Concept Plan:

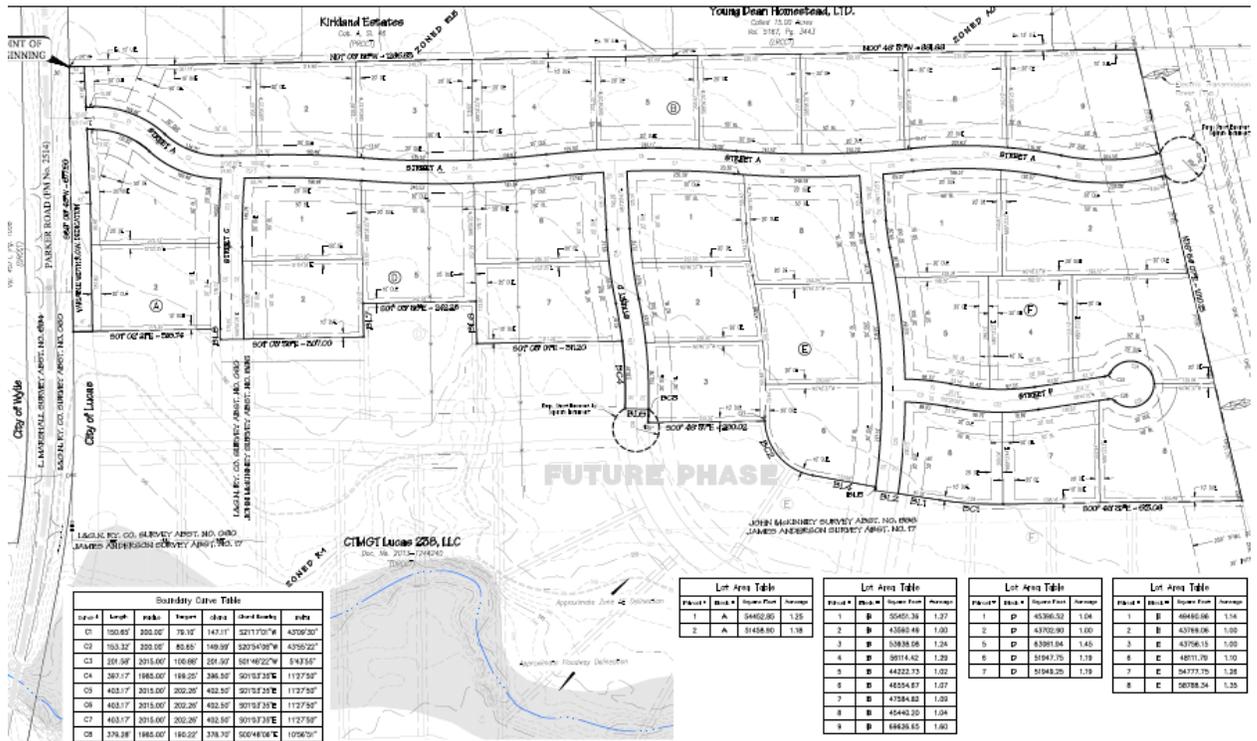


Approved, northern half of Concept Plan:

See the next page.



Preliminary Plat:



Staff recommends approval. On March 18, 2014, the Planning & Zoning Commission voted to recommend approval as well.

MOTION: Councilmember Jim Olk made a Motion to approve the preliminary plat for of a tract of land situated in the L & G N Survey Abstract Number 1060, and the John McKinney Survey Abstract Number 596 being 41.527 acres out of 232.162 acre tract of land. This is the first phase in a proposed 120 ± lots subdivision located off of Parker Road, more commonly known as the Hunt property. Councilmember Debbie Fisher seconded the Motion. Motion carried. Vote: 7-0.

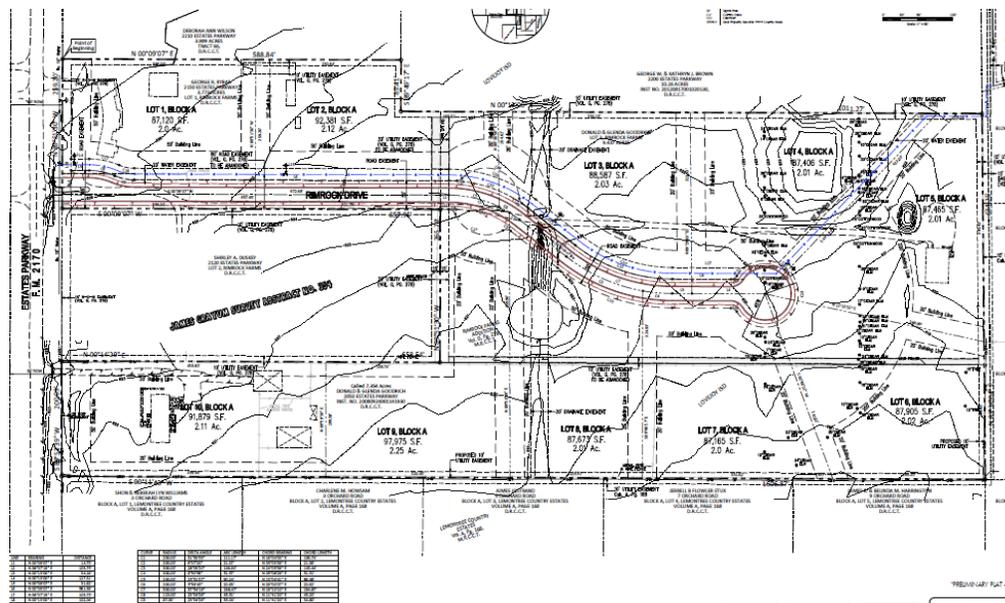
- 8) Discuss and Consider the approval of a preliminary plat submitted by Matt Moore on behalf of George Rybar and Donald & Glenda Goodrich, for Rimrock Estates, a tract of land situated in the James Grayum Survey, Abstract # 354 being 20.564 acres of land, creating ten (10) new lots with Tracts 1 and 3, the property is currently zoned R-2 and located along Estates Parkway. **[Rimrock Estates] [Hilbourn]**

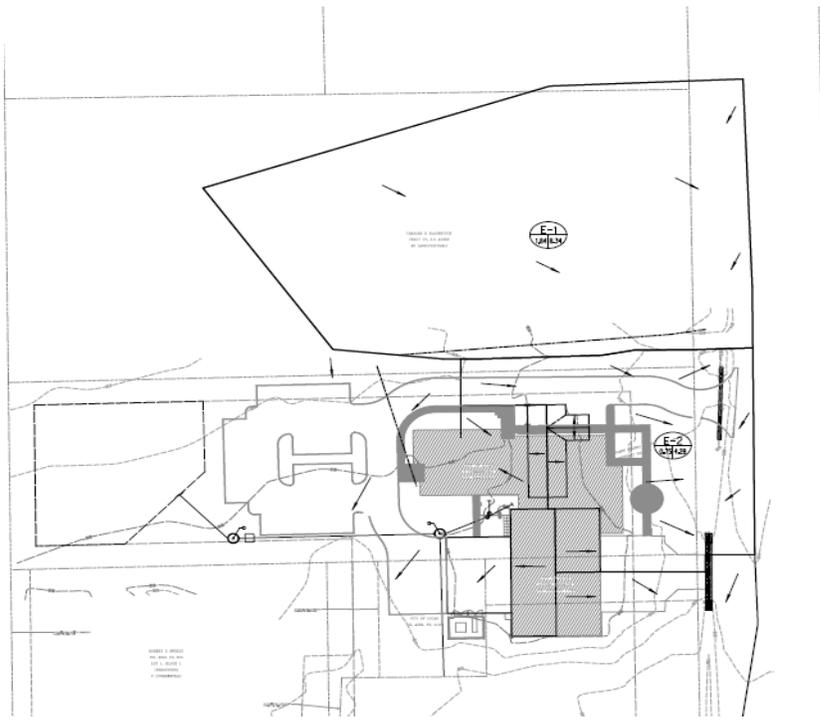
Development Services Director Joe Hilbourn presented the facts to the members of the commission.

Matt Moore, on behalf of George Rybar and Donald & Glenda Goodrich, has submitted an application for a preliminary plat for a ten (10) lot subdivision located on Estates Parkway.

The property is currently zoned R-2 and includes a private road. The lots include the road in lot calculation. There is a total of 20.56 acres with a lot density, gross and net, of 2.056 acres. The subdivision has one entrance. Roads with only one entrance, over 600 feet and ten (10) lots or less, require a split entrance, mid-point turn around, expanded end turn around radius from 45' to 60', and a looped water main.

Preliminary Plat:

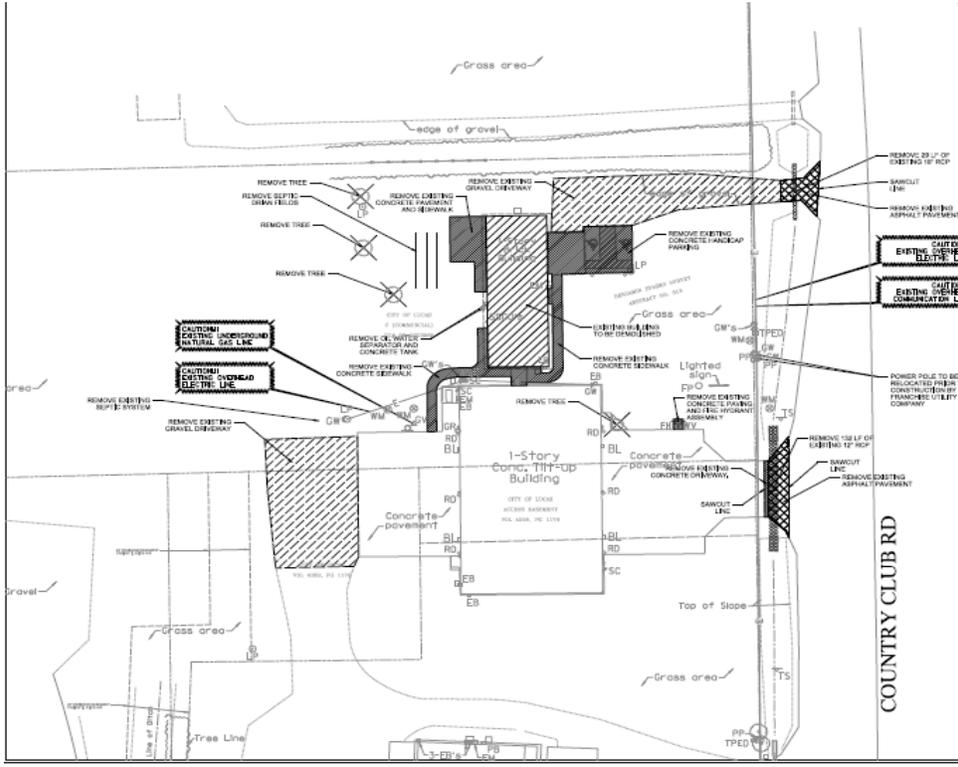




LEGEND

- DRAINAGE AREA
- DRAINAGE SUB AREA
- RIGHT-OF-WAY LINE
- DIRECTION OF FLOW
- PROPOSED CONTOUR
- EXISTING CONTOUR
- DRAINAGE AREA
- AREA, AC

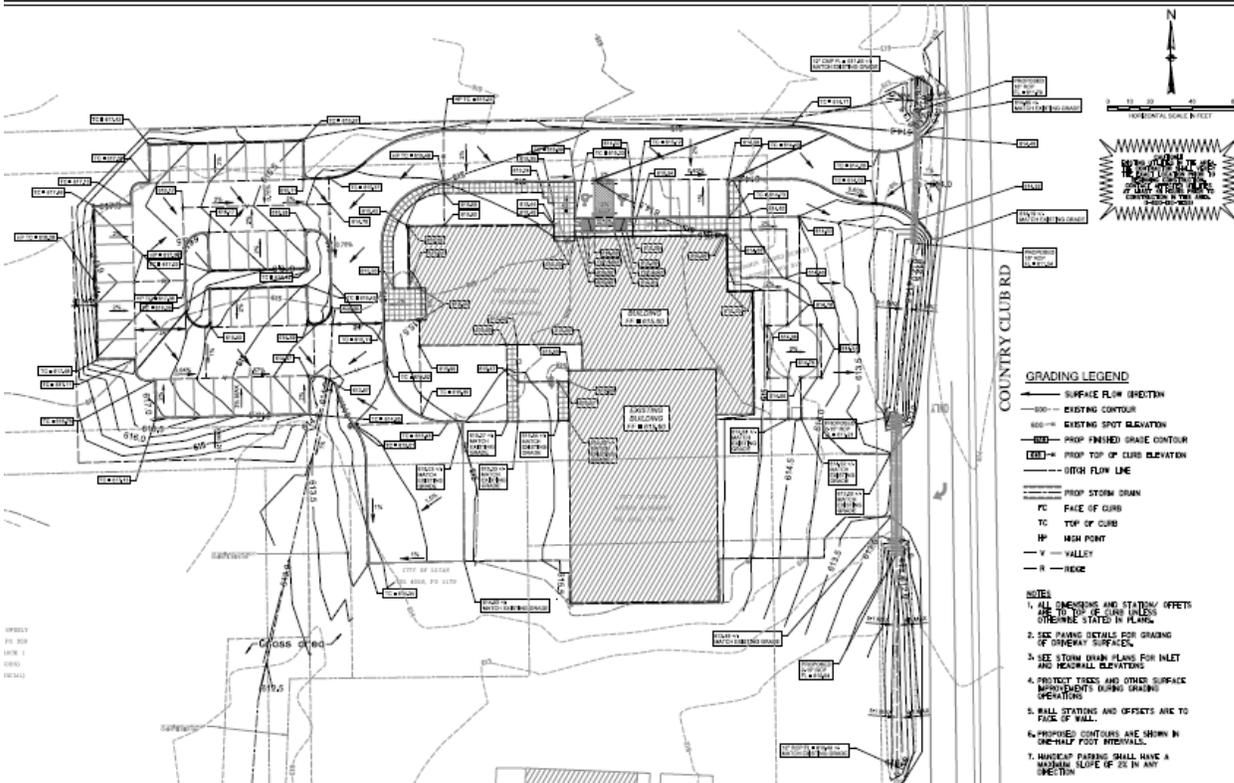
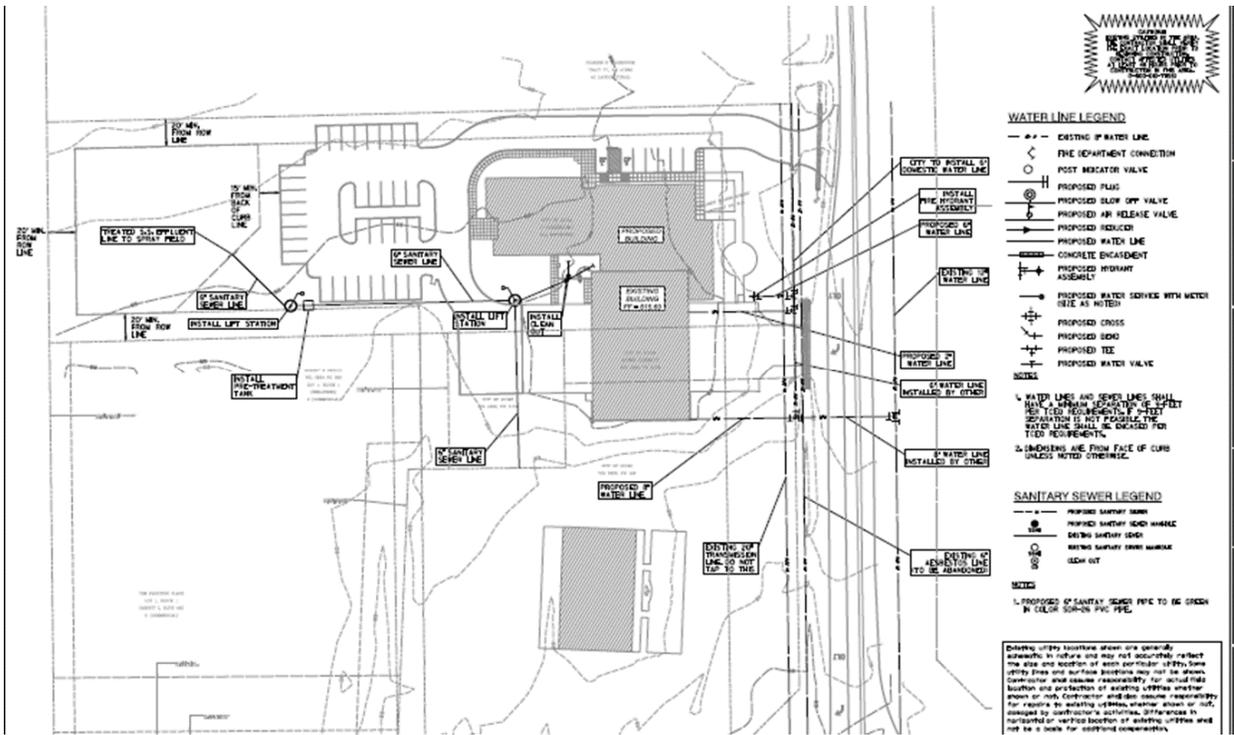
NOTES
 1. DRAINAGE AREAS DERIVED FROM 10-MINUTE CONTOURS GENERATED BY THE NORTH-CENTRAL TEXAS COUNTY OF DRAINAGE DISTRICT NO. 10. ELEVATION DATA COLLECTED BETWEEN JANUARY AND MARCH 2009. VERTICAL DATUM IS NAVD 83.



DEMOLITION LEGEND

- ▨ ASPHALT PAVEMENT TO BE SAWCUT AND REMOVED
- ▨ CONCRETE PAVEMENT TO BE SAWCUT AND REMOVED
- ▨ GRAVEL DRIVEWAY TO BE REMOVED
- △ EXISTING SIGN TO BE REMOVED
- ▭ EXISTING SIGN TO BE RELOCATED
- SAWCUT LINE
- STORM DRAIN TO BE REMOVED
- EXISTING TREE TO BE REMOVED
- EXISTING TREE TO BE REMOVED IN PLACE
- EXISTING TREE TO BE REMOVED

- NOTES**
1. ALL DIMENSIONS ARE TO EDGE OF PAVEMENT UNLESS OTHERWISE NOTED.
 2. EXISTING UTILITIES TO BE RELOCATED BY OTHERS AS REQUIRED.
 3. REFER TO TRAFFIC CONTROL PLAN FOR CONSTRUCTION SEQUENCE.
 4. REFER TO GENERAL NOTES SHEET FOR ADDITIONAL INFORMATION.
 5. REFER TO PAVING PLAN FOR PROPOSED PAVING LIMITS.
 6. DEMOLITION PLAN ELEMENTS AND QUANTITIES ARE APPROXIMATE AND ARE INTENDED TO PROVIDE GUIDANCE TO THE CONTRACTOR. DEMOLITION WORK SHALL BE PERFORMED IN THE MANNER AND SEQUENCE AS NECESSARY FOR THE CONTRACTOR. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE NECESSARY PERMITS AND THE ADDITIONAL WORK SHALL BE NECESSARY TO THE DEMOLITION PROJECT BE ITEM.
 7. CONTRACTOR TO MEET WITH CITY TO DETERMINE TREE TO BE PROTECTED AND TREES TO BE REMOVED.
 8. SAWCUT SIDEWALKS TO NEAREST DUMMY JOINT.



Staff recommends approval. On March 18, 2014, the Planning & Zoning Commission voted to recommend approval as well.

MOTION: Councilmember Jim Olk made a Motion to approve the site plan submitted by the City of Lucas for the Lucas Fire Station Expansion Project, located at 185 Country Club. Councilmember Philip Lawrence seconded the Motion. Motion carried. Vote: 7-0.

- 10) Discuss and Consider the approval of a contract for the installation of a fire suppression system and fire alarm in the existing bays and new addition of the fire station and authorize the City Manager to execute the contract as written by the City Attorney. **[Hilbourn]**

Staff is recommending a contract for fire suppression and fire alarm protection for the City of Lucas Fire Station, existing facilities and proposed additions. The purpose for bringing this contract forward before the rest of the project is to allow Staff to complete the work required in the existing bays prior to start of the main addition.

Contract for fire suppression	\$32,705	Plus cost of backflow (no fire pump required)
Contract for fire alarm	\$10,130	
Total In-House	\$42,835	Plus cost of backflow (should have hard cost of backflow by 3/15/2014)
Estimate from project estimator – fire suppression	\$64,878	Including fire pump
Estimate from project estimator – fire alarm	\$34,146	
TOTAL PROJECT	\$99,024	

MOTION: Councilmember Jim Olk made a Motion to approve the installation of a fire suppression system and fire alarm in the existing bays and new addition of the fire station and authorize the City Manager to execute the contract as written by the City Attorney, in an amount not to exceed \$43,000. Councilmember Wayne Millsap seconded the Motion. Motion carried. Vote: 7-0.

- 11) Discuss and Consider an update for the City of Lucas Fire Station Expansion Project to include cost savings measures and directing Staff to complete the construction plans and advertise for bids. **[Hilbourn]**

Development Services Director Joe Hilbourn came forward and stated that with the change in management for this project, staff felt it was necessary to give an update on the project prior to moving forward with the bid process.

Design and Construction Estimates:

Construction Cost				\$ 2,278,831
	Construction by Contractor	9,325 sf @	\$ 244/sf	\$ 2,278,831
Design Services				\$ 294,789
	A&E Basic Service Fee (Includes Arch, Struct, Mech, Elect, Plumb)		9.50%	\$ 216,489
	Programming			\$ 10,000
	Civil Engineer			\$ 45,500
	Detailed Cost Estimating			\$ 5,500
	Topographic Survey			\$ 3,900
	Geotechnical Investigation			\$ 6,700
	Landscape and Irrigation			\$ 6,700

Owner's Costs/Responsibilities:

Owner Costs				\$ 372,110
	A/E Reimbursables			\$ 20,000
	Construction Material Testing			\$ 30,000
	Commissioning / Air Balance Test			\$ 15,000
	Asbestos Abatement			\$ 15,705
	Demolition of existing house			\$ 7,115
	FFE (Fixtures, Furn., Equipment)			\$ 42,000
	Washer/Dryer			\$ 2,050
	Refrigerators			\$ 3,500
	Data/IT/Radio/Technology			\$ 59,425
	Landscaping/ Irrigation			\$ 30,000
	Water Utility piping - All			\$ 32,515
	Landscape and Domestic meter			\$ 600
	Flag Poles			\$ 4,500
	Fire Protection System - New & Existing			\$ 33,760
	Fire Pump			N/A
	Fire Hydrant			\$ 3,000
	Fire Alarm System - New & Existing			\$ 10,130
	Apparatus Approach - Drainage Piping and Asphalt			N/A
	Emergency Generator and Transfer Switch			\$ 58,810
	Screen wall & gates around Generator			\$ 1,000
	Advertisement for Bidding			\$ 3,000
	Final Plat			\$ 2,200

Total Estimated Costs:

Amount budgeted for the project

\$2.8 million

Amount over budget	\$145,730
Total projected cost	\$2,945,730

MOTION: Councilmember Debbie Fisher made a Motion to allow staff to complete the construction plans and advertise this project for bid. Mayor Pro Tem Kathleen Peele seconded the Motion. Motion carried. Vote: 7-0.

12) Discuss and Consider the award of a construction contract between the City of Lucas and Dickerson Construction for a waterline along Stinson Road in an amount not to exceed \$1,075,374 and authorize the City Manager to execute the contract.

