



## **AGENDA**

### **City of Lucas City Council Meeting October 3, 2019**

**7:00 PM**

**City Hall – Council Chambers  
665 Country Club Road – Lucas, Texas**

*Notice is hereby given that a special meeting of the Lucas City Council will be held on Thursday, October 3, 2019 at 7:00 pm at Lucas City Hall, 665 Country Club Road, Lucas, Texas 75002-7651 at which time the following agenda will be discussed. As authorized by Section 551.071 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 on any item on the agenda at any time during the meeting.*

#### **Call to Order**

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

#### **Citizen Input**

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*The Citizen Input portion of the agenda is an opportunity for the public to address the City Council on any subject. By completing a "Request to Speak" form and submitting to the City Secretary, citizens have an opportunity to speak at the City Council meeting. However, in accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decisions but may refer items to City Staff for research and possible inclusion on a future agenda.*

1. Citizen Input (Mayor Jim Olk)

#### **Community Interest**

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*Pursuant to Section 551.0415 of the Texas Government Code, the City Council may report on the following items: 1) expression of thanks, congratulations or condolences; 2) information about holiday schedules; 3) recognition of individuals; 4) reminders about upcoming City Council events; 5) information about community events; and 6) announcements involving imminent threat to public health and safety.*

2. Items of Community Interest. (Mayor Jim Olk)

#### **Consent Agenda**

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*All items listed under the consent agenda are considered routine and are recommended to the City Council for a single vote approval. If discussion is desired, an item may be removed from the consent agenda for a separate vote.*

3. Consent Agenda:
  - A. Consider approval of the minutes of the August 29, 2019 City Council meeting. (City Secretary Stacy Henderson)

- B. Consider approval of the minutes of the September 19, 2019 City Council meeting. (City Secretary Stacy Henderson)
- C. Consider adopting Ordinance 2019-10-00896 amending the Code of Ordinances by amending Chapter 13 titled “Utilities” by retitling Article 13.03 “Water Conservation Plan and Water Resource and Emergency Management Plan”; by retitling Section 13.03.001 “Adoption of Plans” and Section 13.03.002 titled “Penalty” to adopt the “2019 Water Conservation Plan for the City of Lucas” and “2019 Water Resource and Emergency Management Plan. (Development Services Director Joe Hilbourn)

## **Regular Agenda**

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- 4. Consider authorizing the City Manager to enter into a contract for the construction of On-Call Miscellaneous Grading, Excavation, and Finish Work via Work and Purchase Orders (Bid #014-18a) with Four Star Excavation, Inc. in the amount not to exceed \$100,000 from account Improvements Roads 11-8209-301. (City Engineer Stanton Foerster)
- 5. Consider approving Resolution R 2019-10-00490 supporting the application to the 2019/2020 Collin County Call for City Projects for West Lucas Road thoroughfare improvements. (City Engineer Stanton Foerster)
- 6. Review the City Charter and provide direction to the City Attorney regarding any proposed amendments and consider proceeding with a Charter amendment election on May 2, 2020. (City Attorney Joe Gorfida)
- 7. Discuss permitting the sale of beer and wine produced locally during the Lucas Farmers Market. (Development Services Director Joe Hilbourn)

## **Executive Session Agenda**

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*Pursuant to Section 551.071 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. This meeting is closed to the public as provided in the Texas Government Code.*

- 8. Executive Session: An Executive Session is not scheduled for this meeting.
- 9. Adjournment.

## **Certification**

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*I do hereby certify that the above notice was posted in accordance with the Texas Open Meetings Act on the bulletin board at Lucas City Hall, 665 Country Club Road, Lucas, TX 75002 and on the City's website at [www.lucastexas.us](http://www.lucastexas.us) on or before 5:00 p.m. on September 25, 2019.*

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*Stacy Henderson, City Secretary*

*In compliance with the American with Disabilities Act, the City of Lucas will provide for reasonable accommodations for persons attending public meetings at City Hall. Requests for accommodations or interpretive services should be directed to City Secretary Stacy Henderson at 972.912.1211 or by email at [shenderson@lucastexas.us](mailto:shenderson@lucastexas.us) at least 48 hours prior to the meeting.*



# City of Lucas

## City Council Agenda Request

### October 3, 2019

Item No. 01

Requester: Mayor Jim Olk

#### **Agenda Item Request**

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Citizen Input

#### **Background Information**

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NA

#### **Attachments/Supporting Documentation**

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NA

#### **Budget/Financial Impact**

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NA

#### **Recommendation**

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NA

#### **Motion**

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NA



# City of Lucas City Council Agenda Request October 3, 2019

Requester: Mayor Jim Olk

## **Agenda Item Request**

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2. Items of Community Interest.