[Foerster]

On March 17, 2014, seven bids were opened at city hall at 2 pm. All data was reviewed by BW2 and city staff. There were four add alternates considered during the bid process. Each of the alternates dealt with a different alignment within an area where no easements were obtained. With private sector development taking place on the west side of Stinson Road, Add Alternates No. 2, 3, and 4 will not be necessary.

The Base bid by Dickerson Construction Company was \$786,625.00, and their Add Alternate No. 1 was \$109,520.00. The proposed contract amount with Dickerson Construction Company is \$896,145.00. Staff is recommending a contingency of twenty (20%) percent in the amount of \$179,229.00. The contingency plus Base bid plus the Add Alternate No. 1 comes to a total of \$1,075,374.00.

The top three low bids are as follows:

	<u>Base</u>	<u>No1</u>	<u>Total</u>
1. Dickerson Construction	\$786,625	\$109,520	\$896,145
2. Jim Bowman Construction	\$842,550	\$118,150	\$960,700
3. Four Star Excavating	\$860,306	\$155,614	\$1,015,920

MOTION: Councilmember Debbie Fisher made a Motion to award the construction contract with the addition of Alternate No. 1 to Dickerson Construction for a waterline along Stinson Road in an amount not to exceed \$1,075,374 and authorize the City Manager to execute said contract. Councilmember Philip Lawrence seconded the Motion. Motion carried. Vote: 7-0.

13) Adjournment.

MOTION: Councilmember Wayne Millsap made a Motion to adjourn the meeting at 9:10 p.m. Councilmember Jim Olk seconded the Motion. Motion carried. Vote: 7-0.

These minutes were approved on April 17, 2014 by a majority vote of the City Council.

Rebecca Mark, Mayor

ATTEST:

Kathy Wingo, TRMC, MMC
City Secretary



City of Lucas Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Joni Clarke

Prepared by: Joni Clarke

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the filing all City of Lucas cases and citations with Collin County Justice Court 3-1 located in Plano, Texas.

RECOMMENDED ACTION:

The recommended action is for the City Council to authorize the filing of all City of Lucas cases and citations with Collin County Justice Court 3-1 to improve the efficiency of city operations.

SUMMARY:

Currently, the City of Lucas conducts Municipal Court on a monthly basis to process cases and citations. The regulations and statutory requirements associated with municipal court operations is substantial. The staffing requirements associated with the City of Lucas Municipal Court currently includes two part-time Court Clerks to administer court proceedings and the management of court records, a prosecuting attorney that is provided by Nichols, Jackson, Dillard, Hager & Smith LLP and a contractual municipal Court Judge that is compensated in the amount of \$500 per month. One of the part-time Court Clerks is bilingual to assist our Spanish speaking customers.

Development Services Director Joe Hilbourn has indicated that the code enforcement efforts have been very successful in obtaining voluntary compliance and in the past six years, with only three citations being issued for code violations.

Mayor Rebecca Mark and City Manager Joni Clarke met with Judge Chuck Ruckel to discuss the possibility of filing all City of Lucas cases in the Collin County Justice Court 3-1. Judge Ruckel currently has a staff of five that provides judicial and administrative support for the Collin County Justice Court 3-1. Judge Ruckel who resides in Lucas also

indicated that if there was ever a time where that the number of cases rose to a level to warrant holding court at Lucas City Hall, he would be able to accommodate that situation.

This action would not prohibit the City Council from directing staff to hold Lucas Municipal Court at Lucas City Hall as deemed appropriate for the efficient processing of municipal court cases in the future. Section 2.03 of the Lucas Home Rule Charter gives the City the power to create and establish a municipal court but also acknowledges the concurrent jurisdiction with the Justice of the Peace. The filing of citations with the Collin County Justice Court 3-1 would allow for a better use of city resources.

Lucas Municipal Court uses OmniBase Services of Texas to maintain and administer the central database for the cities and counties contracted to use the Department of Public Safety's Failure to Appear Program. The FTA program as authorized by Chapter 706 of the Texas Transportation Code, provides an effective collection and enforcement tool by restricting the violator's ability to renew their driver's license for outstanding violations. However, there are other tools associated with municipal operations that are NOT being utilized, such as:

- Texas Warrant Round-Up – A Texas Department of Public Safety program that has gained national notoriety over the past six years as a statewide warrant enforcement effort. Every year, more than 240 law enforcement agencies and departments across Texas come together to find and arrest those people who have active warrants as a result of not paying or settling their past due traffic tickets with the court.
- On-line Ticket Pay – Allows for the efficient collection of fees and fines via the internet with the goal of improving the collection percentage without increasing staffing levels.
- Scofflaw Program – A tool for improving collections of unpaid fines and fees owed to county and municipal governments. This unified collections mechanism, assists in the clearance of outstanding warrants and violations at the same time increasing revenues for corresponding departments. Sections of the Texas Transportation Code allow for the Tax Assessor of a County to deny the vehicle registration of an individual who is reported to be outstanding in a Municipal and or County fines & fees.

For fiscal year 2012/2013, the Lucas Municipal Court processed 260 cases, brought in a total of \$26,867.58 in revenue and remitted \$7,653.75 to the State of Texas as required by law with the City being able to retain \$19,213.83. The actual expenses incurred for fiscal year 2012/2013 was \$31,091.53. Because of the limited amount of cases and citations processed by the Lucas Municipal Court and the resources necessary to properly administer court proceedings, it is in the best interest of the City and the citizens that we serve to find ways in which to partner with other agencies to ensure the best management practices for our local government.

MOTION:

I make a Motion to **approve/deny** the implementation of the necessary changes in procedures to file all City of Lucas cases and citations with Collin County Justice Court 3-1.

APPROVED BY: _____ Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____

Note:

This item has been reviewed by City Attorney Joe Gorfida.

Joni Clarke

From: Mark Sanderson <msanderson@co.collin.tx.us>
Sent: Wednesday, March 26, 2014 2:32 PM
To: Joni Clarke
Subject: FW: Citations

Follow Up Flag: Follow up
Flag Status: Flagged

Joni

See below. (Judge Ruckel lives in Lucas)

Mark Sanderson, LCC
Major of Operations
Collin County Sheriff's Office
972-547-5109 Office
214 686-7082 Cell
sandersonm@collincountytx.gov



From: Judge Chuck Ruckel
Sent: Wednesday, March 26, 2014 1:49 PM
To: Mark Sanderson
Subject: RE: Citations

She can (by law) file all of her cases in JP Court. I will call her and explain it. Thanks for the heads up. How about lunch on Friday?

Judge C. Ruckel
Collin County Justice Court 3-1
920 East Park Blvd, Suite 220
Plano, TX 75074
(972) 881-3001

From: Mark Sanderson
Sent: Wednesday, March 26, 2014 12:36 PM
To: Judge Chuck Ruckel
Subject: FW: Citations

Do you have any input on this (below)?

Mark Sanderson, LCC
Major of Operations
Collin County Sheriff's Office
972-547-5109 Office
214 686-7082 Cell
sandersonm@collincountytexas.gov



From: Joni Clarke [<mailto:jclarke@lucastexas.us>]
Sent: Thursday, March 20, 2014 9:36 AM
To: Mark Sanderson
Cc: Joe Gorfida, Jr.
Subject: Citations

Major Sanderson,

I really enjoyed visiting with you this week regarding the law enforcement services that are provided by the Collin County Sheriff's Office. I was hoping that you may be able to provide some guidance to me on another matter. The City of Lucas currently holds Municipal Court once a month. It is my understanding that at one point, all City of Lucas citations were filed with a Collin County Court. Since we are a small organization, keeping up with all the requirements of holding and administering court is somewhat challenging. Do you know who I might talk to regarding the possibility of filing our citations with Collin County? According to our Development Services Director, we have only written three citations in the last six years for code violations and I'm sure you have the data on how many citations are written by Deputy Gilchrist. I would appreciate any insight you may have on this issue.

Joni Clarke
City Manager
City of Lucas
www.lucastexas.us
jclarke@lucastexas.us
office: 972-727-8999 ext. 226
cell: 469-815-9237

ATTENTION PUBLIC OFFICIALS... A "Reply to All" of this e-mail could lead to violations of the Texas Open Meetings Act.
Please reply only to the sender.

MUNICIPAL COURT
FY13 / FY14 YTD

	<u>FY13</u>	<u>FY14</u>	<u>FY13</u>
CASES FILED	260	48	
REVENUE COLLECTED	26,867.58	10,553.05	
REVENUE REMITTED TO STATE	7,653.75	2,179.45	
CITY BALANCE	<u>19,213.83</u>	<u>8,373.60</u>	
	<u>BUDGETED</u>	<u>ACTUAL</u> <u>YTD</u>	<u>ACTUAL</u>
PROJECTED EXPENSES: FY14			
CHILD SAFETY EXPENSE	1,000.00	581.00 RESTRICTED FUNDS	581.31
INMATE BOARDING	400.00	121.00	507.00
OFFICE SUPPLIES / POSTAGE	550.00	120.00	400.00
OMNI EXPENSES	0.00	0.00	60.00
PROFESSIONAL SERVICES	6,000.00	3,000.00 JUDGE COST	6,000.00
PROSECUTION COSTS			4,020.00
STAFF SALARIES			10,000.00
STATE COURT FEES	13,000.00	2,179.45	7,653.75
TRAINING	3,400.00	434.00 HOTEL TCCA CONF	1,869.47
	<u>24,350.00</u>	<u>6,435.45</u>	<u>31,091.53</u>

RESOLUTION # R-2013-02-00395
[Approving Agreement for Municipal Court Judge]

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR MUNICIPAL COURT JUDGE BETWEEN THE CITY AND DANA HUFFMAN FOR DANA HUFFMAN TO SERVE AS PRESIDING JUDGE FOR THE CITY'S MUNICIPAL COURT; AND PROVIDING FOR AN EFFECTIVE DATE.

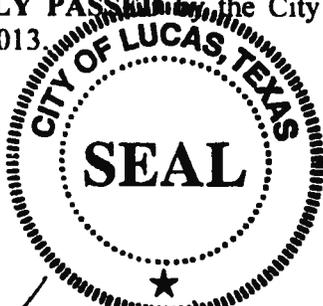
WHEREAS, the City Council of the City of Lucas (the "City") has been presented an Agreement for Municipal Court Judge between the City and Dana Huffman for Dana Huffman to serve as the Presiding Judge for the City's Municipal Court (the "Agreement");

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

SECTION 1. The City Manager shall execute the Agreement, attached hereto as Exhibit "A," for Dana Huffman to serve as the Presiding Judge for the City's Municipal Court.

SECTION 2. This Resolution shall take effect immediately upon its passage.

DULY PASSED by the City Council of the City of Lucas, Texas, on the 7th day of February, 2013.



APPROVED:

A handwritten signature in black ink, appearing to read "Rebecca Mark", written over a horizontal line.

Rebecca Mark, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Kathy Wingo", written over a horizontal line.
Kathy Wingo, TRMC, MMC, City Secretary

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Joe Gorfida", written over a horizontal line.
Joe Gorfida, City Attorney
(JIG/01-28-13/59192)

EXHIBIT A

STATE OF TEXAS §
§ **AGREEMENT FOR MUNICIPAL COURT JUDGE**
COUNTY OF COLLIN §

This agreement ("Agreement") is made by and between the City of Lucas, Texas ("City") and Dana Huffman ("Judge"), (individually as the "Party" or collectively as the "Parties"), acting by and through their authorized representatives.

Recitals:

WHEREAS, City desires to engage the services of the Judge as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Judge desires to render services as the Presiding Judge of the Lucas Municipal Court, in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article I

Term

The Term of this Agreement shall commence effective March 1, 2013, (the "Effective Date") and end on March 1, 2015, for a two-year term.

Article II

Scope of Services

2.1 Judge shall preside over municipal court proceedings for and on behalf of the City as its Presiding Judge; and, to conduct services as may be required from time-to-time, including but not limited to, issuance of search arrests and/or capias warrants, and such administrative duties and responsibilities as are necessary and incidental to the office of Presiding Judge of the City's Municipal Court.

2.2 Judge shall maintain eligibility and the appropriate licenses as may be required under State law to serve in the capacity as the Presiding Judge of the City's Municipal Court for the Term of this Agreement.

2.3 Judge shall perform all services in accordance with the Code of Judicial Conduct applicable to judges of courts in the State of Texas and agrees to conduct herself in a judicial demeanor at all times in representing the City.

2.4 Judge is not precluded from performing such legal services in maintaining her private practice of law, and nothing construed herein shall preclude her from maintaining her private legal practice.

2.5 Judge hereby agrees not to knowingly undertake any legal matter that would compromise or conflict with her duties and responsibilities as the Municipal Court Judge or otherwise knowingly undertake to represent a client on a legal matter against the City.

Article III Municipal Court Docket

Judge agrees to preside over the City's Municipal Court docket once per month. If additional court dates in excess of once per month are necessary, the Judge shall be compensated as provided in Section 4.2.

Article IV Compensation and Method of Payment

4.1 City shall compensate Judge in the amount of Five Hundred Dollars (\$500.00) per month.

4.2 City shall compensate Judge at the rate of one hundred twenty-five dollars per hour (\$125.00) if additional court dates in excess of one per month are required.

4.3 City shall compensate the Judge for services provided pursuant to this Agreement and, as set forth in this Article, within thirty (30) days after receiving the Judge's invoice reflecting her time and billing, provided there are no errors or discrepancies.

4.4 The Parties agree that if the City's Municipal Court case load increases for any reason, the Parties shall review the terms of this Agreement and the Judge's compensation.

Article V Removal of Judge/Termination

5.1 The Parties acknowledge that the Judge can be removed for cause.

5.2 Furthermore, either Party may terminate this Agreement with or without cause by giving thirty (30) days prior written notice to the other party. In the event of such termination, the Judge shall be entitled to compensation for any services completed to the reasonable satisfaction of City in accordance with this Agreement prior to such termination.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

6.2 Assignment. Judge may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by the Judge to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Judge, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by the Judge pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:
Attn: City Manager
City of Lucas
665 Country Club Road
Lucas, Texas 75002

With Copy to:
Joe Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Judge:

6.9 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

6.10 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.11 Audits and Records. Judge agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Judge's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

6.12 Conflicts of Interests. Judge represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

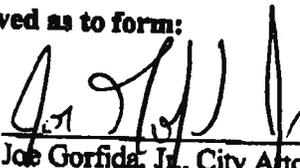
[Signature Page to Follow]

EXECUTED this 7 day of February, 2013.

City of Lucas, Texas

By: 
Jeff Jenkins, City Manager

Approved as to form:

By: 
Joe Gorfida, Jr., City Attorney
(JG/01-28-13/59190)

EXECUTED this 7 day of February, 2013.

By: 
Dana Huffman, Judge



City of Lucas City Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Joni Clarke

Prepared by: Liz Exum

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the reclassification of part-time Court Clerk (.50 FTE) and the creation of a part-time Purchasing Coordinator (.50 FTE) position for the formation of a full-time Purchasing Coordinator/Finance Assistant position using existing funds in the current FY 2013-2014 budget.

RECOMMENDED ACTION:

Staff recommends approval of this reallocation of resources to facilitate the ability to make purchases that will provide the most value and benefit to the City of Lucas and to provide continued technical support to the Finance Department.

SUMMARY:

The Finance Department currently has a part time position (Bi-Lingual Court Clerk) that is scheduled to work 19 hours per week. In evaluating the needs of the City, the Finance Department is in the process of adding a purchasing function. We currently have limited purchasing proficiencies and would like to expand our ability to properly encumber and account for City purchases. This full time position would include purchasing, fixed assets, utility billing backup, and additional finance duties as assigned.

The incremental costs for FY 13-14 would be a total of \$6,965.07. This total is comprised of salary of \$3,766.83 and benefit and tax costs of \$3,198.24. The impact to FY 14-15 would be approximately \$7,451.97 in additional expense.

We will be able to absorb the incremental costs for FY 13-14 with the existing budget that we have for part time and temporary help. The savings in part time were from the reduction in the hours provided by a part time receptionist position from 19 hours per week to 5 hours per week and savings from temporary help.

The addition of this position would help all departments properly account for their purchases and stay on course with their fiscal budgets. We would also be able to utilize this position to cross-train and backup Utility Billing.

MOTION:

I make a Motion to **approve/deny** the reclassification of part-time Court Clerk (.50 FTE) and the creation of a part-time Purchasing Coordinator (.50 FTE) position for the formation of a full-time Purchasing Coordinator/Finance Assistant position.

APPROVED BY: _____ Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



City of Lucas -- Job Description

Position

Position Title: Purchasing Coordinator/Finance Assistant
Position Code: ###
Department: Finance
FLSA Status: Non-Exempt
Revised: Date
Emergency Status: Post Impact/Recovery Assigned

Leadership

Supervisor: Finance Director
Direct Reports: None

Position Purpose

Provides purchasing expertise and guidance to support all City departments as it relates to the acquisition of goods and supplies and ensures compliance with all purchasing regulations and policies. This position is also responsible fixed asset inventory and reconciliation, encumbrance accounting and the timely completion of bank reconciliations.

Essential Functions

❖ Purchasing:

- Examine, verify, and review purchase requests. Review requisitions for completeness, accuracy, compliance with established policies and procedures and state law, and available funding.
- Maintain purchasing files, including purchase orders. Print, route, and distribute purchase orders on a daily basis.

- Responsible for maintaining the inventory of supplies that are used by multiple departments and facilitating bulk purchases to get the best value for the City.
- Maintain a list of vendors, product information and catalogs.
- Participates in the development of policies and procedures.
- Attend bid and pre-bid meetings.
- Ensure adherence to city purchasing approval policies and procedures.

❖ **Fixed Assets:**

- Records maintenance of the city's fixed assets, additions, transfers and deletions.
- Inputs fixed assets into the Incode system.
- Reconciles fixed asset system to general ledger, calculates depreciation on an annual basis.
- Provide annual reports for fiscal year end audit from the fixed asset system.

❖ **Finance**

Prepare monthly journal entries for property and sales tax revenues.

Monthly reconciliation of all city bank accounts.

Tracks payment and activity for all capital projects.

- Assists Finance Director with miscellaneous projects as assigned.
- Serves as primary backup for Utility Billing.

Secondary Functions

- May serve on various committees as assigned.
- Acts as Deputy Court Clerk for Lucas Municipal Court as required.
- Provides support to the Finance Department as it relates to special projects.
- Performs all other duties as assigned.

Capital and/or Fiscal Responsibility

- Responsible for the City of Lucas Purchasing Policies and compliance with all regulations while performing purchasing tasks.
- Assist Finance Director with budget preparation.
- Assist with the City's Fiscal and Budgetary Policy
- Manage the City's Fixed Asset Policy

Credentials (minimum preferred)

❖ **Knowledge/Skills/Abilities**

- Extremely strong knowledge and abilities in the use of personal computers and contemporary software for financial management and encumbrance accounting.
 - Highly developed knowledge of contemporary administrative practices and procedures.
 - Ability to communicate effectively verbally and in writing and to maintain confidentiality regarding sensitive and political issues.
 - Ability to maintain creativity and organization while performing essential functions.
 - Skill in the use of all listed tools and equipment.
 - Ability to coordinate services from various sources to achieve satisfactory resolution of problems and issues while meeting deadlines.
 - Exceptional skills in greeting and communicating with the public in a pleasant and courteous manner, while maintaining a highly professional demeanor.
 - Ability to successfully address and resolve issues expressed by both internal customers and vendors and provides feedback in a timely manner.
- ❖ **Formal Education/Certification/Licenses**
- High school graduation or equivalent, with Associates degree in a relevant field of study preferred.
 - Advanced course work in finance or similar training is preferred.
 - Notary Public or willing to acquire within 90 days.
- ❖ **Prior Experience**
- A minimum of seven (7) years of progressively responsible administrative work, with at least three years in a procurement position desired, with a substantial amount of experience in a similar public sector setting preferred.
 - Any equivalent combination of education and experience, equivalence to be determined by the City.
- ❖ **Language Requirements**
- Bilingual: Spanish and English preferred.

Tools and Equipment Used

Personal computer, telephone, fax and postage machine, copier, printer, and scanner.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee is frequently required to sit and talk or hear; use hands to finger, handle, feel or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to walk; lift and/or move up to twenty-five (25) pounds. Specific vision abilities required by this job include close vision and the ability to adjust focus.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. Work is normally performed in an air-conditioned office environment where the noise level in the work environment is usually quiet.

Selection Guidelines

Formal application, rating of education and experience; oral interview and reference check; job related tests may be required.

Acknowledgement

This position description does not constitute an employment agreement and is subject to change. This description is intended to indicate the types of outcomes, essential duties and levels of work difficulty required for this position. Other outcomes and/or responsibilities may be added, deleted or changed at anytime, and the discretion of Management, formally or informally, either verbally or in writing. I have read and understand the duties required of this position and further affirm that I am physically and mentally able to perform the duties as described.

Employee (print name): _____

Employee (signature): _____

Date: _____

City of Lucas
 Finance Department
 Funding Requirement for New Position

Budget	FY 13-14 Current	FY 13-14 Proposed	FY 14-15 Estimated
Bi-Lingual Court Clerk Salary	\$ 14,975.00	\$ 18,741.83	\$ 31,200.00
Part time receptionist Salary	\$ 13,525.00	\$ 8,587.00	\$ 3,413.80
Temporary Water Salary	\$ 8,000.00	\$ 3,967.88	\$ -
Total Salary	\$ 36,500.00	\$ 31,296.71	\$ 34,613.80
Tax/Benefit Costs:			
TMRS	\$ -	\$ 753.60	\$ 2,449.20
Medicare	\$ 529.25	\$ 453.80	\$ 501.90
Medical/Vision/Dental		\$ 2,188.44	\$ 6,565.32
Other(STD/AFLAC/Consult a doc)		\$ 117.00	\$ 351.00
Total Tax/Benefits	\$ 529.25	\$ 3,512.84	\$ 9,867.42
Total Salary plus Benefit Costs	\$ 37,029.25	\$ 34,809.55	\$ 44,481.22
FY 13-14 Savings			\$ 2,219.70
FY 14-15 Additional Costs			\$ (7,451.97)



City of Lucas Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Kathy Wingo/Liz Exum

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: April 9, 2014

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the approval of an agreement between the City of Lucas and Konica Minolta concerning a thirty-six (36) month lease of a color copier/printer/scanner using existing funds in the current FY 2013-2014 budget.

RECOMMENDED ACTION:

Approve as presented.

SUMMARY:

The City currently has two (2) copiers; one color (owned by the city) and one black & white. The current lease for the black & white is \$523.79 and we pay a monthly maintenance and usage/supply fee for the color copier, which ranges from \$300 - \$700, depending on the monthly activity.

The existing color copier could be sold.

The need for replacing the scanner for Laserfiche would be eliminated as the new copier would include the ability to scan directly to the Laserfiche server, saving approximately \$4,500.

We are able to absorb the cost of the new lease by discontinuing the service on the color copier and with the expiration of the black & white copier lease.

See attached budgeting spreadsheet.

MOTION:

I make a Motion to **approve/deny** an agreement between the City of Lucas and Konica Minolta concerning a thirty-six (36) month lease of a color copier/printer/scanner using existing funds in the current FY 2013-2014 budget.

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____



KONICA MINOLTA

A Proposal for the City of Lucas

DIR-SDD-1673

COLOR COPIER / PRINTER / SCANNER	Quantity	36 mo. Lease Payment
bizhub C554e (55ppm) Includes Dual Scan Document Feeder, PC-410 Large Capacity Unit, FS-535 100 sheet Stapling Finisher, PK-521 2/3 Hole Punch, FK-511 Fax Kit, SD-5-11 Saddle Stitcher, External Keyboard, KH-102 Keyboard Holder, Bizhub SECURE, LK-101 i-Option License Kit (Web Browser), UK-204 i-Option Memory Upgrade Kit, Solutions Installation and Delivery, PS, PCI, & XPS Controller, 2 Duplex Unit, 250 GB Hard Drive, USB Interfaces, Scan-to-USB Thumb Drive, USB Local Printing, Optional Authentication Device Connection.	Included	\$968.50
Integrate eCopy Sharescan v.5.1 Office 3 yr with Advanced Integration and Training	1	\$100.00
	Total	\$1,068.50

Service:

Minolta service/supply contract includes Konica Minolta Corporation's performance/copy quality guarantee, all toners, parts, drums, labor, staples, preventative maintenance and all other supplies excluding paper.

Cost Per Copy:

18,000 Black and White copies included. Black and White overages will be billed at 0.00612.

6,000 Color copies included. Color overages will be billed at 0.04682.



City of Lucas
 Budget for Copy Machines
 FY 2013-2014

Account	Budget	YTD Balance	Xerox Lease Pmt 3-14	Xerox Lease Pmt 4-14	Xerox Lease Pmt 5-14	Xerox Lease Pmt 6-14	Reimb Konica	Balance
51-6400-313	\$ 4,505.00	\$ (1,331.82)	\$ (261.89)	\$ (261.89)	\$ (261.89)	\$ (261.89)	\$ 1,047.58	\$ 3,173.20
11-6200-313	\$ 3,400.00	\$ (1,331.85)	\$ (261.90)	\$ (261.90)	\$ (261.90)	\$ (261.90)	\$ 1,047.58	\$ 2,068.13
11-6100-313(includes 3/14)	\$ 3,600.00	\$ (2,125.73)		\$ (300.00)				\$ 1,174.27
Balance	\$ 11,505.00	\$ (4,789.40)	\$ (523.79)	\$ (823.79)	\$ (523.79)	\$ (523.79)	\$ 2,095.16	\$ 6,415.60

Lease Payment Konica

April	\$ (1,069.00)
May	\$ (1,069.00)
Jun	\$ (1,069.00)
Jul	\$ (1,069.00)
Aug	\$ (1,069.00)
Sept	\$ (1,069.00)
Under budget	\$ 1.60

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Konica Minolta Business Solutions U.S.A., Inc. (hereinafter "Vendor"), with its principal place of business at 100 Williams Drive, Ramsey, New Jersey 07446.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-160, on August 23, 2010, for Hardware, Software and Related Services for Printers, Scanners, and Document Management. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-160 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Master Operating Lease Agreement; Appendix E, Master Lease Agreement; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-160, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-160, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to those specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to those specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one half of one percent (.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dan Contreras, Director
ICT Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: dan.contreras@dir.texas.gov

If sent to the Vendor:

Kristen McKenna
Senior Gov't Marketing Specialist, State Contracts
KMBS U.S.A., Inc.
2120 Washington Blvd., Suite 450
Arlington, VA 22204
Phone (813)-207-8276
Fax (703)-271-1188
email: kmckenna@kmb.konicaminolta.us

7. Software License, Service and Leasing Agreements

A. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

B. Master Operating Leasing Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Operating Lease Agreement in Appendix D of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

C. Master Leasing Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix E of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions.

8. Intellectual Property Matters

A. Definitions

1. “Work Product” means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product, shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

C. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions

of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

D. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else that pertains to the Work Product.

E. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

F. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

G. Agreement with Subcontracts.

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

H. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

I. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. Section 6, Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information, 1. Vendor Website, is hereby replaced in its entirety:

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the product and services offered, product and service specifications, Contract pricing including MSRP, percent discount and price for each model number as applicable, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

B. Section 9, Vendor Responsibilities, A. Indemnification, 1) Acts and Omissions, is hereby replaced in its entirety:

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND

ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

C. Section 10, Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby replaced in its entirety:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiler will not be able to deliver product or services in a timely manner to meet the business needs of the Customer. Konica Minolta will agree to allow the CUSTOMER to cancel the master agreement without fees, preventing any additional placements subsequent to the date of termination. Additionally, termination for convenience will apply to any pending or open orders, which have yet to be installed at CUSTOMER locations. However, equipment installed prior to the date of the termination of the agreement will be obligated to remain in place for the full term of its respective lease period unless cancelled for reasons of non-appropriation of funding (government agencies), Konica Minolta default or non-performance of equipment. Cancellation of any installed equipment for any other reason will result in early cancellation fees. Fees may be equivalent up to the amount of the net remaining stream of payments.

This Contract is executed to be effective as of the date of last signature.

Konica Minolta Business Solutions U.S.A., Inc.

Authorized By: signature on file

Name: Kimberly B. Talbot

Title: Manager, Government Contracts

Date: 4/20/11

The State of Texas, acting by and through the Department of Information Resources

Authorized By: signature on file

Name: Cindy Reed

**Title: Deputy Executive Director
Operations & Statewide Technology Sourcing**

Date: 4/26/11

Legal: initials on file 4/26/11

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

A. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

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- B. Compliance Check** – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- G. Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- H. State** – refers to the State of Texas.

4. General Provisions

A. Entire Agreement

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer’s Purchase Order and the Contract, the Contract term shall control.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

C. Invalid Term or Condition

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United

Appendix A
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States law or regulation which conflicts with the Contract term or condition.

2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

F. Choice of Law

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

G. Limitation of Authority

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

5. Product Terms and Conditions

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters

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206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later thirty (30) days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

6. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

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B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 6.B.1.a above.

3) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

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D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Information and Communications Technology (ICT) Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

4) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or

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passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

I. Orientation Meeting

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

J. Performance Review Meetings

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for

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the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

7. Purchase Orders, Invoices, and Payments

A. Purchase Orders

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

B. Invoices

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

C. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

8. Contract Administration

A. Contract Administrators

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.

1) State Contract Administrator

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

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2) Vendor Contract Administrator

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, manufacturer's suggested retail price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon thirty (30) days written

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notice to Vendor without the need for a formal contract amendment.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

c) Failure to timely submit three (3) reports within any rolling twelve (12) month period may, at DIR's discretion, result in termination of Vendor's Contract.

C. Records and Audit

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may

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request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR ICT Cooperative Contracts E-Mail Box information.

9. Vendor Responsibilities

A. Indemnification

1) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or

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resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

2) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

3) Independent Contractor

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO

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COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

C. Vendor Certifications

Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the

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individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (ix) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (x) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xi) have identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and have disclosed them to DIR and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
- (xiii) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate; and
- (xiv) have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g, privacy and security requirements).

D. Ability to Conduct Business in Texas

Vendor and its Order Fulfiller shall be authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

E. Equal Opportunity Compliance

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

F. Use of Subcontractors

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

G. Responsibility for Actions

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.
- 2) Vendor, for itself and on behalf of its subcontractors, shall report to DIR promptly when the disclosures under Certification Statement of Appendix A to the RFO and/or Section 9.C. (xii) and (xiii), Vendor Certifications of this Appendix A to the Contract change. Vendor covenants to fully cooperate with DIR to update and amend the Contract

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to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.

H. Confidentiality

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

I. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

J. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

Appendix A
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L. Overcharges

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

M. Prohibited Conduct

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

N. Required Insurance Coverage

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

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Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

O. Use of State Property

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

P. Immigration

Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of the 1996 Act who will perform any labor or services under this Contract. Nothing herein is intended to exclude compliance by Vendor with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

R. Product and/or Services Substitutions

Substitutions are not permitted without the written permission of DIR or Customer.

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S. Secure Erasure of Hard Disk Products and/or Services

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

a) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. Drug Free Workplace Policy

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

10. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

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B. Termination

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty

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(30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 10.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war,

Appendix A
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civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

11. Notification

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

12. Captions

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.



City of Lucas Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Stanton Foerster

Prepared by: _____

Account Code #: _____

Date Prepared: March 26, 2014

Budgeted Amount: _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the approval of **Resolution # R-2014-04-00417** of the City Council of the City of Lucas, Texas, approving the agreement to contribute to right-of-way funds to the State of Texas through the Texas Department of Transportation for a transportation improvement project; and providing for an effective date.

RECOMMENDED ACTION:

Staff recommends approval.

SUMMARY:

On January 14, 2014, TxDOT sent an "Agreement to Contribute Right of Way Funds" to staff asking the city to commit to a 10% participation of the ROW acquisition and utility adjustments. These funds are requested as part of the widening of the White Rock Creek Bridge on FM 1378. TxDOT did not provide a map or exhibit of the ROW needs to the city until March 25, 2014. There are three parcels involved: 1) Wise Revocable Trust, 2) Beverly A. Parr and Roderick J. Parr, and 3) Donald L. Kanzler and Carolyn T. Kanzler. All three parcels are located south of Forest Grove Road on the east side of FM 1378.

This agreement also includes the city's portion of the cost of utility adjustments. We have a 12-inch waterline on the east side of FM 1378. Approximately 800 feet of the waterline must be relocated to not interfere with the construction.

TxDOT estimates total costs for ROW and utility adjustments to be \$230,000.00 of which TxDOT is asking the city to pay 10% in the amount of \$23,000.00. This is only an estimate. If the actual costs are higher, the city will be obligated by this contract to pay 10% of the total. TxDOT is planning to let this project in July 2014.

RESOLUTION NO. # R-2014-04-00417

[Approving Agreement to Contribute to Right-of-Way Funds]

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS, APPROVING THE AGREEMENT TO CONTRIBUTE TO RIGHT-OF-WAY FUNDS TO THE STATE OF TEXAS THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR A TRANSPORTATION IMPROVEMENT PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052, establishes that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, the Texas Transportation Code, Section 201.209, authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. FM 1378 from North White Rock Creek to the City of Lucas, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjustments of utilities, called the "Project"; and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right-of-way and adjustments of utilities for this highway project; and

WHEREAS, the Local Government desires to contribute to the State funding participation as defined in 43 TAC Section 15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System; and

WHEREAS, the City Council of the City of Lucas, Texas, desires to enter into an Agreement To Contribute Right of Way Funds for a Transportation Improvement Project (the "Agreement") between the Texas Department of Transportation and the City for the Project;

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

SECTION 1. The Mayor is hereby authorized to execute the Agreement, attached hereto as Exhibit "A," with the Texas Department of Transportation for the Project.

SECTION 2. This Resolution shall take effect immediately upon its passage.

DULY PASSED by the City Council of the City of Lucas, Texas, on the 17th day of April, 2014.

APPROVED:

Rebecca Mark, Mayor

ATTEST:

Kathy Wingo, TRMC, MMC, City Secretary

APPROVED AS TO FORM:

Joseph J. Gorfida, Jr., City Attorney
(04-09-14/65590)

EXHIBIT "A"
Agreement to Contribute Right of Way Funds
(Revised 08/31/2011)

County Collin
District Dallas
ROW CSJ # 1392-01-035
CCSJ # 1392-01-038
Federal Project #:
Federal Highway Administration
CFDA # 20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, called the "State", and the City of Lucas, Texas, acting through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. FM 1378 from at North White Rock Creek to in the City of Lucas, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities, called the "Project"; and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

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AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall contribute to the State the amount shown in Attachment C for its percentage of the total cost of the right of way to be acquired by the State and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.
- B. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny

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reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- D. The total cost of the right of way acquired by the State shall mean the total value of compensation paid, either through negotiations or eminent domain proceedings, to the owners for their property interests, plus costs related to the relocation, removal, or adjustment of eligible utilities.
- E. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.
- F. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government or the State will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another agreement with approval by appropriate personnel of the Local Government. If the Local Government contributes real property under this agreement, this refund provision is subject to the limitation described below in Article 4 (Real Property in Lieu of Monetary Payment).
- G. The State will not pay interest on any funds provided by the Local Government.
- H. In the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- I. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- J. If the Project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair

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market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.

- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.
- C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
- D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

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Local Government:	State:
_____	Director of Right of Way Division
_____	Texas Department of Transportation
_____	125 E. 11 th Street
_____	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

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11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

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16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under

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18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- 22. Federal Funding Accountability and Transparency Act Requirements**
- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
 - B. The Local Government agrees that it shall:
 - 1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
 - 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 - 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.
- 23. Single Audit Report**
- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
 - B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/contact_us/audit.htm.
 - C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

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D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

John P. Campbell, P.E.
Director, Right of Way Division
Texas Department of Transportation

Date

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**ATTACHMENT A
RESOLUTION OR ORDINANCE**

County _Collin_____

District _Dallas_____

ROW CSJ #_1392-01-035_____

CCSJ #_1392-01-038_____

Federal Project #:_____

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ATTACHMENT B
LOCATION MAP SHOWING PROJECT

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ATTACHMENT C
PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE

Description	Total Estimated Cost	State Participation		Local Participation	
		%	Cost	%	Cost
Right of Way Acquisition	\$130,000.00	90%	\$117,000.00	10%	\$13,000.00
Reimbursable Utility Adjustments	\$100,000.00	90%	\$ 90,000.00	10%	\$10,000.00
Joint Bid Reimbursable Utility Adjustments	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
TOTAL	\$230,000.00	90%	\$207,000.00	10%	\$23,000.00

This is an estimate. The final amount of Local Government participation will be based on actual costs.



January 14, 2014

Mr. Dan Savage
Interim City Manager
City of Lucas
665 Country Club
Lucas, Texas 75002

RE: Collin County
RCSJ 1392-01-038
FM 1378 From: at North White Rock Creek To: In the City of Lucas

Dear Mr.

Enclosed for your execution are three original "Agreement to Contribute Right of Way Funds" for the above project.

Please process and return the three original agreements with a warrant in the amount stated in the agreement made payable to the "Texas Department of Transportation Trust Fund" to the address listed below. One fully executed original will be returned to you once final signatures are obtained.

Texas Department of Transportation (TxDOT)
Attn: Betty Taylor - ROW
4777 East Highway 80
Mesquite, Texas 75150-6643

Please understand that TxDOT cannot proceed with right of way acquisition until this process is completed.

Should further information or assistance be required, please contact Betty Taylor at (214) 320-6258.

Sincerely,

William L. Hale, P.E.
Dallas District Engineer

Enclosures

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STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, called the "State", and the City of Lucas, Texas, acting through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. FM 1378 from at North White Rock Creek to in the City of Lucas, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities, called the "Project"; and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

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AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall contribute to the State the amount shown in Attachment C for its percentage of the total cost of the right of way to be acquired by the State and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.
- B. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- C. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny

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reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- D. The total cost of the right of way acquired by the State shall mean the total value of compensation paid, either through negotiations or eminent domain proceedings, to the owners for their property interests, plus costs related to the relocation, removal, or adjustment of eligible utilities.
- E. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the "Texas Department of Transportation Trust Fund." The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.
- F. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government or the State will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another agreement with approval by appropriate personnel of the Local Government. If the Local Government contributes real property under this agreement, this refund provision is subject to the limitation described below in Article 4 (Real Property in Lieu of Monetary Payment).
- G. The State will not pay interest on any funds provided by the Local Government.
- H. In the event any existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner's court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- I. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- J. If the Project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair

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market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.

- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.
- C. Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
- D. In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

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Local Government:	State:
_____	Director of Right of Way Division
_____	Texas Department of Transportation
_____	125 E. 11 th Street
_____	Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

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11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

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The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

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The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

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Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

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In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

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- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under

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18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

23. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/contact_us/audit.htm.
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."

County Collin
District Dallas
ROW CSJ # 1392-01-035
CCSJ # 1392-01-038
Federal Project #: _____
Federal Highway Administration
CFDA # 20.205
Not Research and Development

D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

John P. Campbell, P.E.
Director, Right of Way Division
Texas Department of Transportation

Date

County Collin
District Dallas
ROW CSJ # 1392-01-035
CCSJ # 1392-01-038
Federal Project #: _____
Federal Highway Administration
CFDA # 20.205
Not Research and Development

**ATTACHMENT A
RESOLUTION OR ORDINANCE**

County Collin
District Dallas
ROW CSJ # 1392-01-035
CCSJ # 1392-01-038
Federal Project #: _____
Federal Highway Administration
CFDA # 20.205
Not Research and Development

**ATTACHMENT B
LOCATION MAP SHOWING PROJECT**



Address White Rock Creek
Dallas, TX



County Collin
 District Dallas
 ROW CSJ # 1392-01-035
 CCSJ # 1392-01-038
 Federal Project #: _____
 Federal Highway Administration
 CFDA # 20.205
 Not Research and Development

ATTACHMENT C
PROJECT BUDGET ESTIMATE AND PAYMENT SCHEDULE

Description	Total Estimated Cost	State Participation		Local Participation	
		%	Cost	%	Cost
Right of Way Acquisition	\$130,000.00	90%	\$117,000.00	10%	\$13,000.00
Reimbursable Utility Adjustments	\$100,000.00	90%	\$ 90,000.00	10%	\$10,000.00
Joint Bid Reimbursable Utility Adjustments	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
	\$0	0%	\$0	0%	\$0
TOTAL	\$230,000.00	90%	\$207,000.00	10%	\$23,000.00

This is an estimate. The final amount of Local Government participation will be based on actual costs.

WISE REVOCABLE TRUST
 DEED
 STA. 217+62.44 TO STA. 221+41.70
 INST. NO. 10,2197 AC.1
 9,574 SF. (0.2197 AC.)
 REM = 1.6189 ACRES

BEVERLY A. PARR AND RODERICK J. PARR.
 DEED
 STA. 221+97.93 TO STA. 225+76.10
 INST. NO. 7,478 SQ. FT. (0.1716 AC.)
 REM = 2.7544 ACRES

DONALD L. KANZLER AND CAROLYN T. KANZLER
 DEED
 STA. 225+76.10 TO STA. 227+11.84
 INST. NO. 2,763 SQ. FT. (0.0634 AC.)
 REM = 5.2251 ACRES

DONALD L. KANZLER AND CAROLYN T. KANZLER
 INST. NO. 19931004000846050
 D.R.C.C.T.
 (CALLED 5,289 AC.)

**GABRIEL FITZHUGH SURVEY
 ABSTRACT NO. 318**

JOHN HARKINNEY ETR.
 FITZHUGH CEMETERY ASSOCIATION
 VOL. 1, PG. 74
 D.R.C.C.T.

FOREST GROVE PLACE
 VOL. 1, PG. 351
 M.R.C.C.T.

BEVERLY A. PARR AND RODERICK J. PARR
 VOL. 4751, PG. 2466
 D.R.C.C.T.
 (CALLED 2,598 AC.)

DONALD L. KANZLER AND CAROLYN T. KANZLER
 INST. NO. 19931004000846050
 D.R.C.C.T.
 (CALLED 5,289 AC.)

KEVIN D. KANZLER
 INST. NO. 200604000090800
 D.R.C.C.T.

CENTERLINE CURVE INFORMATION
 PI STATION 286+99.86
 DELTA 57° 09' 57" (L)
 DEGREE OF CURVE 7° 08' 45" 30"
 TANGENT LENGTH 153.61
 RADIIUS 5,000.00
 PC STATION 219+96.25
 PCC STATION 218+53.37
 PT STATION 218+53.37

CENTERLINE CURVE INFORMATION
 PI STATION 219+92.18
 DELTA 57° 09' 57" (R)
 DEGREE OF CURVE 7° 08' 45" 30"
 TANGENT LENGTH 153.62
 RADIIUS 5,000.00
 PC STATION 218+53.37
 PCC STATION 221+30.93
 PT STATION 221+30.93

CENTERLINE CURVE INFORMATION
 PI STATION 224+34.50
 DELTA 57° 09' 57" (R)
 DEGREE OF CURVE 7° 08' 45" 30"
 TANGENT LENGTH 153.62
 RADIIUS 5,000.00
 PC STATION 222+93.44
 PCC STATION 225+95.46
 PT STATION 225+95.46

CENTERLINE CURVE INFORMATION
 PI STATION 228+49.11
 DELTA 57° 09' 57" (R)
 DEGREE OF CURVE 7° 08' 45" 30"
 TANGENT LENGTH 145.99
 RADIIUS 650.00
 PC STATION 227+75.94
 PCC STATION 229+21.93
 PT STATION 229+21.93

CENTERLINE CURVE INFORMATION
 PI STATION 219+92.18
 DELTA 57° 09' 57" (R)
 DEGREE OF CURVE 7° 08' 45" 30"
 TANGENT LENGTH 153.62
 RADIIUS 5,000.00
 PC STATION 218+53.37
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 DEGREE OF CURVE 7° 08' 45" 30"
 TANGENT LENGTH 145.99
 RADIIUS 650.00
 PC STATION 227+75.94
 PCC STATION 229+21.93
 PT STATION 229+21.93

TDJO AND JANET BOLTON HOLDINGS, LTD.
 A TEXAS LIMITED PARTNERSHIP
 INST. NO. 2007094001259880
 D.R.C.C.T.

GARY L. SMITH & BARBARA J. SMITH
 INST. NO. 20110000000000000000
 D.R.C.C.T.

PATRICK D. GARRETT & STEPHANIE A. GARRETT
 INST. NO. 20080100000000000000
 D.R.C.C.T.

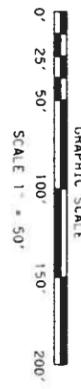
EVELYN L. MOJINA
 INST. NO. 20070320003933860
 D.R.C.C.T.

NOTE: NO DESCRIPTION IN DEED. LINE SET BY THE ADDRESSES.

FM 1378

UTPA
 Texas Department of Transportation
 (COLLIN COUNTY)

1349 Empire Center, Suite 900
 Dallas, Texas 75227 - 214-919-1144
 13150 Regal Station, No. 0-0000
 Dallas, Texas 75244



REV. NO.	6	STATE	TEXAS	FEDERAL AID PROJECT NO.		SECTION	FM 1378
DISTRICT NO.	18	COUNTY	COLLIN	CONTRACT NO.	1392 01 038	SHEET NO.	04

BASE OF BEARINGS IS THE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983 (1993), NORTH CENTRAL ZONE (4802). ALL COORDINATES SHOWN ARE SURFACE UNLESS OTHERWISE NOTED AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE TADOT COMBINED SCALE FACTOR OF 1.000120.

THE STATION AND OFFSET INFORMATION REFERS TO THE BASELINE DESCRIBED IN THE DESIGN SCHEMATIC DATED JUNE 2013 FOR THE TADOT RIGHT OF WAY MAPPING PROJECT CONTROL SECTION NUMBER 1392-01-035.



City of Lucas Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Stanton Foerster

Account Code #: _____

Date Prepared: April 8, 2014

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the proposed information technology telephone system project, provide guidance to staff regarding priorities, and identify funding strategies.

RECOMMENDED ACTION:

Out of the IT projects being considered, staff believes the new telephone system is the highest priority.

The replacement of the City's current telephone system is a priority project because of the inefficiencies identified in the current system. All incoming calls go to a main line which is answered by a staff member and then forwarded to the appropriate department or staff member. It is not an effective use of resources to screen and filter all incoming calls. Our citizens and customers should have direct access and the ability to reach a department or staff member without being transferred.

Staff recommends approval and funding of this item.

SUMMARY:

The main goal for this item is to improve the communication with Lucas citizens. Staff will also benefit with better internal communication and message retrieval.

The following is the estimated cost for the new system:

- New DID Phone Lines \$600 to \$700/month for 25 lines. The City currently spends \$505 for 12 lines.
- Phone System, Phones, Labor, and Licenses = Approx. \$25,000

We currently maintain two telephone systems: one at city hall and one at the fire station. Both systems are old and using outdated technology. Upgrading to an IP

based system will help set a solid technology base and position the City towards a smooth growth path in the future.