## **Background Information**

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NA

## **Attachments/Supporting Documentation**

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NA

## **Budget/Financial Impact**

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NA

## **Recommendation**

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NA

## **Motion**

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NA



# City of Lucas Council Agenda Request October 3, 2019

Item No. 03

Requester: City Secretary Stacy Henderson, Development Services Director Joe Hilbourn

## **Agenda Item Request**

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3. Consent Agenda:
  - A. Consider approval of the minutes of the August 29, 2019 City Council meeting.
  - B. Consider approval of the minutes of the September 19, 2019 City Council meeting.
  - C. Consider adopting Ordinance 2019-10-00896 amending the Code of Ordinances by amending Chapter 13 titled "Utilities" by retitling Article 13.03 "Water Conservation Plan and Water Resource and Emergency Management Plan"; by retitling Section 13.03.001 "Adoption of Plans" and Section 13.03.002 titled "Penalty" to adopt the "2019 Water Conservation Plan for the City of Lucas" and "2019 Water Resource and Emergency Management Plan.

## **Background Information**

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### Agenda Item 3C:

The City of Lucas is required every five years to update the Drought Contingency Plan. The City is currently under the North Texas Municipal Water District (NTMWD) 2014 Drought Contingency Plan and Emergency Management Plan. The NTMWD has updated the 2014 Drought Contingency Plan with the 2019 Water Conservation Plan and the 2019 Water Resource and Emergency Management Plan.

## **Attachments/Supporting Documentation**

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1. Minutes of the August 29, 2019 meeting.
2. Minutes of the September 19, 2019 meeting
3. Ordinance 2019-10-00896 – Drought Contingency Plan

## **Budget/Financial Impact**

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NA

## **Recommendation**

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City Staff recommends approval of the Consent Agenda.

## **Motion**

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I make a motion to approve the Consent Agenda as presented.



**City of Lucas  
City Council Meeting  
August 29, 2019  
7:05 P.M.**

*(or immediately following the Lucas Fire Control, Prevention and EMS District meeting)*  
**City Hall - 665 Country Club Road – Lucas Texas**

## **MINUTES**

### **Call to Order**

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Mayor Olk called the meeting to order at 7:02 p.m.

**City Councilmembers Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Wayne Millsap *(arrived at 7:12pm)*  
Councilmember Tim Baney  
Councilmember Steve Duke  
Councilmember Debbie Fisher  
Councilmember Philip Lawrence

**Staff Present:**

City Manager Joni Clarke  
City Secretary Stacy Henderson  
Development Services Director Joe Hilbourn  
Finance Director Liz Exum  
City Engineer Stanton Foerster  
Fire Chief Ted Stephens

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

### **Citizen Input**

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**1. Citizen Input.**

There was no citizen input at this meeting.

### **Community Interest**

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**2. Items of Community Interest.**

Mayor Olk noted that the Lucas Farmers Market would take place on October 12 and November 2 at the Community Park, and the Public Lands Trail Cleanup event was scheduled for September 21. Mayor Olk also explained that he and City Manager Joni Clarke met with Collin County Judge Chris Hill and Commissioner Williams regarding the County's transportation plan for expansion, and the City's vision for future roadways in Lucas. Mayor Olk noted that the City would continue working with the County regarding expansion of Lucas roadways in accordance with the City's vision.

Chief Stephens noted that National Night Out would be held October 1.

### **Consent Agenda**

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**3. Consent Agenda:**

- 3A. Consider amending the Fiscal Year 18/19 budget 11-4914 insurance proceeds in the amount of \$6,295.36 and associated expense account 11-6212-232 Vehicle Maintenance for property damage repairs for the hailstorm that occurred on March 25, 2019.
- 3B. Consider amending FY 2018-2019 budget by appropriating \$27,806 from unrestricted Water Fund reserves to account 51-6400-233 Repairs and Maintenance Water Systems for repair and replacement of burned out pumps and faulty clay valves damaged during peak water volume usage consumed during the months of July and August.