An IP phone system is currently part of new fire station equipment list which will easily expand to the city hall side. If city hall is updated now then the fire station expansion will be simpler.

Current Phone System:

<u>City Hall</u>	<u>Fire station</u>
Phones 16	Phones 10
Phone system 1	Phone System 1
Voicemail 1	Voicemail 1

We have a total of 12 telephone lines.

New Avaya IP Office Phone System:

- Consolidate to a single Phone System
- Purchase New "Modern Phones
- Purchase as many DID's (Direct Dial Phone Numbers) as needed. Currently we are considering 25 lines total for city hall and the fire station.
- Purchase Licenses for Phones
- Purchase Telephone infrastructure licenses

The following is notable features of the Avaya IP Office Phone System:

- IP Office offers full voice functionality with a comprehensive list of features and benefits for the small or mid-size business
- DID Dialling (Direct Dial)
- **Full PBX features** — Caller ID, Call Forwarding, Conference Calling, Voice Messaging, Advanced Call Distribution, etc.
- **Outlook Integration** – Voice Mail to Email
- **Full Key System features** — Busy Lamp Fields that notify attendants and fellow workers of each employee's phone status; Flexible Paging that allows attendants and employees to intercom the entire office or select groups; and Soft Interfaces that reflect the particular features of the incoming caller's system.
- **A variety of network trunk interfaces**, including T1, PRI as well as analog loop start, and analog ground start — for comprehensive network connectivity.
- **Support for a range of extensions, from 2 to 180** — sophisticated voice performance for the new and growing businesses.
- Scalable to 384 users
- **A variety of telephones** including analog, digital, and IP hard and soft phones (wired and wireless) — the appropriate desktop or device phone for every need.
- Paging Phone for the fire station

- **Alternate Call Routing** — ensures reliable handling of calls by selecting from analog, digital or VoIP trunks.
- **Multisite Support** – 4 digit dialing among city hall, the fire station, and future fire stations
- **Direct Copper Lines** for FAX, SCADA, Emergency, etc.

MOTION:

I make a Motion to....

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



The Power of We™

Avaya 9611G IP Deskphone

Provide everyday users with enriched communications capabilities



The 9611G IP deskphone is an 8-line intermediate telephone ideally suited for Everyday users who consider their phone to be one of many useful communication tools and who rely on common functions like directory and speed dial to enhance productivity and communications.

The 9611G IP deskphone is an 8-line intermediate telephone ideally suited for Everyday users who consider their phone to be one of many useful communication tools and who rely on common functions like directory and speed dial to enhance productivity and communications. Enabling digital customers to transition easily to the best of IP phone technology, the 9611G delivers intelligent communications with a traditional look and feel, graphical color display, high definition audio quality with full duplex speaker, and a wideband handset and headset. Competitively priced and high-performing, it supports a USB interface, integrated Gigabit Ethernet (1000MBps for both deskphone and attached PC), a secondary Ethernet port, and up to three 12 or 24 Button Expansion Modules. Part of the 9600 Series IP Deskphones, the 9611G leverages your enterprise IP Network to deliver sophisticated communications from headquarters or remote locations. Integrated with Avaya Aura® and IP Office, the 9611G's evolutionary approach optimizes communications through a flexible architecture that leverages existing investments and accommodates changing business needs.

Key Features and Benefits

- Delivers high-definition audio that can increase productivity by reducing fatigue and provides easier-to-understand multi-party calls using the wideband audio codec in the handset and headset
- Facilitates access to information through an easy-to-read, high resolution color display and a permanently labeled Navigation Cluster (Up/Down, Left/Right, OK)
- Delivers visual queues that can speed task management through 8 Red/Green LEDs
- Helps increase productivity through context-sensitive graphical interfaces
- Simplifies call control on the display using softkeys to transfer, conference and forward calls and to access everyday processes including third-party applications such as company-wide corporate directories
- Provides consistency through a common Avaya one-X® interface (including mobile endpoints)
- Wired/wireless headset compatible
- Enables efficient, high-speed call management through support for up to three 12 or 24 Button Expansion Modules
- Supports reduced energy consumption and costs through Power-over-Ethernet Class 1 design with "sleep mode"
- Provides choice through integrated Gigabit Ethernet and USB interface support
- Accommodates changing business needs with Session Initiated Protocol (SIP) based infrastructure

About Avaya

Avaya is a global provider of business collaboration and communications solutions, providing unified communications, contact centers, networking and related services to companies of all sizes around the world. For more information please visit www.avaya.com.

Contact Center Model

An adaptation of the 9611G designed for contact centers simplifies access to a range of features for enhancing agent productivity, such as handling greetings, monitoring calls in the queue, updating status and quickly completing many other day-to-day tasks. An optional dual headset adapter makes it a valuable addition to any contact center.

Specifications

Hardware

- Color display 2.8 inches x 2.1 inches (7.0 cm x 5.3 cm) – Diagonal width: 3.5 inches (8.8 cm)
- 8 button's with dual LED's (red, green)
- 4 Softkeys
- Permanently-labeled feature buttons: Speaker, Mute, Volume, Headset, Contacts, Home, History, Message, Phone
- Permanently-labeled Navigation Cluster (Up/Down, Left/Right, OK)
- 24 administrative buttons and up to 8 lines displayed simultaneously with green / red LEDs
- Wideband audio in handset and headset
- Full duplex speakerphone
- Ergonomic hearing aid compatible handset supports TTD acoustic coupler
- Two message waiting indicators
- USB application support
- Gigabit Ethernet support
- Bluetooth and DECT headset support with additional adapter
- Wall-mount option and dual-position stand
- Ethernet (10/100/1000) line interface



The 9611G IP Deskphone is available in a global model. English language text on the faceplate has been removed. Contact your Avaya Account Manager or Avaya authorized partner for details.

- Secondary Ethernet interface 10/100/1000 Mbps
- PoE Class (IEEE 802.3af) registers as class 1 device

Software

- SIP protocol support on Avaya Aura
- H.323 protocol support
- Standards-based codec support: G.711, G.726, G.729A/B, G.722 (G.726 is not available in SIP)
- Supports the following languages: Arabic, Brazilian Portuguese, Simplified Chinese, Dutch, English, Canadian French, Parisian French, German, Hebrew, Italian, Japanese (Kanji, Hiragana and Katakana), Korean, Latin American Spanish, Castilian Spanish, and Russian.

Requirements and Platform Support

- Avaya Aura® Communication Manager 3.1.4 and greater (H.323)
- Avaya Aura® Communication Manager 6.0 with Avaya Aura® Session Manager 6.0 or Avaya Midsize Business Template 5.2.1 (SIP)
- Local or centralized electrical power; through a 802.3af switch, or local power supply
- HTTP file server

Learn More

To learn more about the 9611G IP Deskphone and 9600 Series IP Deskphones contact your Avaya Account Manager, Avaya Authorized Partner or visit avaya.com for white papers, case studies and other information showcasing Avaya solutions in action



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11/12 • UC4560-02



City of Lucas Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Stanton Foerster

Prepared by: Stanton Foerster

Account Code #: _____

Date Prepared: April 7, 2014

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the proposed information technology project to purchase a web filtering appliance, provide guidance to staff regarding priorities, and identify funding strategies, and the initial development of a social media policy.

RECOMMENDED ACTION:

Establish funding for the Web Filtering Appliance in the amount not to exceed \$5,000.00.

SUMMARY:

Web Filtering Appliance – Funding Price Estimate = \$4,750.00
(plus an annual \$995.00 license and software updates fee after the first year)

Why do we need it?

Our IT consultant does not have the ability to monitor or block social media websites and other sites or threats from a central management console. Purchasing a web filtering appliance will give us that capability and allow us to implement a future city policy in a uniform and cost effective manner. The appliance will also improve our protection against threats coming from social media and other nefarious web applications.

Staff believes the web filtering appliance ranks third behind a new telephone system and complying with the Microsoft licenses.

MOTION: I make a Motion to....

APPROVED BY: _____

Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____



<h2 style="text-align: center;">City of Lucas Council Agenda Request</h2>

Council Meeting: April 17, 2014

Requestor: Stanton Foerster

Prepared by: _____

Account Code #: _____

Date Prepared: April 7, 2014

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the proposed information technology project to upgrade our Microsoft Platform Licensing, provide guidance to Staff regarding priorities and email access, and identify funding strategies.

RECOMMENDED ACTION:

Staff recommends limiting the number of email licenses to Councilmembers, paid staff, and volunteer fire fighter by eliminate the 18 licenses for the committee members: P&Z, BOA, Park, etc.

SUMMARY:

Attached you will find an updated user list detailing which individuals that currently utilize City software. Our current licensing agreement allows for 75 licensed users and this is a priority project because the City is not in compliance with its licensing agreement and will need to move towards a solution should the City Council want to continue to allow those parties listed in the attached user list to continue to use City-owned software. As you can see from the attached user spreadsheet, there are two categories with the first being Exchange Users and the second is Active Directory. We have a total of 45 licenses acquired with an additional 30 licenses budgeted for this fiscal year. We would be able to apply the \$3,200 on license fees that were budget for the current fiscal year and towards the cost of the Microsoft Platform Licensing Upgrade in the next fiscal year.

City Council	7
City Manager	2
City Secretary	1
Development Services	4

Finance	5
Fire	43
IT	4
<u>Public Works</u>	<u>9</u>
Total	75

Staff will continue to work with Baxter IT to determine alternatives that would move the city forward.

Microsoft Platform Licensing Upgrade – Funding Price Estimate = \$??????

ROLL-UP TECHNOLOGY COSTS FOR SYSTEMS UPGRADE		
INFRASTRUCTURE (License) MIGRATION COSTS		
Cost Of Migration	Costs	Notes
Core (Active Directory)	\$???	Step 1: Completed first (??? CAL's)
Exchange (Email)	\$6,263	Step 2: Completed second (60 CAL's)
Total	\$???	

(Note: CAL refers to a client access license)

Why do we need it?

We have grown beyond our current Microsoft User/Device licensing agreement for the City's three key services (Active Directory Security envelope, Email, City Intranet). The current platform limits us to 75 User licenses and we have 98 users on the system today. This puts the city in violation of Microsoft licensing agreement for their software. Unfortunately we cannot just add licenses. We must move to Microsoft's Enterprise platform with new software and licenses. To be successful we must purchase 1 new server, new Windows Operating systems for the 3 services and new user licenses for each service. The migration is complex and extensive and requires our best engineers dedicated to the project over 3 + weeks. This migration also requires us to accomplish this without interfering with daily operations. Note: Because of our long relationship with the City, Baxter I.T.'s labor fee for projects is 50% of industry standard for this type of work effort of \$130/hr. Baxter I.T. discount fee for the City is \$65/hr.

Note: We will save \$3,200 on license fees for Small Business Server if we do this project as the council approved spending these \$\$ to get us to 75 licenses.

Current USER List

Below is a filtered view of all users by Department. We have scrubbed the user list to show who needs a specific license and who does not. The decision on who needs access to what is up to the Council and City Manager.

MICROSOFT LICENSE ANALYSIS WORKSHEET					
Subtotals	Dept	Users	Exchange Users	Active Director	SharePoint
Administration		3	3	3	3
Building Inspections		3	2	3	3
City Secretary		1	1	1	1
Committees		20	20	20	0
Council		7	7	7	0
Court		2	2	2	2
Finance		2	2	2	2
Fire		43	9	43	43
Police		1	1	1	1
Public Works		5	5	5	5
Technology		21	1	10	2
Term		26	0	0	0
Utility Billing		1	1	1	1
Grand Count		135	54	98	63

Consideration of Hosted VS In-House Hosted VS In-House

	#1: Out-Sourced Hosted	#2: In-House Hosted	#3: In-House
Cost for Business Class (5 yrs)	\$30,000	\$24,000	\$15,000 (Paid upfront)
Monthly Fee Service	\$5/User	\$4/User	No
Cost Control ***	None	None	Full Control
Storage	50GB	50GB	Unlimited
Support****	Limited Control	Maximum Control	Maximum Control
Web Based Access	Yes	Yes	Yes
Mobility	Yes	Yes	Yes
Shared Calendars	Yes	Yes	Yes
Archive and ORR**	Extra Cloud Service	Extra Cloud Service	Extra Cloud Service
Version Upgrade*	Included	Included	Not Included *
SPAM Control	Average	Best	Best
Redundancy	Best	Extra Cloud Service	Extra Cloud Service
Responsiveness	Slow	Excellent	Excellent

***Version Upgrade:** We find that some of our applications are not compatible with newer versions of other Software such as Exchange/Outlook. Email Outsourcers typically move to upgraded version as soon as they become available regardless of the consequences of application incompatibility to the clients. These upgrades break interoperability to other applications so is not in the city's best interest.

**** Archive and ORR:** The City currently has an excellent pay-per month in-house solution that is archiving all incoming and outgoing email. The Retention policy is set for two years as per state requirements. The cost to do this in the cloud would cost additional \$\$.

***** Cost Control:** Once you've signed up with a Hosted Service they may increase their prices at any time.

******Support:** With the #3 In-House Solution we can resolve issues quickly and have email up and running again quickly. With #1 we lose this control to the Hosted company. This could increase support costs and resolution time.

MOTION: I make a Motion to....

APPROVED BY: _____ Initial/Date

Department Director: _____ / _____
City Manager: _____ / _____



City of Lucas Council Agenda Request

Council Meeting: April 17, 2014

Requestor: Joe Hilbourn

Prepared by: Kathy Wingo

Account Code #: _____

Date Prepared: _____

Budgeted Amount: \$ _____

Exhibits: Yes No

AGENDA SUBJECT:

Discuss and consider the approval of **Ordinance # 2014-04-00776** an ordinance of the City Council of the City of Lucas, Texas, amending the Code of Ordinance by amending Chapter 13, "Utilities" by amending Article 13.03 "Drought Contingency Plan" by amending sections 13.03.001 through 13.03.002; by adopting the May 2014 Water Conservation Plan and the May 2014 Water Resource Management Plan; providing for the delayed effective date for the May 2014 Water Conservation and Water Resource Management Plan; providing a repealing clause; providing a severability clause; providing a savings clause; providing for a penalty or fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; providing for an administrative penalty applicable to non-single family water customers; and providing for an effective date.

RECOMMENDED ACTION:

The updating of the current drought contingency and emergency response plan is mandated by the North Texas Municipal Water District Member Cities and has been approved by this governing body.

SUMMARY:

From the TCEQ:

The amended Texas Administrative Code Title 30, Chapter 288 became effective on December 6, 2012.

The next revision of water conservation plans for municipal, industrial, and other non-irrigation uses must be submitted to the TCEQ no later than May 1, 2014, and every five years after that date to coincide with the regional water planning process. The Chapter 288 Rules require specific, quantified five and ten year targets for water savings to be included in all water conservation plans. In addition to the revised water conservation plans, water conservation Implementation Reports must be submitted to the TCEQ no

later than May 1, 2014. Any revised plans must be submitted to the TCEQ within 90 days of adoption and must also include implementation reports.

MOTION:

I make a Motion to **approve/deny Ordinance # 2014-04-00776** an ordinance of the City Council of the City of Lucas, Texas, amending the Code of Ordinance by amending Chapter 13, "Utilities" by amending Article 13.03 "Drought Contingency Plan" by amending sections 13.03.001 through 13.03.002; by adopting the May 2014 Water Conservation Plan and the May 2014 Water Resource Management Plan; providing for the delayed effective date for the May 2014 Water Conservation and Water Resource Management Plan; providing a repealing clause; providing a severability clause; providing a savings clause; providing for a penalty or fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; providing for an administrative penalty applicable to non-single family water customers; and providing for an effective date.

APPROVED BY: _____ Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____

<input type="checkbox"/>	Annexation
<input type="checkbox"/>	Disannexation
<input checked="" type="checkbox"/>	Code of Ordinances
<input type="checkbox"/>	Other

ORDINANCE # 2014-04-00776
[Ordinance Amending Drought Contingency Plan]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LUCAS, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 13, “UTILITIES” BY AMENDING ARTICLE 13.03 “DROUGHT CONTINGENCY PLAN” BY AMENDING SECTIONS 13.03.001 THROUGH 13.03.002; BY ADOPTING THE MAY 2014 WATER CONSERVATION PLAN AND THE MAY 2014 WATER RESOURCE MANAGEMENT PLAN; PROVIDING FOR THE DELAYED EFFECTIVE DATE FOR THE MAY 2014 WATER CONSERVATION AND WATER RESOURCE MANAGEMENT PLAN; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OR FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; PROVIDING FOR AN ADMINISTRATIVE PENALTY APPLICABLE TO NON-SINGLE FAMILY WATER CUSTOMERS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS the City of Lucas, Texas (the “City”), recognizes that the amount of water available to its water customers is limited; and,

WHEREAS, the City recognizes that due to natural limitations, drought conditions, system failures and other acts of God which may occur, the City cannot guarantee an uninterrupted water supply for all purposes at all times; and,

WHEREAS, the Texas Water Code and the regulations of the Texas Commission on Environmental Quality (the “Commission”) require that the City adopt a Drought Contingency Plan; and,

WHEREAS, the City Council has reviewed the proposed City of Lucas Water Conservation Plan and Water Resource Management Plan and finds it is in the best interest of the City to adopt said plans;

NOW, THEREFORE, BE IT ORDAINED THAT THE CITY COUNCIL OF THE CITY OF LUCAS:

Section 1. That the May 2014 City of Lucas Water Conservation Plan and Water Resource Management Plan attached as Exhibits “A” and “B”, respectively, and incorporated herein by reference as if fully set forth in full, copies of which are on file in the office of the City Secretary, are hereby adopted; provided, however, the May 2014 City of Lucas Water Conservation Plan and Water Resource Management Plan shall not become effective until the

City Manager has ordered implementation of Stage 1 or Stage 2 under the May 2014 Water Resource Management Plan as a result of a recommendation of the North Texas Municipal Water District.

Section 2. That effective on the date the City Manager has ordered implementation of Stage 1 or Stage 2 of the May 2014 City of Lucas Water Resource Management Plan as a result of a recommendation of the North Texas Municipal Water District, Chapter 13 “Utilities” of the City of Lucas Code of Ordinances be, and the same is hereby amended by amending Article 13.03 “Drought Contingency Plan” by amending Sections 13.03.001 to read as follows:

“ARTICLE 13.03 DROUGHT CONTINGENCY PLAN

Sec. 13.03.001 Adoption of Water Conservation and Water Resource Plans.

That the May 2014 City of Lucas Water Conservation Plan and Water Resource Management Plan incorporated herein by reference as if fully set forth in full, copies of which are on file in the office of the City Secretary are hereby adopted.”

Section 3. That effective on the date the City Manager has ordered implementation of Stage 1 or Stage 2 of the May 2014 City of Lucas Water Resource Management Plan as a result of a recommendation of the North Texas Municipal Water District, Chapter 13 “Utilities” of the City of Lucas Code of Ordinances be, and the same is hereby amended by amending Article 13.03 “Drought Contingency Plan” by amending Sections 13.03.002 to read as follows:

“Sec. 13.03.002 Enforcement

- (1) It is unlawful for any person to violate the provisions of the City of Lucas Water Conservation Plan and Water Resource Management Plan.
- (2) For a first violation of any provision of the Water Conservation Plan and/or the Water Resource Management Plan or this article, the city shall issue a letter and provide educational materials on water conservation, including a copy of the relevant provisions of this article, to the water user violating the provisions of this article. The city shall give the water user a reasonable time to correct the violation.
- (3) For a second violation of any provision the Water Conservation Plan and/or the Water Resource Management Plan or this article, the city shall issue the water user a citation and upon conviction shall be subject to a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00).
- (4) The city's current five-tier level conservation rate structure is in effect year-round to encourage ongoing water conservation. Additional rate surcharges may be established when it is required to meet the reduction goal in each respective stage of this article.

...”

Section 4. That if any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.

Section 5. That all provisions of the Ordinances of the City of Lucas in conflict with the provisions of this Ordinance be, and the same are hereby repealed and all other provisions of the Ordinances of the City of Lucas not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 6. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

Section 7. That the City Manager or designee is hereby directed to file a copy of the City Plan and this Ordinance with the TCEQ in accordance with Title 30, Chapter 288, of the Texas Administrative Code.

Section 8. That this ordinance shall take effect immediately from and after its passage as the law in such case provides.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ON THIS 17TH DAY OF APRIL, 2014.

APPROVED:

Rebecca Mark, Mayor

APPROVED AS TO FORM:

ATTEST:

Joseph J. Gorfida, Jr., City Attorney
(04-10-14/65619)

Kathy Wingo, TRMC, MMC City Secretary

EXHIBIT "A"

CITY OF LUCAS WATER CONSERVATION

EXHIBIT “B”

CITY OF LUCAS WATER RESOURCE MANAGEMENT PLAN



**WATER CONSERVATION PLAN
FOR
THE CITY OF LUCAS, TEXAS**

MAY 2014

FORWARD

This Water Conservation plan was prepared by the City of Lucas. The Water Conservation Plan was prepared pursuant to Texas Commission on Environmental Quality rules. Questions regarding this Water Conservation plan should be addressed to the following:

Joni Clarke
City Manager
City of Lucas
972-727-8999
jclarke@lucastexas.us

Joe Hilbourn
Director of Development Services
City of Lucas
972-727-8999
jhilbourn@lucastexas.us

Stanton Foerster
Public Works Director
City of Lucas
972-727-8999
sfoerster@lucastexas.us

This Water Conservation plan is based on the Texas Administrative Code in effect on June 25, 2013, and considers water conservation best management practices from Texas Water Development Board Report 362, *Water Conservation Best Management Practices Guide*. The Texas Commission on Environmental Quality (TCEQ), Texas Water Development Board (TWDB) and Water Conservation Advisory Council (WCAC) are currently reviewing additional regulations in compliance with the mandates of Senate Bill 181 enacted in 2011 by the 82nd Texas Legislature.

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APPENDICES

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APPENDIX B City of Lucas's TWDB Water Utility Profile

APPENDIX C City of Lucas's Annual Water Conservation Report

APPENDIX D City of Lucas's TCEQ Water Conservation Implementation Report

APPENDIX E City of Lucas's Annual GPCD vs. Water Restriction GPCD Chart

APPENDIX F Letters to Region C and Region D Water Planning Groups

APPENDIX G Adoption of Water Conservation Plan

1. INTRODUCTION AND OBJECTIVES

Water supply has always been a key issue in the development of Texas. In recent years, the increasing population and economic development of North Central Texas have led to growing demands for water supplies. At the same time, local and less expensive sources of water supply are largely already developed. Additional supplies to meet future demands will be expensive and difficult to secure. Severe drought conditions in recent years have highlighted the importance of efficient use of our existing supplies to make them last as long as possible. This will delay the need for new supplies, minimize the environmental impacts associated with developing new supplies, and delay the high cost of additional water supply development.

Recognizing the need for efficient use of existing water supplies, the Texas Commission on Environmental Quality (TCEQ) has developed guidelines and requirements governing the development of water conservation and drought contingency plans for wholesale water suppliers². The City of Lucas has developed this water conservation plan pursuant to TCEQ guidelines and requirements. The best management practices established by the Water Conservation Implementation Task Force³ were also considered in the development of the water conservation measures.