**MOTION:** A motion was made by Councilmember Duke, seconded by Councilmember Baney to approve the Consent Agenda as presented. The motion passed unanimously by a 7 to 0 vote.

## **Regular Agenda**

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### **4. Consider approving a City-sponsored fall parade event on Saturday, October 19, 2019.**

City Manager Joni Clarke stated that a citizen group was interested in holding a community event at the Community Park, but due to certain challenges was unable to do so. As a compromise, City staff was suggesting a city sponsored fall parade and pet costume contest on October 19 that would be held in lieu of the parade at Founders Day. Ms. Clarke stated that staff would manage the parade and include volunteers.

Councilmember Fisher stated that volunteers should be utilized in a better capacity to involve the community and maintain a lighter workload for staff.

The City Council discussed the current workload of staff, the concern of holding too many events in the fall, and the need for volunteers to handle a majority of the workload for the event.

Brenda Rizos, 1200 Winningkoff, discussed the details of the community event that the volunteer group wanted to hold, but due to insurance and park ordinance regulations were not able to conduct. Ms. Rizos stated that they were interested in volunteering for the parade and taking on various aspects of the event.

The City Council discussed logistics of the event, such as road closures, utilization of Collin County Deputies, and who would handle certain details of the event.

Tracy Matern, 2 Choice Lane, stated that the only items City staff needed to take part in was the insurance for the event, traffic related items, and utilization of the deputies. The volunteers would handle the remainder of the event.

**MOTION:** A motion was made by Councilmember Baney, seconded by Councilmember Duke to approve a City-sponsored fall parade event on Saturday, October 19, 2019. The motion passed unanimously by a 7 to 0 vote.

**5. Consider approving Resolution R-2019-08-00488 supporting 1) the reconstruction of the intersection of FM 1378 and FM 3286; 2) a TxDOT study and consideration of the roundabout at said intersection; and 3) providing for an effective date.**

Mayor Pro Tem Peele explained that the Texas Department of Transportation (TxDOT) had presented to the City a proposal for the reconstruction of the intersection that included a 4-lane divided roadway with a median that limited access to the Bait shop and did not allow for a left turn onto Cedar Bend. Mayor Pro Tem Peele stated that the City must seek alternatives that can be presented to TxDOT for consideration. Mayor Pro Tem Peele shared the research that she had conducted regarding roundabouts, traffic calming devices, and traffic circles, the distinction between each item, and what their purpose was related to moving traffic. Mayor Pro Tem Peele discussed roundabouts as a viable option for the intersection because it provided continuous traffic flow, the size could accommodate between one to four lanes, and roundabouts also accommodate larger vehicles and trailers such as horse trailers and fire engines.

Mayor Pro Tem Peele asked that voting on this item be delayed until the September 5, 2019 Council meeting to allow additional time to get information out to the citizens.

Mayor Olk called the following individuals forward that requested to speak:

Patsy Black, 2180 Snider Lane, expressed her concern that a roundabout would not be able to handle the amount of traffic at the intersection currently, and if an 18-wheeler could maneuver within the roundabout.

Brenda Rizos, 1200 Winningkoff, expressed her concerns regarding the larger trailers and trucks being able to maneuver within the roundabout and if the roundabout would provide relief to the congestion at that intersection.

Mohammad Dezfoolian, 175 Southview, owner of the Lucas Food Mart expressed his concern that TxDOT's proposal would cut off access to his property and was unsure if the roundabout would ease congestion in the area.

City Engineer Stanton Foerster discussed with the Council the timeline and process for approving and constructing roadways. Mr. Foerster stated that a Resolution from the Council would be needed for TxDOT to consider another alternative.

Mayor Olk read emails received into the record from the following individuals:

Richard Meyer, 1475 Holy Oak, stated he was in favor of the roundabout.

Scott and Angela Areis, stated their opposition to the roundabout.

Kenneth Bird, 4 Orchard Road, stated their opposition to the roundabout.

**MOTION:** A motion was made by Mayor Pro Tem Peele, seconded by Councilmember Duke to table this item for consideration to the September 5, 2019 City Council meeting. The motion passed unanimously by a 7 to 0 vote.