This water conservation plan includes measures that are intended to result in ongoing, long-term water savings. This plan replaces the previous plan dated January 2010. The objectives of this water conservation plan are as follows:

- To reduce water consumption from the levels that would prevail without conservation efforts.
 - To reduce the loss and waste of water.
 - To improve efficiency in the use of water.
 - Encourage efficient outdoor water use.
 - To document the level of recycling and reuse in the water supply.
 - To extend the life of current water supplies by reducing the rate of growth in demand.

¹ Superscripted numbers match references listed in Appendix A.

2. DEFINITIONS

1. ATHLETIC FIELD means a public sports competition field, the essential feature of which is turf grass, used primarily for organized sports practice, competition or exhibition events for schools, professional sports, or sanctioned league play.
2. COOL SEASON GRASSES are varieties of turf grass that grow best in cool climates primarily in northern and central regions of the U.S. Cool season grasses include perennial and annual rye grass, Kentucky blue grass and fescues.
3. CUSTOMERS include those entities to whom City of Lucas provides water on a customer basis.
4. EVAPOTRANSPIRATION abbreviated as ET represents the amount of water lost from plant material to evaporation and transpiration. The amount of ET can be estimated based on the temperature, wind, and relative humidity.
5. ET/SMART CONTROLLERS are irrigation controllers that adjust their schedule and run times based on weather (ET) data. These controllers are designed to replace the amount of water lost to evapotranspiration.
6. EXECUTIVE DIRECTOR means the Executive Director of the North Texas Municipal Water District and includes a person the Director has designated to administer or perform any task, duty, function, role, or action related to this plan or on behalf of the Executive Director.
7. INSTITUTIONAL USE means the use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.
8. MEMBER CITIES include the cities of Allen, Farmersville, Forney, Frisco, Garland, McKinney, Mesquite, Plano, Princeton, Lucas, Rockwall, Royce City, and Wylie, Texas.
9. MULTI-FAMILY PROPERTY means a property containing five or more dwelling units.

10. MUNICIPAL USE means the use of potable water provided by a public water supplier as well as the use of treated wastewater effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses.
11. RECLAIMED WATER means reclaimed municipal wastewater that has been treated to a quality that meets or exceeds the minimum standards of the 30 Texas Administrative Code, Chapter 210 and is used for lawn irrigation, industry, or other non-potable purposes.
12. RESIDENTIAL GALLONS PER CAPITA PER DAY (Residential GPCD) the total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year.
13. TOTAL GALLONS PER CAPITA PER DAY (Total GPCD) The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in TAC 288.1 shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.
14. WATER CONSERVATION PLAN means this water conservation plan approved and adopted by the City of Lucas on April 14, 2014.

3. REGULATORY BASIS FOR WATER CONSERVATION PLAN

3.1 TCEQ Rules Governing Conservation Plans

The TCEQ rules governing development of water conservation plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2 of the Texas Administrative Code. For the purpose of these rules, a water conservation plan is defined as “A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water².” The elements in the TCEQ water conservation rules covered in this conservation plan are listed below.

Minimum Conservation Plan Requirements

The minimum requirements in the Texas Administrative Code for Water Conservation Plans for Public Water Suppliers are covered in this report as follows:

- 288.2(a)(1)(A) – Utility Profile – Section 4 and Appendix B
- 288.2(a)(1)(B) – Specification of Goals – Section 5
- 288.2(a)(1)(C) – Specific, Quantified Goals – Section 5
- 288.2(a)(1)(D) – Accurate Metering – Section 6.1.1
- 288.2(a)(1)(E) – Universal Metering – Section 6.1.2
- 288.2(a)(1)(F) – Determination and Control of Water Loss – Section 6.1.3
- 288.2(a)(1)(G) – Public Education and Information Program – Section 6.2
- 288.2(a)(1)(H) – Non-Promotional Water Rate Structure – Section 7.1
- 288.2(a)(1)(I) – Reservoir System Operation Plan – Section 6.3
- 288.2(a)(1)(J) – Means of Implementation and Enforcement – Section 8
- 288.2(a)(1)(K) – Coordination with Regional Water Planning Group – Section 6.4 and Appendix F
- 288.2(c) – Review and Update of Plan – Section 9

Conservation Additional Requirements (Population over 5,000)

- The Texas Administrative Code includes additional requirements for water conservation plans for drinking water supplies serving a population over 5,000
 - 288.2(a)(2)(A) – Leak Detection, Repair, and Water Loss Accounting – Sections 6.1.4
 - 288.2(a)(2)(B) – Record Management System – Section 6.1.5
 - 288.2(a)(2)(C) – Requirement for Water Conservation Plans by Wholesale Customers – Section 6.5

Additional Conservation Strategies

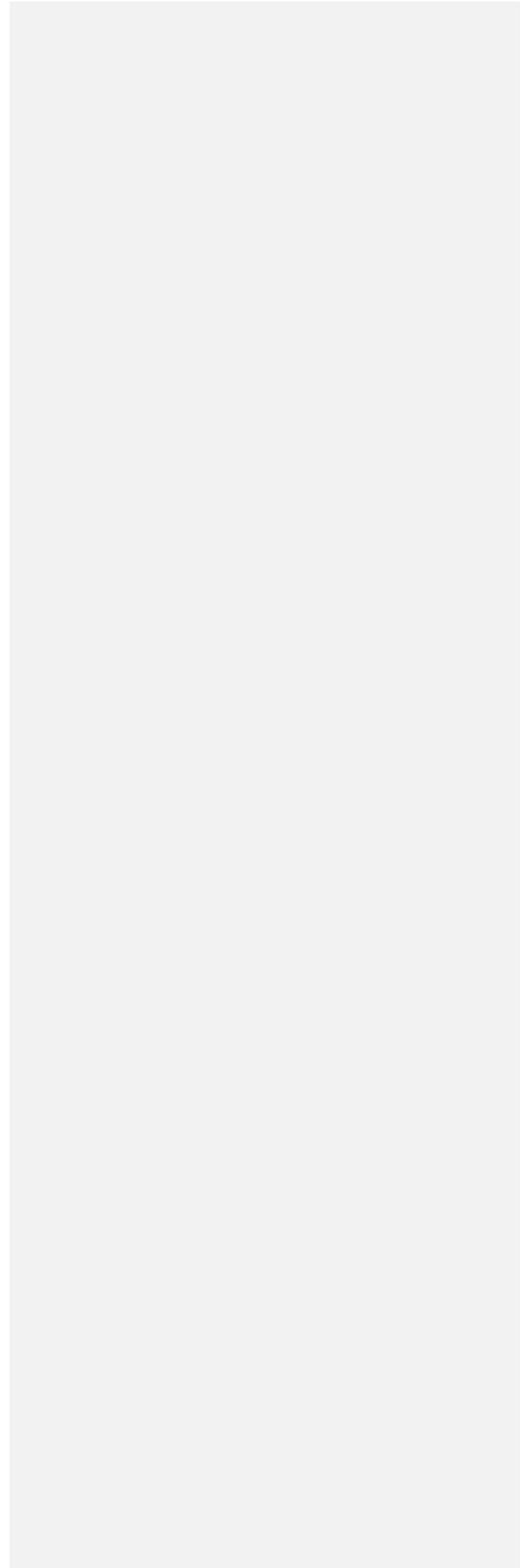
The TCEQ requires that a water conservation implementation report be completed and submitted on an annual basis.

3.2 Guidance and Methodology for Reporting on Water Conservation and Water Use

In addition to TCEQ rules regarding water conservation, this plan also incorporates elements of the Guidance and Methodology for Reporting on Water Conservation and Water Use developed by TWDB and TCEQ, in consultation with the Water Conservation Advisory Council (the “Guidance”). The Guidance was developed in response to a charge by the 82nd Texas Legislature to develop water use and calculation methodology and guidance for preparation of water use reports and water conservation plans in accordance with TCEQ rules.

4. WATER UTILITY PROFILE

Appendix B to this Water Conservation Plan is the water utility profile submitted to TWDB in March 2014.



5. SPECIFICATION OF WATER CONSERVATION GOALS

TCEQ rules require the adoption of specific water conservation goals for a water conservation plan. As part of plan adoption, the City of Lucas must develop 5-year and 10-year goals for per capita municipal use. The goals for this water conservation plan include the following:

- Maintain the total and residential per capita water use below the specified amount in gallons per capita per day in a dry year, as shown in the completed Table 5-1.
- Maintain the water loss percentage in the system below 12 percent annually in 2013 and subsequent years, as discussed in Section 6.1.3. (The 12 percent goal for water loss is recommended but is not required. Systems with long distances between customers may adopt a higher percent water loss goal.)
- Implement and maintain a program of universal metering and meter replacement and repair, as discussed in Section 6.1.2.
- Increase efficient water usage through a water conservation ordinance, order or resolution as discussed in Section 7.5 and Appendix G. Decrease waste in lawn irrigation by implementation and enforcement of landscape water management regulations, as discussed in Section 7.6. (These landscape water management regulations are recommended but are not required.)
- Raise public awareness of water conservation and encourage responsible public behavior by a public education and information program, as discussed in Section 6.2.
- Develop a system specific strategy to conserve water during peak demands, thereby reducing the peak use.

Table 5-1 Five-Year and Ten-Year Per Capita Water Use Goals (gpcd)

Description	Historic 5-year Average³	2x Week 5-year Average⁴	5-Year Goal for 2019	10-Year Goal for 2024
Total GPCD	250	260	258	260
Residential GPCD	240	239	239	239
Water Loss (GPCD) ¹	31.72	28	26	24
Water Loss (Percentage) ²	15.6	12.5	11.25	10

1. Water Loss GPCD = (Total Water Loss ÷ Permanent Population) ÷ 365

2. Water Loss Percentage = (Total Water Loss ÷ Total Gallons in System) x 100; or (Water Loss GPCD ÷ Total GPCD) x 100

3. During the historic 5-year average (2009-2013) over half of that time the City of Lucas was under mandatory water restrictions. Some periods of mandatory water restrictions resulted in watering once a week or less (more restrictive than water conservation plan of twice a week watering).

4. Averages obtained from 2x week watering periods in Annual GPCD vs. Watering Restrictions GPCD chart – Appendix E

6. BASIC WATER CONSERVATION STRATEGIES

6.1 Metering, Water Use Records, Control of Water Loss, and Leak Detection and Repair

One of the key elements of water conservation is tracking water use and controlling losses through illegal diversions and leaks. It is important to carefully meter water use, detect and repair leaks in the distribution system and provide regular monitoring of real losses.

6.1.1 Accurate Metering of Treated Water Deliveries from NTMWD

Water deliveries from NTMWD are metered by the City of Lucas using meters with accuracy of $\pm 2\%$. These production meters are calibrated on an annual basis by the City of Lucas to maintain the required accuracy.

6.1.2 Metering of Customer and Public Uses and Meter Testing, Repair, and Replacement

The provision of water to all customers, including public and governmental users, should be metered. In many cases, the City of Lucas already meter retail and commercial water users. The City of Lucas test and replace their commercial meters on a regular basis.

6.1.3 Determination and Control of Water Loss

Total water loss is the difference between water delivered from NTMWD to the City of Lucas (and other supplies, if applicable) and metered water sales to customers plus authorized for use but not sold. (Authorized for use but not sold would include use for firefighting, releases for flushing of lines, uses associated with new construction, etc.)

Total water loss includes three categories:

- Apparent Losses – including inaccuracies in customer meters. Losses due to illegal connections and theft. Accounts which are being used but have not yet been added to the billing system.
- Real Losses – includes physical losses from the system or mains, reported breaks and leaks, storage overflow.
- Unidentified Water Losses – (System Input - Total Authorized - Apparent Losses - Real Losses)

Measures to control water loss are part of the routine operations of the City of Lucas. Maintenance crews and personnel look for and report evidence of leaks in the water distribution system. Meter readers watch for and report signs of illegal connections, so they can be quickly addressed.

Total water loss should be calculated in accordance with the provisions of Appendix D. With the measures described in this plan, Member Cities and Customers should maintain water loss percentage below 12 percent in 2014 and subsequent years. If total water loss exceeds this goal, the City of Lucas should implement a more intensive audit to determine the source(s) of and reduce the water loss. The annual conservation report described below is the primary tool that should be used to monitor water loss.

6.1.4 Leak Detection and Repair

As described above, city crews and personnel should look for and report evidence of leaks in the water distribution system. Areas of the water distribution system in which numerous leaks and line breaks occur should be targeted for replacement as funds are available.

6.1.5 Record Management System

As required by TAC Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2(a)(2)(B), a record management system should allow for the separation of water sales and uses into residential, commercial, public/institutional, and industrial categories. This information will be included in an annual water conservation report, as described in Section 7.6 below.

6.2 Continuing Public Education and Information Campaign

The continuing public education and information campaign on water conservation includes the following elements:

- Utilize the “Water IQ: Know Your Water” and other public education materials produced by the NTMWD.
- Insert water conservation information with water bills. Inserts will include material developed by Member Cities’ and Customers’ staff and material obtained from the TWDB, the TCEQ, and other sources.

- Encourage local media coverage of water conservation issues and the importance of water conservation.
- Notify local organizations, schools, and civic groups that Member City or Customer staff and staff of the City of Lucas are available to make presentations on the importance of water conservation and ways to save water.
- Promote the *Texas Smartscape* web site (www.txsmartscape.com) and provide water conservation brochures and other water conservation materials available to the public at City Hall and other public places.
- Make information on water conservation available on its website, and include links to the “Water IQ: Know Your Water” website, *Texas Smartscape* website and to information on water conservation on the TWDB and TCEQ web sites and other resources.

6.3 NTMWD System Operation Plan

Member Cities of NTMWD, which includes the City of Lucas, purchase treated water from NTMWD, and do not have surface water supplies for which to implement a system operation plan. NTMWD operates multiple sources of water supply as a system. The operation of the reservoir system is intended to optimize the use of the District’s sources (within the constraints of existing water rights) while minimizing energy use cost for pumping, maintaining water quality, minimizing potential impacts on recreational users of the reservoirs and fish and wildlife.

6.4 Coordination with Regional Water Planning Group and NTMWD

Appendix F includes a copy of the letter sent to the Chair of the Region C and Region D water planning group with this water conservation plan. The City of Lucas will send a copy of their ordinance(s) or regulation(s) implementing the plan and their water utility profile to NTMWD. The adopted ordinance(s) or regulation(s) and the adopted water utility profile will be sent to the Chair of the appropriate Water Planning Group and to NTMWD.

6.5 Requirement for Water Conservation Plans by Wholesale Customers

Every contract for the wholesale sale of water by the City of Lucas that is entered into, renewed, or extended after the adoption of this water conservation plan will include a requirement that the wholesale customer and any wholesale customers of that wholesale customer develop and implement a water conservation plan meeting the requirements of Title 30, Part 1, Chapter 288,

Subchapter A, Rule 288.2 of the Texas Administrative Code. The requirement will also extend to each successive wholesale customer in the resale of the water.

7. ENHANCED WATER CONSERVATION STRATEGIES

7.1 Water Rate Structure

The City of Lucas has an increasing block rate water structure that is intended to encourage water conservation and discourage excessive use and waste of water. The City of Lucas's water rate structure is as follows:

Residential Rates (1")

Minimum of \$24.68 plus per each 2,000 gallons consumed:

\$4.71 for 2,001 – 5,000 gallons

\$5.01 for 5,001 – 10,000 gallons

\$5.25 for 10,001 – 30,000 gallons

\$5.48 for 30,001 – 50,000 gallons

\$5.89 for 50,001 and over

Commercial Rates (1")

Minimum of \$25.56 plus per each 2,000 gallons consumed:

\$4.79 for 2,001 – 5,000 gallons

\$5.09 for 5,001 – 10,000 gallons

\$5.33 for 10,001 – 30,000 gallons

\$5.56 for 30,001 – 50,000 gallons

\$5.83 for 50,001 and over

7.2 Ordinances, Plumbing Codes, or Rules on Water-Conserving Fixtures

The state has required water-conserving fixtures in new construction and renovations since 1992. The state standards call for flows of no more than 2.5 gallons per minute (gpm) for faucets, 2.5 gpm for showerheads, and 1.6 gallons per flush for toilets. Similar standards are now required nationally under federal law. These state and federal standards assure that all new construction and renovations will use water-conserving fixtures.

7.3 Compulsory Landscape and Water Management Measures

The following landscape water management measures are required by the City of Lucas for this plan. These measures are to be implemented and enforced in order to irrigate the landscape appropriately, and are to remain in effect on a permanent basis unless water resource management stages are declared.

1. Landscape Water Management Measures

- Limit landscape watering with sprinklers or irrigation systems at each service address to no more than two days per week year-round, with education that less than twice per week is usually adequate. Additional watering of landscape may be provided by hand-held hose with shutoff nozzle, use of dedicated irrigation drip zones, and/or soaker hose provided no runoff occurs.
- Prohibit lawn irrigation watering from 10 AM to 6 PM (April 1 – October 31).
- Prohibit the use of irrigation systems that water impervious surfaces. (Wind driven water drift will be taken into consideration.)
- Prohibit outdoor watering during precipitation or freeze events.
- Prohibition of use of poorly maintained sprinkler systems that waste water.
- Prohibit excess water runoff or other obvious waste.

2. Additional Water Management Measures

- Non-commercial car washing can be done only when using a water hose with a shut-off nozzle.
- Encourage restaurants, bars, and other commercial food or beverage establishments not to provide drinking water to customers unless a specific request is made by the customer for drinking water.

7.4 Monitoring of Effectiveness and Efficiency - Annual Water Conservation Report

The annual conservation report will be submitted by the City of Lucas on March 31 each year. This report is used to monitor the effectiveness and efficiency of the water conservation program, and to plan conservation-related activities for the next year. The form records the water use by category, per capita municipal use, and total water loss for the current year and compares them to historical values. The annual water conservation report will be sent to NTMWD, which will monitor NTMWD Member Cities' and Customers' water conservation trends.

7.5 Water Conservation Implementation Report

Appendix F includes the TCEQ-required water conservation implementation report. The report is due to the TCEQ by May 1 of every year. This report lists the various water conservation strategies that have been implemented including the date the strategy was implemented. The report also calls for the five-year and ten-year per capita water use goals from the previous water conservation plan. The reporting entity must answer whether or not these goals have been met and if not, why not. The amount of water saved is also requested.

8. IMPLEMENTATION AND ENFORCEMENT OF THE WATER CONSERVATION PLAN

Appendix G contains the ordinance that was adopted by the City Council regarding the water conservation plan. The ordinance designates responsible officials to implement and enforce the water conservation plan.

Enforcement

a) For a first violation of any provision of this Plan, the city shall issue a letter and provide educational materials on water conservation, including a copy of the relevant provisions of this Plan, to the water user violating the provisions of the Plan. The city shall give the water user a reasonable time to correct the violation.

b) For a second violation of any provision of this Plan, the city shall issue the water user a citation to appear in the municipal court and upon conviction will be subject to a fine not to exceed the sum of \$2,000.

c) The city's current, water conservation rate structure is in effect year-round to encourage ongoing water conservation. Additional rate surcharges may be established when it is required to meet the reduction goal in each respective stage of this article.

9. REVIEW AND UPDATE OF WATER CONSERVATION PLAN

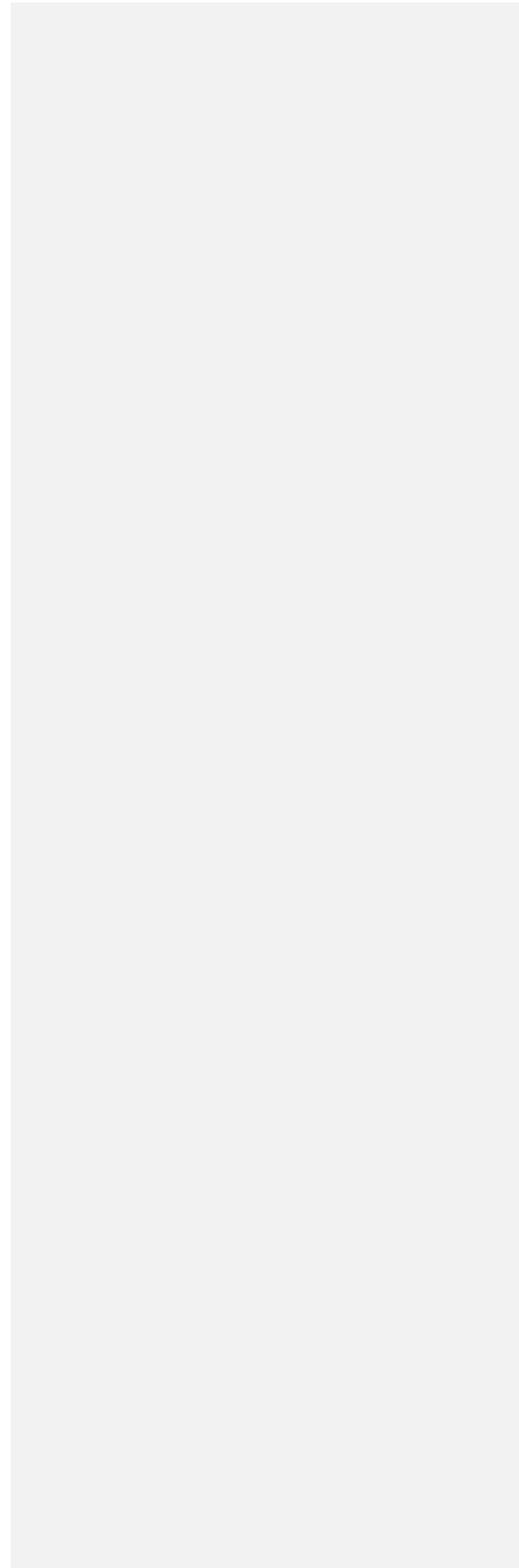
TCEQ requires that the water conservation plans be updated prior to May 1, 2014. The plans are required to be updated every five years thereafter. The plan will be updated as required and as appropriate based on new or updated information.

Appendix A List of References

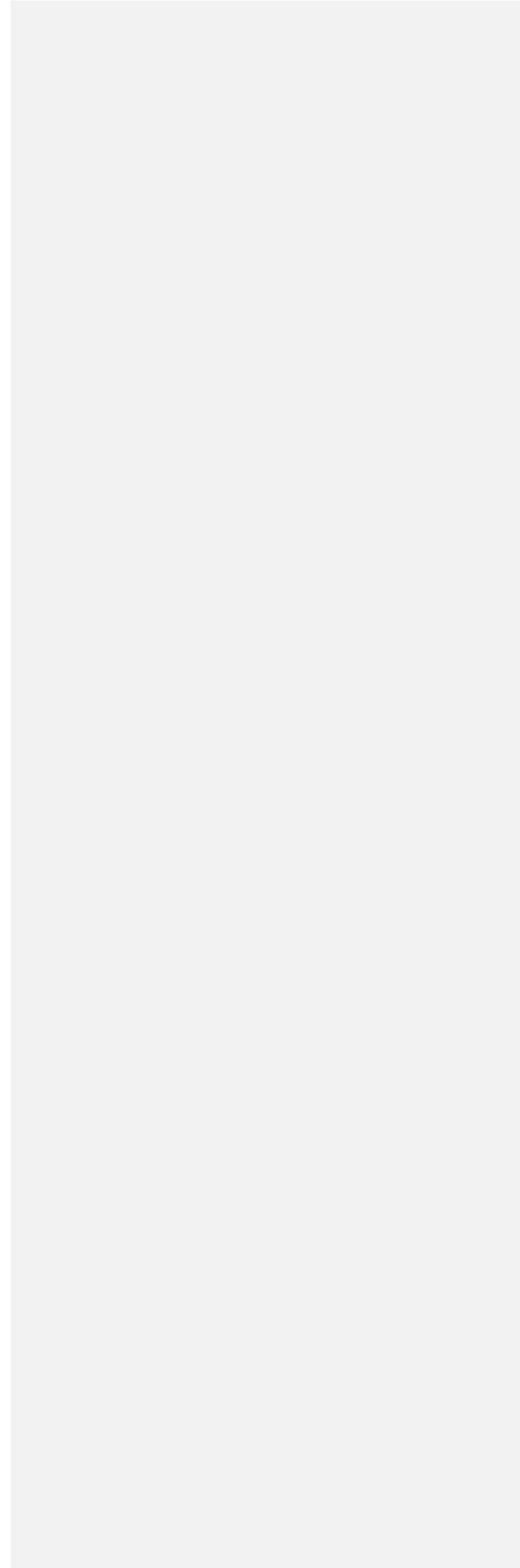
1. Texas Commission on Environmental Quality Annual Report.
http://www.tceq.texas.gov/permitting/water_rights/conserve.html#imple
2. Title 30 of the Texas Administrative Code, Part 1, Chapter 288, Subchapter A, Rules 288.1 and 288.5, and Subchapter B, Rule 288.22, downloaded from
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=288](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=288),
June 2013.
3. Water Conservation Implementation Task Force: “Texas Water Development Board Report 362, Water Conservation Best Management Practices Guide,” prepared for the Texas Water Development Board, Austin, November 2004.
4. Water Conservation Advisory Council: Guidance and Methodology for Reporting on Water Conservation and Water Use, December 2012
5. Freese and Nichols, INC.: Model Water Conservation Plan for NTMWD Members Cities and Customers, prepared for the North Texas Municipal Water District, Fort Worth, November 2013.
6. Definitions from City of Austin Water Conservation and Drought Contingency Ordinance adopted August 16, 2012.
http://www.austintexas.gov/sites/default/files/files/Water/Conservation/Planning_and_Policy/ProposedCodeRevision_DRAFT_with_watering_schedule-8-15-2012.pdf
7. Definition from City of San Antonio Water Conservation Ordinance adopted 2005.
http://saws.org/conservation/ordinance/docs/Ch34_Ordinance_2009.pdf
8. Definition developed by Freese and Nichols Inc.
9. Texas Water Development Board, Texas Commission on Environmental Quality, Water Conservation Advisory Council. “DRAFT Guidance and Methodology for Water Conservation Reporting.”

10. Freese and Nichols Inc., Alan Plummer and Associates, CP & Y Inc. and Cooksey Communications.
“2011 Region C Regional Water Plan”

Appendix B
City of Lucas's TCEQ Water Utility Profile

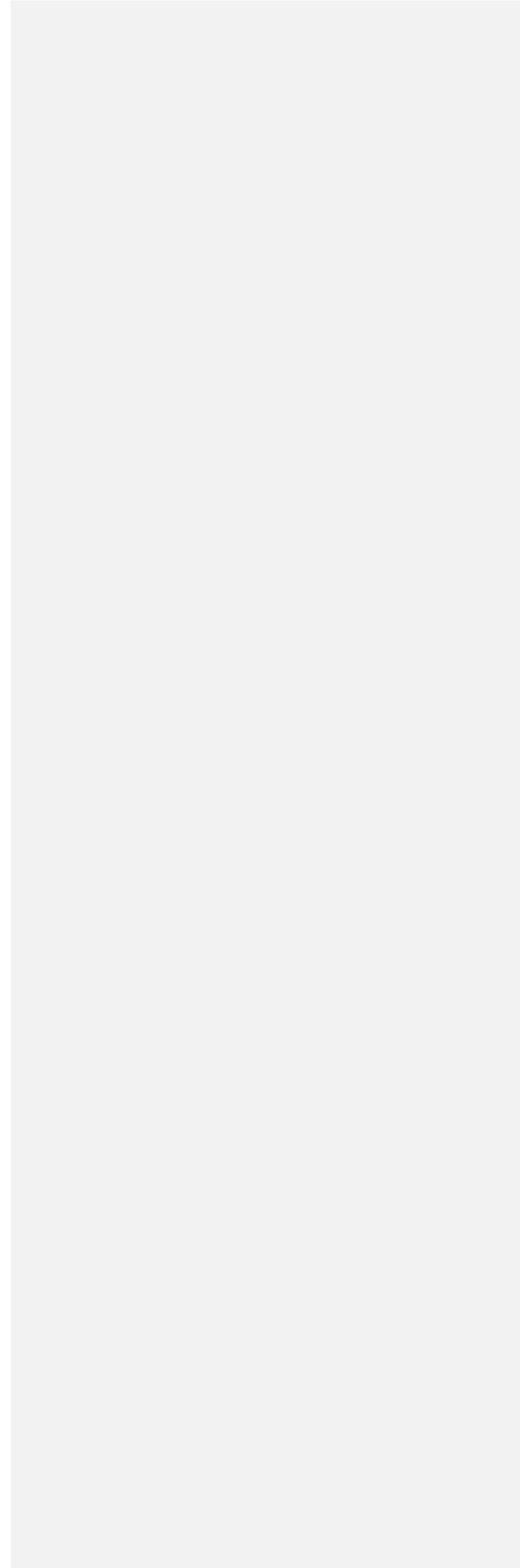


Appendix C
City of Lucas's Annual Water Conservation Report

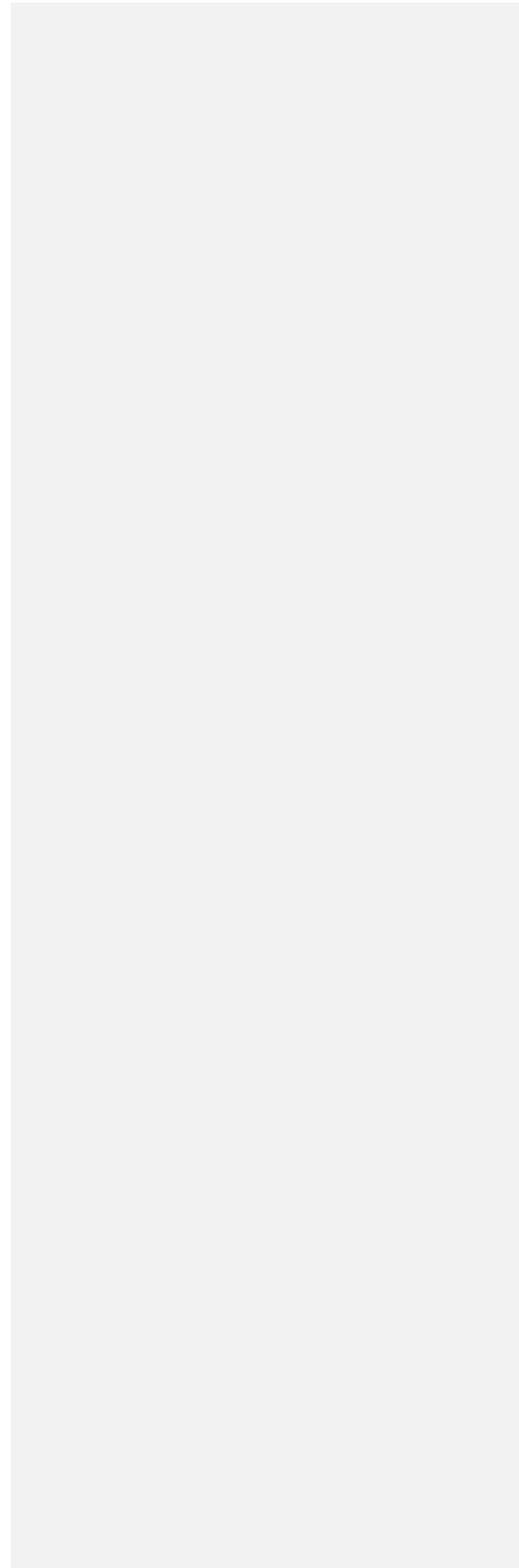


Appendix D

City of Lucas's TCEQ Water Conservation Implementation Report



Appendix E
GPCD 5 year and 10 year Chart here



Appendix F

Letter to Region C

April 15, 2014

Region C Water Planning Group
c/o North Texas Municipal Water District
505 E. Brown St.
P.O. Box 2408
Wylie, TX 75098

Dear Sir/Madam:

Enclosed please find a copy of the Water Conservation Plan and a copy of the Water Resource Management Plan (which is an update to the previous Drought Contingency and Water Emergency Response Plan) for the City of Lucas, Texas. I am submitting a copy of both plans to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules.

The City of Lucas City Council adopted this Water Conservation Plan through **Ordinance** on April 17, 2014.

Sincerely,

Joni Clarke
City Manager
City of Lucas, TX

Appendix F

Letter to Region D

April 15, 2014

Mr. Bret McCoy
Chair, Region D Water Planning Group
700 CR3347
Omaha, TX 75571

Dear Sir:

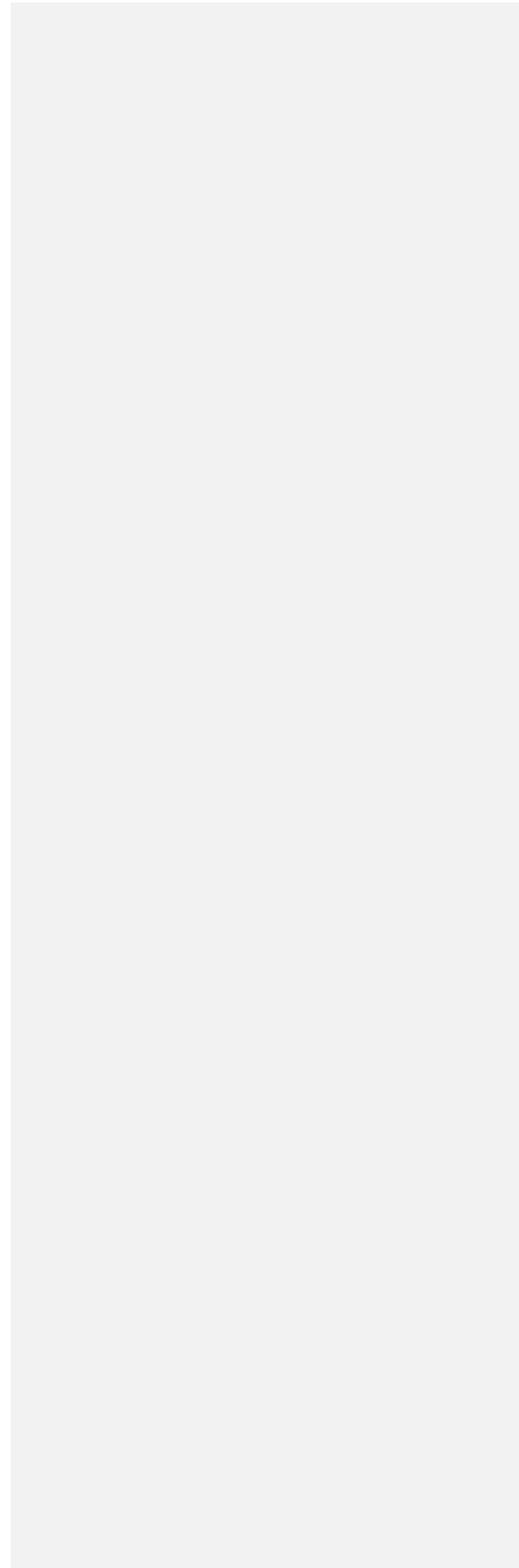
Enclosed please find a copy of the Water Conservation Plan and a copy of the Water Resource Management Plan (which is an update to the previous Drought Contingency and Water Emergency Response Plan) for the City of Lucas, Texas. I am submitting a copy of both plans to the Region D Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules.

The City of Lucas City Council adopted this Water Conservation Plan through **Ordinance** on April 17, 2014.

Sincerely,

Joni Clarke
City Manager
City of Lucas, TX

Appendix G
Ordinance



APPENDIX B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES ON MUNICIPAL WATER CONSERVATION PLANS

APPENDIX B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULESON MUNICIPAL WATER CONSERVATION PLANS

Texas Administrative Code

<u>TITLE 30</u>	ENVIRONMENTAL QUALITY
<u>PART 1</u>	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
<u>CHAPTER 288</u>	WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS
<u>SUBCHAPTER A</u>	WATER CONSERVATION PLANS
RULE §288.1	Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural or Agriculture--Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) Agricultural use--Any use or activity involving agriculture, including irrigation.

(3) Best management practices--Voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

(4) Conservation--Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) Commercial use--The use of water by a place of business, such as a hotel, restaurant, or office building. This does not include multi-family residences or agricultural, industrial, or institutional users.

(6) Drought contingency plan--A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(7) Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, and the development of power by means other than hydroelectric, but does not include agricultural use.

(8) Institutional use--The use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.

(9) Irrigation--The agricultural use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water from a public water supplier.

(10) Irrigation water use efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(11) Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field re-pressuring.

(12) Municipal use--The use of potable water provided by a public water supplier as well as the use of sewage effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses.

(13) Nursery grower--A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50% of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease, and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Public water supplier--An individual or entity that supplies water to the public for human consumption.

(16) Residential use--The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.

(17) Residential gallons per capita per day--The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year.

(18) Regional water planning group--A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

(19) Retail public water supplier--An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(20) Reuse--The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(21) Total use--The volume of raw or potable water provided by a public water supplier to billed customer sectors or nonrevenue uses and the volume lost during conveyance, treatment, or transmission of that water.

(22) Total gallons per capita per day (GPCD)--The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in this chapter shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.

(23) Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(24) Wholesale public water supplier--An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

(25) Wholesale use--Water sold from one entity or public water supplier to other retail water purveyors for resale to individual customers.

Source Note: The provisions of this §288.1 adopted to be effective May 3, 1993, 18 TexReg 2558; amended to be effective February 21, 1999, 24 TexReg 949; amended to be effective April 27, 2000, 25 TexReg 3544; amended to be effective August 15, 2002, 27 TexReg 7146; amended to be effective October 7, 2004, 29 TexReg 9384; amended to be effective January 10, 2008, 33 TexReg 193; amended to be effective December 6, 2012, 37 TexReg 9515

Texas Administrative Code

TITLE 30 ENVIRONMENTAL QUALITY
PART 1 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 288 WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS
SUBCHAPTER A WATER CONSERVATION PLANS
RULE §288.2 **Water Conservation Plans for Municipal Uses by Public Water Suppliers**

(a) A water conservation plan for municipal water use by public water suppliers must provide information in response to the following. If the plan does not provide information for each requirement, the public water supplier shall include in the plan an explanation of why the requirement is not applicable.

(1) Minimum requirements. All water conservation plans for municipal uses by public water suppliers must include the following elements:

(A) a utility profile in accordance with the Texas Water Use Methodology, including, but not limited to, information regarding population and customer data, water use data (including total gallons per capita per day (GPCD) and residential GPCD), water supply system data, and wastewater system data;

(B) a record management system which allows for the classification of water sales and uses into the most detailed level of water use data currently available to it, including, if possible, the sectors listed in clauses (i) - (vi) of this subparagraph. Any new billing system purchased by a public water supplier must be capable of reporting detailed water use data as described in clauses (i) - (vi) of this subparagraph:

(i) residential;

(I) single family;

(ii) commercial;

(C) specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in total GPCD and residential GPCD. The goals established by a public water supplier under this subparagraph are not enforceable;

(D) metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply;

(E) a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement;

(F) measures to determine and control water loss (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections; abandoned services; etc.);

(G) a program of continuing public education and information regarding water conservation;

(H) a water rate structure which is not "promotional," i.e., a rate structure which is cost-based and which does not encourage the excessive use of water;

(I) a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin in order to optimize available water supplies; and

(J) a means of implementation and enforcement which shall be evidenced by:

(i) a copy of the ordinance, resolution, or tariff indicating official adoption of the water conservation plan by the water supplier; and

(ii) a description of the authority by which the water supplier will implement and enforce the conservation plan; and

(K) documentation of coordination with the regional water planning groups for the service area of the public water supplier in order to ensure consistency with the appropriate approved regional water plans.

(2) Additional content requirements. Water conservation plans for municipal uses by public drinking water suppliers serving a current population of 5,000 or more and/or a projected population of 5,000 or more within the next ten years subsequent to the effective date of the plan must include the following elements:

(A) a program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system;

(B) a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with the provisions of this chapter.

(3) Additional conservation strategies. Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements in paragraphs (1) and (2) of this subsection, if they are necessary to achieve the stated water conservation goals of the plan. The commission may require that any of the following strategies be implemented by the water supplier if the commission determines that the strategy is necessary to achieve the goals of the water conservation plan:

(A) conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

(B) adoption of ordinances, plumbing codes, and/or rules requiring water-conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;

(C) a program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;

(D) reuse and/or recycling of wastewater and/or graywater;

(E) a program for pressure control and/or reduction in the distribution system and/or for customer connections;

(F) a program and/or ordinance(s) for landscape water management;

(G) a method for monitoring the effectiveness and efficiency of the water conservation plan; and

(H) any other water conservation practice, method, or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

(b) A water conservation plan prepared in accordance with 31 TAC §363.15 (relating to Required Water Conservation Plan) of the Texas Water Development Board and substantially meeting the requirements of this section and other applicable commission rules may be submitted to meet application requirements in accordance with a memorandum of understanding between the commission and the Texas Water Development Board.

(c) A public water supplier for municipal use shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The public water supplier for municipal use shall review and update the next revision of its water conservation plan every five years to coincide with the regional water planning group.

Source Note: The provisions of this §288.2 adopted to be effective May 3, 1993, 18 TexReg 2558; amended to be effective February 21, 1999, 24 TexReg 949; amended to be effective April 27, 2000, 25 TexReg 3544; amended to be effective October 7, 2004, 29 TexReg 9384; amended to be effective December 6, 2012, 37 TexReg 9515

APPENDIX C
TCEQ WATER UTILITY PROFILE



Texas Commission on Environmental Quality

UTILITY PROFILE AND WATER CONSERVATION PLAN REQUIREMENTS FOR MUNICIPAL WATER USE BY RETAIL PUBLIC WATER SUPPLIERS

This form is provided to assist retail public water suppliers in water conservation plan development. If you need assistance in completing this form or in developing your plan, please contact the conservation staff of the Resource Protection Team in the Water Availability Division at (512) 239-4691.

Name: City of Lucas

Address: 665 Country Club Road. Lucas Texas, 75002

Telephone Number: (972) 727-8999
(469) 223-2975

Regional Water Planning Group: NTMWD

Form Completed by: Joseph Hilbourn

Title: Development Services Director

Person responsible for implementing conservation program: Joseph Hilbourn Phone: (972) 727-8999

Signature: _____ Date: 4/10/14

NOTE: If the plan does not provide information for each requirement, include an explanation of why the requirement is not applicable.

UTILITY PROFILE

I. POPULATION AND CUSTOMER DATA

A. Population and Service Area Data

1. Attach a copy of your service-area map and, if applicable, a copy of your Certificate of Convenience and Necessity (CCN).
2. Service area size (in square miles): 17.66
(Please attach a copy of service-area map)
3. Current population of service area: 6755
4. Current population served for:
 - a. Water 6755
 - b. Wastewater 4

5. Population served for previous five years:

<i>Year</i>	<i>Population</i>
2013	6755
2012	6430
2011	6172
2010	5966
2009	5641

6. Projected population for service area in the following decades:

<i>Year</i>	<i>Population</i>
2020	10,000
2030	12,000
2040	14,000
2050	14,000
2060	14,000

7. List source or method for the calculation of current and projected population size.
Current NTCOG, future Lucas Comp plan

B. Customers Data

Senate Bill 181 requires that uniform consistent methodologies for calculating water use and conservation be developed and available to retail water providers and certain other water use sectors as a guide for preparation of water use reports, water conservation plans, and reports on water conservation efforts. A water system must provide the most detailed level of customer and water use data available to it, however, any new billing system purchased must be capable of reporting data for each of the sectors listed below. http://www.tceq.texas.gov/assets/public/permitting/watersupply/water_rights/sb181_guidance.pdf

1. Current number of active connections. Check whether multi-family service is counted as Residential or Commercial?

<i>Treated Water Users</i>	<i>Metered</i>	<i>Non-Metered</i>	Totals
Residential		0	2210
Single-Family	2179	0	2179
Multi-Family	0	0	0
Commercial	31	0	31
Industrial/Mining	0	0	0
Institutional	0	0	0
Agriculture	0	0	0
Other/Wholesale	0	0	0

2. List the number of new connections per year for most recent three years.

<i>Year</i>	2011	2012	2013
<i>Treated Water Users</i>			
Residential	91	90	97
Single-Family	91	90	97
Multi-Family	0	0	0
Commercial	1	4	4
Industrial/Mining	0	0	0
Institutional	0	0	0
Agriculture	0	0	0
Other/Wholesale	0	0	0

3. List of annual water use for the five highest volume customers.

	<i>Customer</i>	<i>Use (1,000 gal/year)</i>	<i>Treated or Raw Water</i>
1.	Stinson Highland HOA	22,927	Treated
2.	Wal-Mart	16,416	Treated
3.	Duncanson Gary & Joyce	15,657	Treated
4.	NTMWD	14,202	Treated
5.	Lovejoy High School	13,223	Treated

II. WATER USE DATA FOR SERVICE AREA

A. Water Accounting Data

1. List the amount of water use for the previous five years (in 1,000 gallons). Indicate whether this is diverted or X treated water.

<i>Year</i>	2009	2010	2011	2012	2013
<i>Month</i>					
January	164157	154,159	176618	132,332	224,417
February	168242	125,941	167212	145,702	156,548
March	178494	92,112	151245	129,512	155,696
April	258328	167,410	12220	172,498	221,660
May	180748	266,667	297847	362,727	336,003
June	334726	480,096	444933	419,826	303,824
July	334726	411,896	867546	519,412	642,768
August	376098	651,468	811108	724,411	602,823
September	572884	553,216	913894	522,310	728,056
October	198217	362,994	551905	464,120	501,172
November	133209	218,733	231611	395,318	278,253
December	121041	223,092	149066	315,094	221,376
Totals	3,238,169	3,707,784	5,067,444	4,303,262	4,372,596

Describe how the above figures were determine (e.g, from a master meter located at the point of a diversion from the source, or located at a point where raw water enters the treatment plant, or from water sales).

Water Sales

2. Amount of water (in 1,000 gallons) delivered/sold as recorded by the following account types for the past five years.

<i>Year</i>	2009	2010	2011	2012	2013
<i>Account Types</i>					
Residential	3,238,169	3,707,784	4777879	4036238	4030073
Single-Family	3,238,169	3,707,784	4777879	40362384	4030073
Multi-Family	0	0	0	0	0
Commercial	0	0	289123	269030	342523
Industrial/Mining	0	0	0	0	0
Institutional	0	0	0	0	0
Agriculture	0	0	0	0	0
Other/Wholesale	0	0	0	0	0

3. List the previous records for water loss for the past five years (the difference between water diverted or treated and water delivered or sold).

<i>Year</i>	<i>Amount (gallons)</i>	<i>Percent %</i>
2013	1,012,007	18.8%
2012	1,167,971	21.35%
2011	858,046	14.48%
2010	860,734	18.85%
2009	615,654	15.97%

B. Projected Water Demands

If applicable, attach or cite projected water supply demands from the applicable Regional Water Planning Group for the next ten years using information such as population trends, historical water use, and economic growth in the service area over the next ten years and any additional water supply requirements from such growth.

III. WATER SUPPLY SYSTEM DATA

A. Water Supply Sources

List all current water supply sources and the amounts authorized (in acre feet) with each.

<i>Water Type</i>	<i>Source</i>	<i>Amount Authorized</i>
Surface Water	N/A	N/A
Groundwater	N/A	N/A
Contracts	NTMWD	2115
Other	N/A	N/A

B. Treatment and Distribution System

1. Design daily capacity of system (MGD): N/A
2. Storage capacity (MGD):
 - a. Elevated 0.6
 - b. Ground 1.8
3. If surface water, do you recycle filter backwash to the head of the plant?
 Yes No If yes, approximate amount (MGD): N/A

IV. WASTEWATER SYSTEM DATA

A. Wastewater System Data (if applicable)

1. Design capacity of wastewater treatment plant(s) (MGD): N/A
2. Treated effluent is used for on-site irrigation, off-site irrigation, for plant wash-down, and/or for chlorination/dechlorination.

If yes, approximate amount (in gallons per month): 0

3. Briefly describe the wastewater system(s) of the area serviced by the water utility. Describe how treated wastewater is disposed. Where applicable, identify treatment plant(s) with the TCEQ name and number, the operator, owner, and the receiving stream if wastewater is discharged.

NTMWD Wilson Creek plant

B. Wastewater Data for Service Area (if applicable)

1. Percent of water service area served by wastewater system: 4.72 %
2. Monthly volume treated for previous five years (in 1,000 gallons):

<i>Year</i>	2009	2010	2011	2012	2013
<i>Month</i>					
January	0	0	0	0	0
February	0	0	0	0	0
March	0	0	0	0	0
April	0	0	0	0	0
May	0	0	0	0	0
June	0	0	0	0	0
July	0	0	0	0	0
August	0	0	0	0	0
September	0	0	0	0	0
October	0	0	0	0	0
November	0	0	0	0	0
December	0	0	0	0	0
Totals	0	0	0	0	0

V. ADDITIONAL REQUIRED INFORMATION

In addition to the utility profile, please attach the following as required by Title 30, Texas Administrative Code, §288.2. Note: If the water conservation plan does not provide information for each requirement, an explanation must be included as to why the requirement is not applicable.

A. Specific, Quantified 5 & 10-Year Targets

The water conservation plan must include specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in gallons per capita per day. Note that the goals established by a public water supplier under this subparagraph are not enforceable

B. Metering Devices

The water conservation plan must include a statement about the water suppliers metering device(s), within an accuracy of plus or minus 5.0% in order to measure and account for the amount of water diverted from the source of supply.

C. Universal Metering

The water conservation plan must include and a program for universal metering of both customer and public uses of water, for meter testing and repair, and for periodic meter replacement.

D. Unaccounted- For Water Use

The water conservation plan must include measures to determine and control unaccounted-for uses of water (for example, periodic visual inspections along distribution lines; annual or monthly audit of the water system to determine illegal connections; abandoned services; etc.).

E. Continuing Public Education & Information

The water conservation plan must include a description of the program of continuing public education and information regarding water conservation by the water supplier.

F. Non-Promotional Water Rate Structure

The water supplier must have a water rate structure which is not “promotional,” i.e., a rate structure which is cost-based and which does not encourage the excessive use of water. This rate structure must be listed in the water conservation plan.

G. Reservoir Systems Operations Plan

The water conservation plan must include a reservoir systems operations plan, if applicable, providing for the coordinated operation of reservoirs owned by the applicant within a common watershed or river basin. The reservoir systems operations plan shall include optimization of water supplies as one of the significant goals of the plan.

H. Enforcement Procedure and Plan Adoption

The water conservation plan must include a means for implementation and enforcement, which shall be evidenced by a copy of the ordinance, rule, resolution, or tariff, indicating official adoption of the water conservation plan by the water supplier; and a description of the authority by which the water supplier will implement and enforce the conservation plan.

I. Coordination with the Regional Water Planning Group(s)

The water conservation plan must include documentation of coordination with the regional water planning groups for the service area of the wholesale water supplier in order to ensure consistency with the appropriate approved regional water plans.

J. Plan Review and Update

A public water supplier for municipal use shall review and update its water conservation plan, as appropriate, based on an assessment of previous five-year and ten-year targets and any other new or updated information. The public water supplier for municipal use shall review and update the next revision of its water conservation plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. The revised plan must also include an implementation report.

VI. ADDITIONAL REQUIREMENTS FOR LARGE SUPPLIERS

Required of suppliers serving population of 5,000 or more or a projected population of 5,000 or more within ten years

A. Leak Detection and Repair

The plan must include a description of the program of leak detection, repair, and water loss accounting for the water transmission, delivery, and distribution system in order to control unaccounted for uses of water.

B. Contract Requirements

A requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with the provisions of this chapter.

VII. ADDITIONAL CONSERVATION STRATEGIES

A. Conservation Strategies

Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements of this chapter, if they are necessary in order to achieve the stated water conservation goals of the plan. The commission may require by commission order that any of the following strategies be implemented by the water supplier if the commission determines that the strategies are necessary in order for the conservation plan to be achieved:

1. Conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat rate or decreasing block rates;

2. Adoption of ordinances, plumbing codes, and/or rules requiring water conserving plumbing fixtures to be installed in new structures and existing structures undergoing substantial modification or addition;
3. A program for the replacement or retrofit of water-conserving plumbing fixtures in existing structures;
4. A program for reuse and/or recycling of wastewater and/or graywater;
5. A program for pressure control and/or reduction in the distribution system and/or for customer connections;
6. A program and/or ordinance(s) for landscape water management;
7. A method for monitoring the effectiveness and efficiency of the water conservation plan; and
8. Any other water conservation practice, method, or technique which the water supplier shows to be appropriate for achieving the stated goal or goals of the water conservation plan.

Best Management Practices

The Texas Water Developmental Board's (TWDB) Report 362 is the Water Conservation Best Management Practices (BMP) guide. The BMP Guide is a voluntary list of management practices that water users may implement in addition to the required components of Title 30, Texas Administrative Code, Chapter 288. The Best Management Practices Guide broken out by sector, including Agriculture, Commercial, and Institutional, Industrial, Municipal and Wholesale along with any new or revised BMP's can be found at the following link on the Texas Water Developments Board's website: <http://www.twdb.state.tx.us/conservation/bmps/index.asp>

Individuals are entitled to request and review their personal information that the agency gathers on its forms. They may also have any errors in their information corrected. To review such information, contact 512-239-3282.

APPENDIX D
NTMWD MEMBER CITY AND CUSTOMER WATER CONSERVATION REPORT

Due: March 31 of every year

Entity Reporting:	City of Lucas
Filled Out By:	Joseph Hilbourn
Date Completed:	04/10/2014
Year Covered:	2013
# of Connections	2,210

Recorded Deliveries and Sales by Month (in Million Gallons):

Month	Deliveries from NTMWD	Other Supplies	Sales by Category						Total
			Residential	Commercial	Public/ Institutional	Industrial	Wholesale	Other	
January	2.727	0.000	2.116	0.119	0.009	0.000	0.000	0.000	2.244
February	2.475	0.000	1.450	0.104	0.011	0.000	0.000	0.000	1.566
March	3.487	0.000	1.414	0.100	0.042	0.000	0.000	0.000	1.557
April	3.429	0.000	2.046	0.134	0.035	0.000	0.000	0.000	2.214
May	4.408	0.000	3.219	0.136	0.009	0.000	0.000	0.000	3.364
June	4.825	0.000	2.805	0.127	0.106	0.000	0.000	0.000	3.038
July	6.335	0.000	6.071	0.296	0.061	0.000	0.000	0.000	6.428
August	8.121	0.000	5.556	0.396	0.076	0.000	0.000	0.000	6.027
September	8.153	0.000	6.791	0.469	0.021	0.000	0.000	0.000	7.281
October	4.124	0.000	4.613	0.387	0.011	0.000	0.000	0.000	5.012
November	3.214	0.000	2.500	0.235	0.048	0.000	0.000	0.000	2.783
December	2.536	0.000	2.093	0.117	0.004	0.000	0.000	0.000	2.214
TOTAL	53.836	0.000	40.673	2.620	0.433	0.000	0.000	0.000	43.727

Peak Day Usage

Peak Day (MG)		Total peak day use (Peak day delivery from NTMWD + other supplies)
Average Day (MG)	0.147	Average day use (Annual deliveries from NTMWD + other supplies / 365 days)
Peak/Average Day Rat	0	Total peak day use/average day use

Unaccounted Water (Million Gallons):

NTMWD Deliveries	53.836 from Table above
Other Supplies	0.000 from Table above
Total Supplies	53.836 from Table above
Total Sales	43.727 from Table above
Estimated Fire Use	estimated from best available data
Estimated Line Flushing Use	estimated from best available data
Unaccounted Water	10.110
% Unaccounted	18.78%
Goal for % Unaccounted	15.60%

Per Capita Use (Gallons per person per day)

Total Use (MG)	53.836 from Table above (NTMWD deliveries+ other supplies - wholesale)
Municipal Use (MG)	53.836 from Table above (NTMWD deliveries+ other supplies - industrial sales - municipal sales - wholesale - other sales)
Residential Use (MG)	50.783 from Table above (NTMWD deliveries+ other supplies - commercial sales - public/institutional sales)
Estimated Population	6,755 NTCOG
Total Per Capita Use (gpcd)	21.84
Municipal Per Capita Use (gpcd)	21.84
Residential Per Capita Use (gpcd)	20.60
5-year Per Capita Goal (___)	
10-year Per Capita Goal (___)	

Recorded Wholesale Sales by Month (in Million Gallons):

Month	N/A	Total Wholesale Sales								
January	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
February	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
March	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
April	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
May	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
June	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
July	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
August	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
September	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
October	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
November	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
December	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL	0.000									

Information on Wholesale Customers:

Customer	Estimated Population
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Unusual Circumstances (use additional sheets if necessary):

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Progress in Implementation of Conservation Plan (use additional sheets if necessary):

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Conservation measures planned for next year (use additional sheets if necessary):

A large, empty rectangular box with a thin black border, intended for listing conservation measures planned for the next year.

Assistance requested from North Texas Municipal Water District (use additional sheets if necessary):

A large, empty rectangular box with a thin black border, intended for detailing assistance requested from the North Texas Municipal Water District.

Other (use additional sheets if necessary):

A large, empty rectangular box with a thin black border, intended for providing other relevant information.



APPENDIX E
CONSIDERATIONS FOR LANDSCAPE WATER MANAGEMENT
REGULATIONS

APPENDIX E

CONSIDERATIONS FOR LANDSCAPE WATER MANAGEMENT REGULATIONS

A. Purpose

The purpose of these proposed landscape water management regulations is to provide a consistent mechanism for preventing the waste of water resources. To enact these provisions, entities must verify legal authority to adopt such provisions, and must promulgate valid rules, orders, or ordinances.

B. Required Measures

The following landscape water conservation measures are required to be included in the landscape management regulations adopted and enforced in this plan.

1. Lawn and Landscape Irrigation Restrictions

- a. A person commits an offense if the person irrigates, waters, or knowingly or recklessly causes or allows the irrigation or watering of any lawn or landscape located on any property owned, leased, or managed by the person between the hours of 10:00 a.m. and 6:00 p.m. from April 1 through October 31 of any year.
- b. A person commits an offense if the person knowingly or recklessly irrigates, waters, or causes or allows the irrigation or watering of lawn or landscape located on any property owned, leased, or managed by that person in such a manner that causes:
 - 1) over-watering lawn or landscape, such that a constant stream of water overflows from the lawn or landscape onto a street or other drainage area; or
 - 2) irrigating lawn or landscape during any form of precipitation or freezing conditions. This restriction applies to all forms of irrigation, including automatic sprinkler systems; or
 - 3) the irrigation of impervious surfaces or other non-irrigated areas, wind driven water drift taken into consideration.
- c. A person commits an offense if the person knowingly or recklessly allows the irrigation or watering of any lawn or landscape located on any property owned, leased, or managed by the person more than two days per week.

2. Rain and Freeze Sensors and/or ET or Smart Controllers

Any new irrigation system installed on or after November 4, 2004, must be equipped with rain and freeze sensing devices and/or ET or Smart controllers in compliance with state design and installation regulations.

- a. A person commits an offense on property owned, leased or managed if the person:
 - 1) knowingly or recklessly installs or allows the installation of new irrigation systems in violation of Subsection B.2.a; or
 - 2) knowingly or recklessly operates or allows the operation of an irrigation system that does not comply with Subsection B.2.a.

3. Filling or Refilling of Ponds

A person commits an offense if the person knowingly or recklessly fills or refills any natural or manmade pond located on any property owned, leased, or managed by the person by introducing any treated water to fill or refill the pond. This does not restrict the filling or maintenance of pond levels by the effect of natural water runoff or the introduction of well water into the pond. A pond is considered to be a still body of water with a surface area of 500 square feet or more.

4. Washing of Vehicles

A person commits an offense if the person knowingly or recklessly washes a vehicle without using a water hose with a shut-off nozzle on any property owned, leased, or managed by the person.

5. Enforcement

Each entity will develop its own set of penalties for violations of the ordinance, order, or resolution. The ordinance, order, or resolution will designate the responsible official(s) to implement and enforce the landscape water conservation measures.

C. Recommended Measures

1. Lawn and Landscape Irrigation Restrictions

- a. A person commits an offense if the person knowingly or recklessly operates a lawn or irrigation system or device on property that the person owns, leases, or manages that:
 - 1) has broken or missing sprinkler head(s); or
 - 2) has not been properly maintained to prevent the waste of water.



**WATER RESOURCE MANAGEMENT PLAN
FOR THE CITY OF LUCAS, TEXAS**

May 2014

FORWARD

This Water Resource Management Plan (which is an update to the previous Drought Contingency and Water Emergency Response Plan) was prepared by the City of Lucas. To develop a regional approach, the drought contingency plans for Tarrant Regional Water District and the City of Dallas were consulted.

Questions regarding this water resource management plan should be addressed to the following:

Joni Clarke
City Manager
City of Lucas
972-727-8999
jclarke@lucastexas.us

Joe Hilbourn
Director of Development
Services
City of Lucas
972-727-8999
jhilbourn@lucastexas.us

Stanton Foerster
Public Works Director
City of Lucas
972-727-8999
sfoerster@lucastexas.us

This water resource management plan is based on the Texas Administrative Code in effect on July 30, 2012.

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1.0 INTRODUCTION AND OBJECTIVES

The City of Lucas’s Water Resource Management Plan addresses all of the current TCEQ requirements for a drought contingency plan¹. This plan replaces the plan dated April 16, 2009. The previous plan, from April 16, 2009, will continue to apply until such time that the drought contingency or water emergency response stage currently in effect under the April 16, 2009 plan terminates and a less restrictive stage is applicable.

The City of Lucas purchases treated water from the North Texas Municipal Water District (NTMWD). In addition to serving as a wholesale water supplier, the NTMWD is also a public water supplier of treated water, providing a direct service to 34 customers who do not have access to retail service from other sources.

The measures included in this Water Resource Management Plan are intended to provide short-term water savings during drought or emergency conditions. The purpose of this water resource management plan is as follows:

- To conserve the available water supply in times of drought and emergency
- To maintain supplies for domestic water use, sanitation, and fire protection
- To protect and preserve public health, welfare, and safety
- To minimize the adverse impacts of water supply shortages
- To minimize the adverse impacts of emergency water supply conditions.

In the absence of drought response measures, water demands tend to increase during a drought due to increases in outdoor irrigation. The severity of a drought depends on the degree of depletion of supplies, and on the relationship of demand to available supplies. As City of Lucas’s water supplier, the NTMWD considers a drought to end when all of its supply reservoirs refill to the conservation storage pool.

¹ Superscripted numbers match references listed in Appendix A.

2.0 DEFINITIONS

1. AQUATIC LIFE means a vertebrate organism dependent upon an aquatic environment to sustain its life³.
2. ATHLETIC FIELD means a sports playing field, the essential feature of which is turf grass, used primarily for organized sports practice, competition or exhibition events for schools, professional sports, or sanctioned league play⁴.
3. COMMERCIAL FACILITY business or industrial buildings and the associated landscaping, but does not include the fairways, greens, or tees of a golf course³.
4. COMMON AREA means an area held, designed, or designated for the common use of the owners or occupants of a townhouse project, planned unit development, apartment, condominium, mobile home park, or subdivision³.
5. COSMETIC POWER WASHING means treatment or cleaning of a surface with specialized equipment that uses a spray of or directed water for the cosmetic cleaning of buildings, vehicles or other mobile equipment, or outdoor surfaces. It does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or cleaning necessary to remove graffiti³.
6. DESIGNATED OUTDOOR WATER USE DAY means a day prescribed by rule on which a person is permitted to irrigate outdoors³.
7. DRIP IRRIGATION is a method of low volume, low pressure water application on the landscape from a series of valves, pipes, tubes and emitters delivering water at a slow and constant rate³.
8. DROUGHT, for the purposes of this report, means an extended period of time when an area receives insufficient amounts of rainfall to replenish the water supply, causing water supply sources (in this case reservoirs) to be depleted.
9. EVAPOSTRANSPIRATION abbreviated as ET represents the amount of water lost from plant material and soils through evaporation and transpiration. The amount of ET can be estimated based on the temperature, wind, relative humidity and precipitation⁵.

10. ET/SMART CONTROLLERS are irrigation controllers that adjust their schedule and run times based on weather (ET) data. These controllers are designed to replace the amount of water lost to evapotranspiration⁵.
11. EXECUTIVE DIRECTOR means the Executive Director of the North Texas Municipal Water District and includes a person the Director has designated to administer or perform any task, duty, function, role, or action related to this plan or on behalf of the Executive Director⁵.
12. FOUNDATION WATERING means an application of water to the soils directly abutting the foundation of a building, structure³.
13. GOVERNMENT PROPERTY means a property owned or operated by a federal, state, or local governmental unit, entity, agency, or subdivision for public purpose³.
14. HOSE-END SPRINKLER means an above-ground water distribution device that may be attached to a garden hose³.
15. MULTI-FAMILY PROPERTY means a property containing five or more dwelling units³.
16. NEW LANDSCAPE means living vegetation comprised of turfgrasses, trees, shrubs, groundcovers, and annual or perennial herbaceous plants used ornamentally. Does not include fruits or vegetables.
17. ORNAMENTAL FOUNTAIN means an artificially created structure from which a jet, stream, or flow of water emanates and is not utilized for the preservation of aquatic life³.
18. PERMANENTLY INSTALLED IRRIGATION SYSTEM means a custom-made, site-specific system of delivering water generally for landscape irrigation via a system of pipes or other conduits installed below ground³.
19. POND is a still body of water with a surface area of 500 square feet or more⁵.
20. RAIN/FREEZE SENSOR means a device designed to stop the flow of water to an automatic irrigation system when rainfall or freeze event has been detected⁴.
21. RECLAIMED WATER means reclaimed municipal wastewater that has been treated to a quality that meets or exceeds the minimum standards of the 30 Texas Administrative

- Code, Chapter 210 and is used for lawn irrigation, industry, or other non-potable purposes³.
22. RESIDENTIAL FACILITY means a site with four or fewer dwelling units³.
23. RESIDENTIAL GALLONS PER CAPITA PER DAY (Residential gpcd) the total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year⁶.
24. SOAKER HOSE means a perforated or permeable garden-type hose or pipe that is laid above ground that provides irrigation at a slow and constant rate³.
25. SWIMMING POOL means any structure, basin, chamber, or tank including hot tubs, containing an artificial body of water for swimming, diving, or recreational bathing, and having a depth of two (2) feet or more at any point⁴.
26. TOTAL GALLONS PER CAPITA PER DAY (Total gpcd) the total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in TCA Chapter 288.1 shall be credited against total diversion volumes for the purposes of calculating gpcd for targets and goals⁶. (TAC Chapter 288.1)
27. VEGETABLE/COMMUNITY GARDEN means any non-commercial vegetable garden planted primarily for household use; "non-commercial" includes incidental direct selling of produce from such a vegetable garden to the public⁴.
28. VEHICLE WASH FACILITY means a permanently-located business that washes vehicles or other mobile equipment with water or water-based products, including but not limited to self-service car washes, full service car washes, roll-over/in-bay style car washes, and facilities managing vehicle fleets or vehicle inventory³.
29. WATER RESOURCE MANAGEMENT PLAN means a strategy or combination of strategies for temporary supply management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies required by Texas Administrative Code Title 30, Chapter 288, Subchapter B. This is sometimes called a drought contingency plan³.

30. XERISCAPE means a landscape which employs certain principles of design and installation which conserve water and energy and where the plant material, at mature growth, will provide, minimally, 50% of the new landscape's areal coverage³.

3.0 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES

The TCEQ rules governing development of drought contingency plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.20 of the Texas Administrative Code. For the purpose of these rules, a drought contingency plan is defined as “a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies.”¹

4.0 WATER RESOURCE MANAGEMENT PLAN

PROVISIONS TO INFORM THE PUBLIC AND OPPORTUNITY FOR PUBLIC INPUT

- The City of Lucas provided an opportunity for public input at the City council meeting on April 17, 2014.
- Providing written notice of the proposed plan, and give the community the opportunity to comment on the plan. The plan will be available City of Lucas’s web site.
- Providing the draft plan to anyone requesting a copy.
- A public meeting regarding the water resource management plan was held at city hall on April 17, 2014.

PROVISIONS FOR CONTINUING PUBLIC EDUCATION AND INFORMATION

The City of Lucas will inform and educate the public about the water resource management plan by the following means:

- Preparing a bulletin describing the plan and making it available at city hall and other appropriate locations.
- Making the plan available to the public.
- Including information about the water resource management plan on the City of Lucas’s web site.
- Notifying local organizations, schools, and civic groups that staff are available to make presentations on the water resource management plan. This is usually in conjunction with presentations on water conservation programs.
- At any time that the water resource management plan is activated or the water resource management plan changes, The City of Lucas will notify local media of the issues, the water resource

management stage, and the specific actions required of the public. The information will also be publicized on the City of Lucas's web site. Billing inserts will also be used as appropriate.

INITIATION AND TERMINATION OF WATER RESEROUCE MANAGEMENT STAGES

The City of Lucas by and through the City Manager, or designee will initiate and terminate stages of this plan on the basis of NTMWD's request or recommendation. Each stage is normally but not required to be initiated until the prior stage has been activated and restrictions implemented. This plan applies to all metered water users utilizing the City of Lucas's public water supply. Based on existing or projected conditions, the City Manager may impose alternative provisions within each stage which may be more or less restricted than herein. The following are the City of Lucas's criteria for initiation and termination of the stages of the plan.

Water Resource Management Plan Stages and Measures

Stage 1

Initiation and Termination Conditions for Stage 1

The following conditions warrant the declaration of Stage 1.

- Water demand is projected to approach the limit of the permitted supply.
- The storage in Lavon Lake is less than 55 percent of the total conservation pool capacity.
- NTMWD's storage in Jim Chapman Lake is less than 55 percent of NTMWD's total conservation pool capacity.
- The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a mild drought.
- NTMWD has concern that Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source may be limited in availability in the next 3 months.
- NTMWD water demand exceeds 95 percent of the amount that can be delivered to customers for three consecutive days.
- NTMWD water demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate.
- NTMWD's supply source becomes contaminated.

- Supply source is interrupted or unavailable due to invasive species.
- NTMWD’s water supply system is unable to deliver water due to the failure or damage of major water system components.
- City Manager may impose other conditions that may warrant the initiation of Stage 1.

Stage 1 may terminate when the circumstances that caused the initiation of Stage 1 no longer prevail.

Goal for Use Reduction and Actions Available under Stage 1

The goal for water use reduction under Stage 1 is a minimum five percent reduction (5%) in the amount of water obtained from NTMWD.

The City Manager or designee may order the implementation of any of the actions listed below, as deemed necessary to achieve a minimum five percent reduction. Measures described as “requires notification to TCEQ” impose mandatory requirements on customers. The City of Lucas must notify TCEQ and NTMWD within five business days if these measures are implemented:

- Continue actions in the water conservation plan.
- Further accelerate public education efforts on ways to reduce water use.
- Encourage the public to wait until the current drought or emergency situation has passed before establishing new landscaping.
- **Requires Notification to TCEQ** – Limit landscape watering with sprinklers or irrigation systems to no more than two days per week on designated days between April 1 – October 31, and to one day per week on a designated day between November 1 – March 31 each year.
- Exceptions are as follows:
 - New landscape may be watered as necessary for 30 days from the date of the installation with an approved variance.
 - Foundations and ornamental landscape may be watered for up to 2 hours on any day by a hand-held hose, a soaker hose, or a dedicated zone using a drip irrigation system.
 - Golf courses may water greens and tee boxes without restrictions.
 - Public athletic fields used for competition may be watered once per week.
 - Locations using other sources of water supply for irrigation may irrigate without restrictions.

- Registered and properly functioning ET/Smart irrigation systems and drip irrigation systems may irrigate with an approved variance.

Stage 2

Initiation and Termination Conditions for Stage 2

The following conditions warrant the declaration of Stage 2.

- Water demand is projected to approach or exceed the limit of the permitted supply.
- The storage in Lavon Lake is less than 45 percent of the total conservation pool capacity.
- NTMWD's storage in Jim Chapman Lake is less than 45 percent of NTMWD's total conservation pool capacity.
- The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a moderate drought. (Measures required by SRA under a Moderate drought designation are similar to those under NTMWD's Stage 2.)
- The supply from Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source has become limited in availability.
- NTMWD water demand exceeds 98 percent of the amount that can be delivered to customers for three consecutive days.
- NTMWD water demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate.
- NTMWD's supply source becomes contaminated.
- NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City Manager may impose other conditions that may warrant the initiation of Stage 2.

Stage 2 may terminate when the circumstances that caused the initiation of Stage 2 no longer prevail.

Goals for Use Reduction and Actions Available under Stage 2

The goal for water use reduction under Stage 2 is a minimum reduction of a ten percent (10%) in the amount of water obtained from NTMWD.

The City Manager or designee may order the implementation of any of the actions listed below, as deemed necessary to achieve a minimum ten percent reduction. Measures described as “requires notification to TCEQ” impose mandatory requirements on customers. The City of Lucas must notify TCEQ and NTMWD within five business days if these measures are implemented:

- Continue or initiate any actions available under Conservation Plan and Stage 1.
- **Requires Notification to TCEQ** – Limit landscape watering with sprinklers or irrigation systems at each service address to one day per week on designated days between April 1 – October 31, and to one day twice a month on designated days between November 1 – March 31 each year.
 - Prohibit hosing of paved areas, buildings, or windows. Pressure washing of impervious surfaces is allowed.
 - Prohibit operation of all ornamental fountains or other amenity impoundments to the extent they use treated water.
- Exceptions are as follows:
 - New landscape may be watered as necessary for 30 days from the date of the installation with an approved variance.
 - Foundations and ornamental landscape may be watered for up to 2 hours on any day by a hand-held hose, a soaker hose, or a dedicated zone using a drip irrigation system.
 - Golf courses may water greens and tee boxes without restrictions.
 - Public athletic fields used for competition may be watered once per week.
 - Locations using other sources of water supply for irrigation may irrigate without restrictions.
 - Registered and properly functioning ET/Smart irrigation systems and drip irrigation systems may irrigate with an approved variance.
- **Requires Notification to TCEQ** – Existing swimming pools may not be drained and refilled except to repair leaks or to replace normal water loss. An approved variance is required if a pool needs to be drained and refilled to repair leaks.
- **Requires Notification to TCEQ** - Initiate a rate surcharge as requested by NTMWD.
- **Requires Notification to TCEQ** - Initiate a rate surcharge for all water use over a certain level.

- **Requires Notification to TCEQ** – Prohibit watering of golf courses using treated water, except as needed to keep greens and tee boxes alive.

Stage 3

Initiation and Termination Conditions for Stage 3

The following conditions warrant the declaration of Stage 3.

- Water demand is projected to approach or exceed the limit of the permitted supply.
- The storage in Lavon Lake is less than 35 percent of the total conservation pool capacity.
- NTMWD's storage in Jim Chapman Lake is less than 35 percent of NTMWD's total conservation pool capacity.
- The Sabine River Authority has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a severe drought or emergency.
- The supply from Lake Texoma, the East Fork Raw Water Supply Project, or some other NTMWD source has become severely limited in availability.
- NTMWD water demand exceeds the amount that can be delivered to customers.
- NTMWD water demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate.
- NTMWD's supply source becomes contaminated.
- NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- City Manager or designee may impose other conditions that may warrant the initiation of Stage 3.

Stage 3 may terminate when the circumstances that caused the initiation of Stage 3 no longer prevail.

Goals for Use Reduction and Actions Available under Stage 3

The goal for water use reduction under Stage 3 is a reduction of whatever amount is necessary in the amount of water obtained from NTMWD.

The City Manager or designee may order the implementation of any of the actions listed below. Measures described as "requires notification to TCEQ" impose mandatory requirements on member cities and

customers. The City of Lucas must notify TCEQ and NTMWD within five business days if these measures are implemented.

- Continue or initiate any actions available under the Conservation Plan, Stages 1, and 2.
- **Requires Notification to TCEQ** – Prohibit the irrigation of landscaping using treated water.
- **Requires Notification to TCEQ** – Prohibit washing of vehicles except as necessary for health, sanitation, or safety reasons.
 - **Requires Notification to TCEQ** – Prohibit commercial and residential landscape watering, except that foundations and trees may be watered for 2 hours on any day with a hand-held hose, a soaker hose, or a dedicated zone using a drip irrigation system. ET/Smart controllers are not exempt from this requirement.
 - **Requires Notification to TCEQ** – Prohibit golf course watering with treated water except for greens and tee boxes.
 - **Requires Notification to TCEQ** – Prohibit the permitting of private pools. Pools already permitted may be completed and filled with water. Existing private and public pools may add water to maintain pool levels but may not be drained and refilled.
 - **Requires Notification to TCEQ** – Require all commercial water users to reduce water use by a percentage established by the City Manager or official designee.
 - **Requires Notification to TCEQ** - Initiate a rate surcharge for all water use over normal rates for all water use.

PROCEDURES FOR GRANTING VARIANCES TO THE PLAN

The City Manager or designee may grant temporary variances for existing water uses otherwise prohibited under this Water Resource Management Plan if one or more of the following conditions are met:

- Failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person or entity requesting the variance.
- Compliance with this plan cannot be accomplished due to technical or other limitations.
- Alternative methods that achieve the same level of reduction in water use can be implemented.

- Variances shall be granted or denied at the discretion of the City Manager or official designee.

All petitions for variances should be in writing and should include the following information:

- Name and address of the petitioners
- Purpose of water use
- Specific provisions from which relief is requested
- Detailed statement of the adverse effect of the provision from which relief is requested
- Description of the relief requested
- Period of time for which the variance is sought
- Alternative measures that will be taken to reduce water use
- Other pertinent information

PROCEDURES FOR ENFORCING MANDATORY WATER USE RESTRICTIONS

- For a first violation of any provision in this Plan, the city shall issue a letter and provide educational materials on water conservation, including a copy of the relevant provisions of this Plan, to the water user violating the provisions of this Plan. The city shall give the water user a reasonable time to correct the violation.
- For a second violation of any provision of this Plan the city shall issue the water user a citation to appear in municipal court and upon conviction will be subject to a fine not to exceed the sum of \$2,000.
- The city's current, water conservation rate structure is in effect year-round to encourage ongoing water conservation. Additional rate surcharges may be established when it is required to meet the reduction goal in each respective stage of this article.

COORDINATION WITH THE REGIONAL WATER PLANNING GROUPS AND NTMWD

Appendix B includes a copy of a letter sent to the Chairs of the Region C and Region D water planning groups with this model water resource management plan.

REVIEW AND UPDATE OF WATER RESOURCE MANAGEMENT PLAN

As required by TCEQ rules, the City of Lucas must review the water resource management plan every five years. The plan will be updated as appropriate based on new or updated information.

ADOPTION OF THE WATER RESOURCE MANAGEMENT PLAN

The formal adoption of the Water Resource Management Plan through Ordinance # 2014-04-00776 occurred on April 17, 2014 by City Council. Appendix C is a copy of the ordinance.

APPENDIX A

List of References

1. Title 30 of the Texas Administrative Code, Part 1, Chapter 288, Subchapter B, Rules 288.20 and 288.22, downloaded from [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=288](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=288), July 2012
2. Freese and Nichols, Inc.: Model Water Resource Management Plan for NTMWD Members Cities and Customers, prepared for the North Texas Municipal Water District, Fort Worth, October 2012.
3. Definitions from City of Austin Water Conservation and Drought Contingency Ordinance adopted August 16, 2012.
http://www.austintexas.gov/sites/default/files/files/Water/Conservation/Planning_and_Policy/ProposedCodeRevision_DRAFT_with_watering_schedule-8-15-2012.pdf
4. Definition from City of San Antonio Water Conservation Ordinance adopted 2005.
http://saws.org/conservation/ordinance/docs/Ch34_Ordinance_2009.pdf
5. Definition developed by Freese and Nichols, Inc.
6. Freese and Nichols, Inc.: Water Conservation and Drought Contingency and Water Emergency Response Plan, prepared for North Texas Municipal Water District, Fort Worth, March 2008.
7. Texas Water Development Board, Texas Commission on Environmental Quality, Water Conservation Advisory Council. "DRAFT Guidance and Methodology for Water Conservation Reporting."
8. Freese and Nichols, Inc. "2011 Region C Water Plan".

Appendix B

Letter to Region C Planning Group

April 15, 2014

Region C Water Planning Group
c/o North Texas Municipal Water District
505 E. Brown St.
P.O. Box 2408
Wylie, TX 75098

Dear Sir/Madam,

Enclosed please find a copy of the Water Conservation Plan and a copy of the Water Resource Management Plan (which is an update to the previous Drought Contingency and Water Emergency Response Plan) for the City of Lucas, Texas. I am submitting a copy of both plans to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules.

The City of Lucas City Council adopted this Water Conservation Plan through Ordinance on April 17, 2014.

Sincerely,

Joni Clarke
City Manager
City of Lucas, TX

Appendix B

Letter to Region D Planning Group

April 15, 2014

Mr. Brett McCoy
Chair, Region D Water Planning Group
700 CR3347
Omaha, TX 75571

Enclosed please find a copy of the Water Conservation Plan and a copy of the Water Resource Management Plan (which is an update to the previous Drought Contingency and Water Emergency Response Plan) for the City of Lucas, Texas. I am submitting a copy of both plans to the Region D Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules.

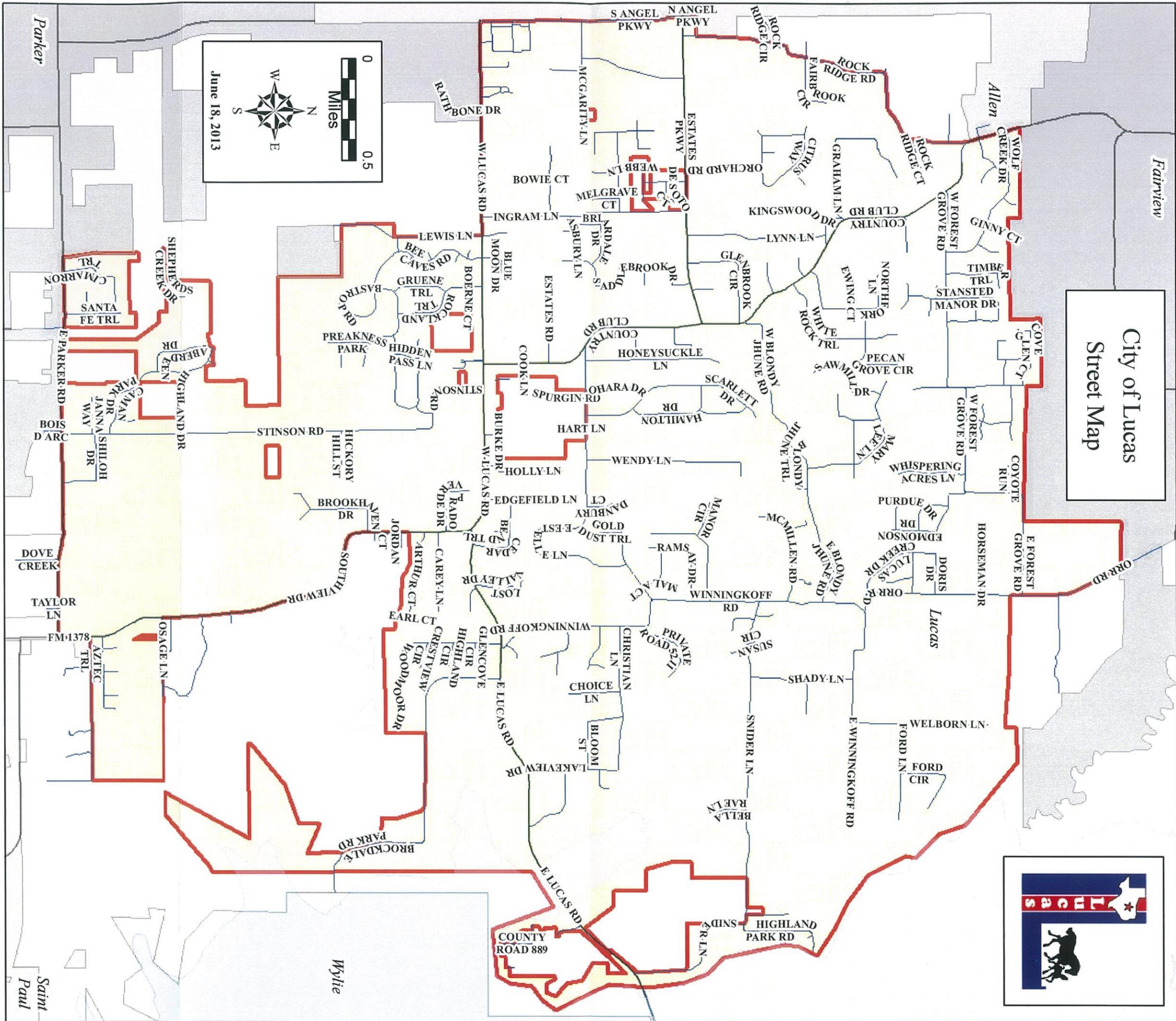
The City of Lucas City Council adopted this Water Conservation Plan through Ordinance on April 17, 2014.

Sincerely,

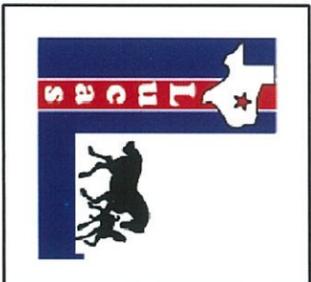
Joni Clarke
City Manager
City of Lucas, TX

Appendix C

Ordinance Adopting Water Resource Management Plan



City of Lucas Street Map

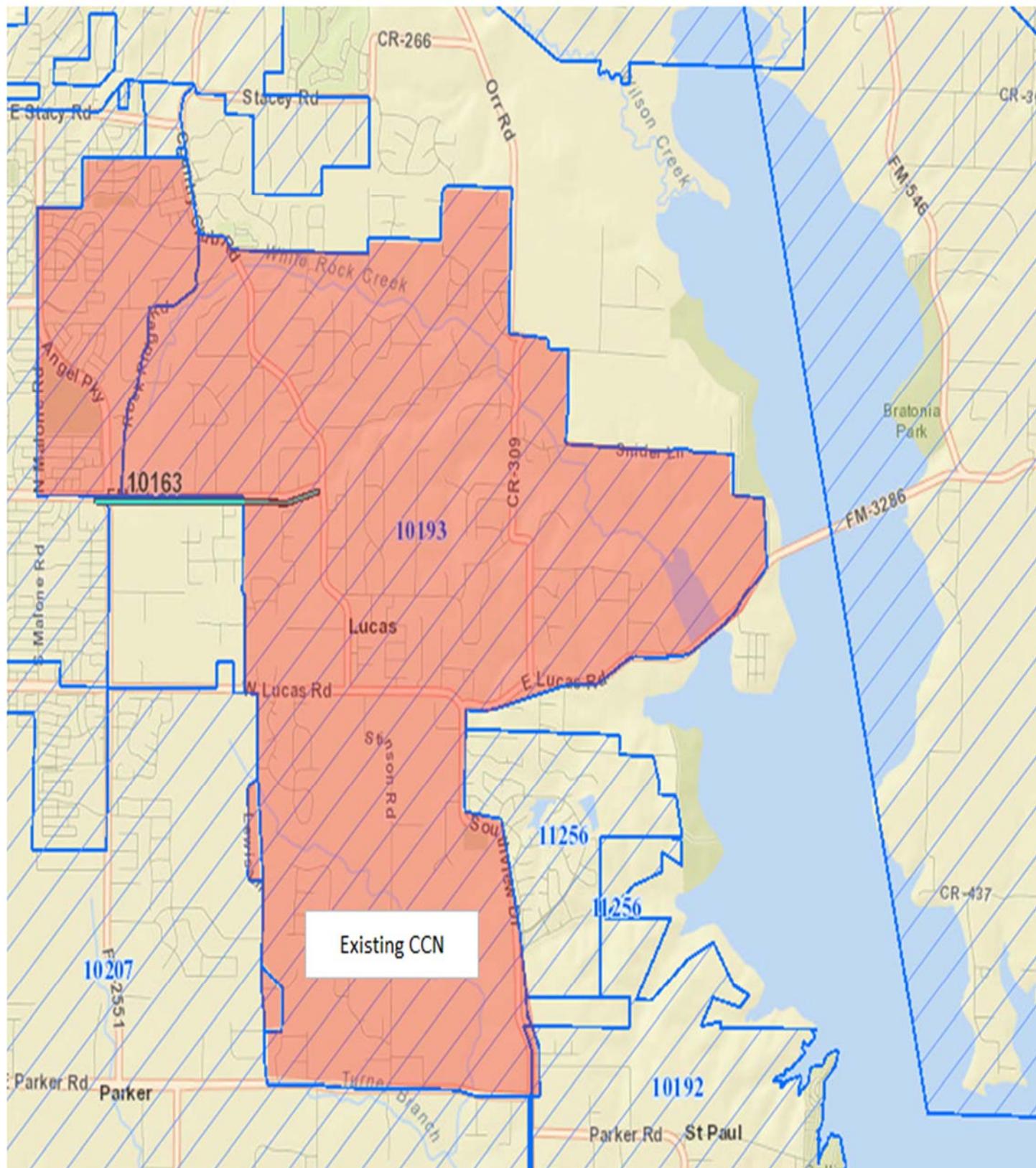


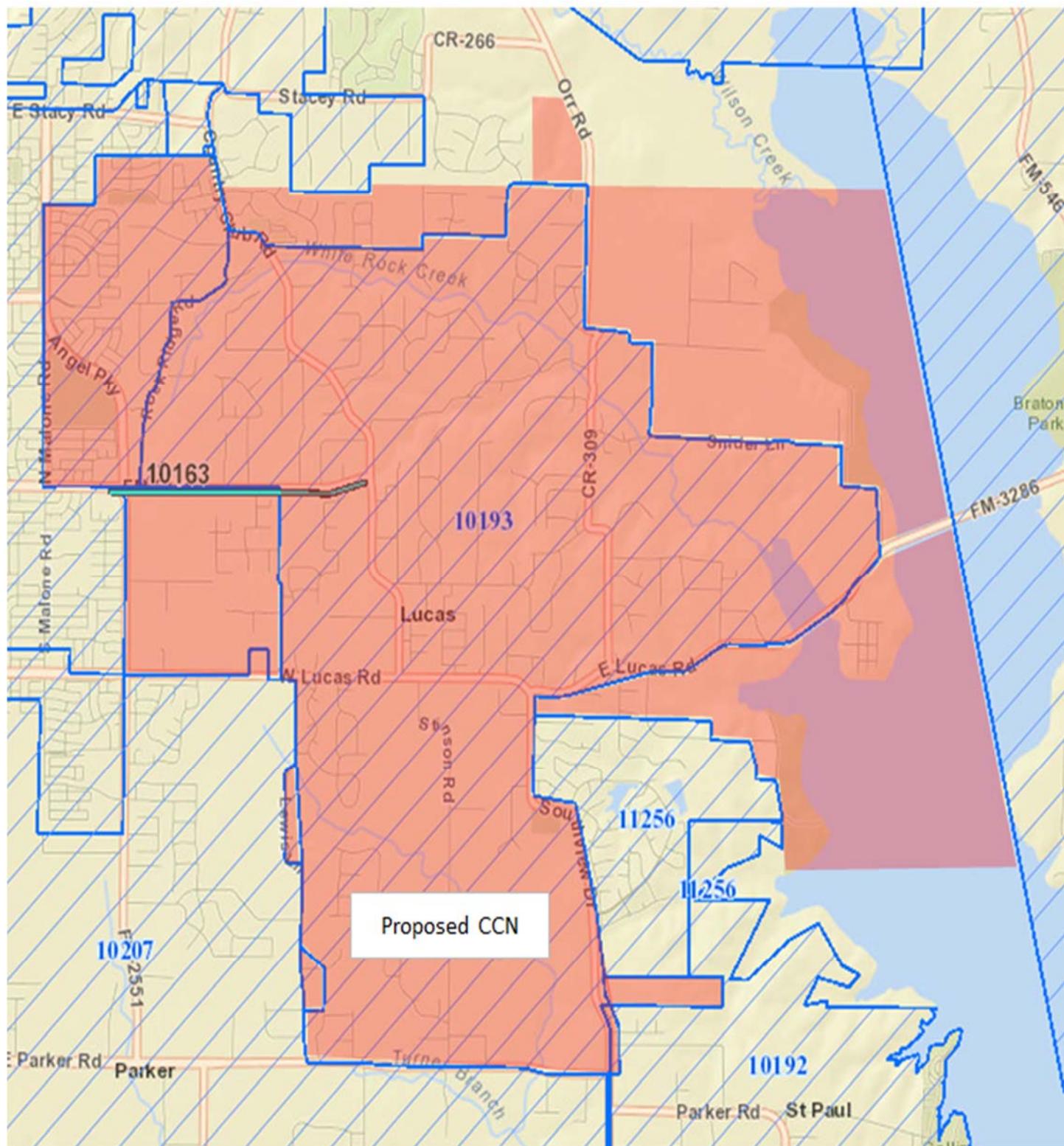
0 0.5
Miles

June 18, 2013

COUNTY ROAD 889

Lucas







**City of Lucas
Council Agenda Request**

Council Meeting: April 17, 2014

Requestor: _____

Prepared by: Kathy Wingo

Account Code #: N/A

Date Prepared: _____

Budgeted Amount: \$ N/A

Exhibits: Yes No

AGENDA SUBJECT:

Adjournment.

RECOMMENDED ACTION:

SUMMARY:

MOTION:

I make a Motion to adjourn the meeting at _____ p.m.

APPROVED BY: _____ Initial/Date

Department Director: _____ / _____

City Manager: _____ / _____