**6. Consider adopting Ordinance 2019-08-00898 approving the budget for fiscal year beginning October 1, 2019 and ending September 30, 2020.**

**MOTION:** A motion was made by Mayor Olk, seconded by Councilmember Duke to adopt Ordinance 2019-08-00898 approving the budget for fiscal year beginning October 1, 2019 and ending September 30, 2020. The motion passed unanimously by a 7 to 0 vote with the following roll call vote taken:

Councilmember Fisher:	Yes
Councilmember Baney:	Yes
Councilmember Duke:	Yes
Mayor Olk:	Yes
Mayor Pro Tem Peele:	Yes
Councilmember Millsap:	Yes
Councilmember Lawrence:	Yes

**MOTION:** A motion was made by Mayor Olk, seconded by Councilmember Lawrence to ratify the property tax revenue increase reflected in the fiscal year 2019-2020 adopted budget. The motion passed by a 6 to 1 vote with the following roll call vote taken:

Councilmember Fisher:	Yes
Councilmember Baney:	Yes
Councilmember Duke:	Yes
Mayor Olk:	Yes
Mayor Pro Tem Peele:	Yes
Councilmember Millsap:	Nay
Councilmember Lawrence:	Yes

**7. Consider adopting Ordinance 2019-08-00899 of the City of Lucas, Texas, levying Ad Valorem Taxes for the Tax Year 2019 (Fiscal Year 2019-2020) at a rate of \$0.303216 per one hundred (\$100) assessed valuation on all taxable property within the corporate limits of the City of Lucas as of January 1, 2019.**

**MOTION:** A motion was made by Councilmember Lawrence, seconded by Baney to approve the property tax rate be increased by the adoption of a tax rate of \$0.303216, which is effectively a 1.96 percent increase in the tax rate. The motion passed by a 6 to 1 vote with the following roll call vote taken:

Councilmember Fisher:	Yes
Councilmember Baney:	Yes
Councilmember Duke:	Yes
Mayor Olk:	Yes
Mayor Pro Tem Peele:	Yes
Councilmember Millsap:	Nay
Councilmember Lawrence:	Yes

## Executive Session Agenda

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### 8. Executive Session.

Pursuant to Section 551.072 of the Texas Government Code, the City Council will convene into Executive Session to deliberate the purchase of real property located within the City of Lucas.

The City Council convened into Executive Session at 8:29 pm.

### 9. Reconvene from Executive Session and take any action necessary as a result of the Executive Session.

The City Council reconvened from Executive Session at 8:41pm. There was no action taken as a result of the Executive Session.

### 10. Adjournment.

**MOTION:** A motion was made by Mayor Olk, seconded by Councilmember Millsap to adjourn the meeting at 8:41 pm. The motion passed unanimously by a 7 to 0 vote.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor Jim Olk

\_\_\_\_\_  
Stacy Henderson, City Secretary



**City of Lucas  
City Council Meeting  
September 19, 2019  
7:00 P.M.**

**City Hall - 665 Country Club Road – Lucas Texas**

**MINUTES**

**Call to Order**

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

**City Councilmembers Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Tim Baney  
Councilmember Steve Duke  
Councilmember Debbie Fisher  
Councilmember Philip Lawrence

**City Staff Present:**

City Manager Joni Clarke  
City Secretary Stacy Henderson  
Development Services Director Joe Hilbourn  
City Engineer Stanton Foerster  
Fire Chief Ted Stephens  
EMS Officer Aaron Alderdice

**City Councilmember Absent:**

Councilmember Wayne Millsap

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

**Citizen Input**

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**1. Citizen Input.**

There was no citizen input at this meeting.

**Community Interest**

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**2. Items of Community Interest.**

Mayor Olk noted the following items of community interest:

- Lucas Farmers Market would take place on October 12 and November 2 at the Community Park
- A Public Lands Trail Cleanup event was scheduled for September 21 at the Brockdale Park and Highland Park trailheads
- Registration for the Scarecrow Contest begins October 1
- A City sponsored equestrian and pet parade was scheduled for October 19 from 10 am to Noon at Hart Elementary

## Consent Agenda

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### 3. Consent Agenda:

- A. Consider approval of the minutes of the September 5, 2019 City Council meeting.
- B. Consider authorizing the Mayor to enter into an interlocal agreement between the City of Lucas and Collin County for animal sheltering services for a one-year period beginning October 1, 2019 through September 30, 2020.
- C. Consider adopting Ordinance 2019-09-00900 of the City of Lucas, Texas, amending the Code of Ordinances by amending Chapter 3 titled "Building Regulations" by amending Article 3.04 titled "Building Code" by adopting the 2015 Edition of the International Building Code with amendments; by amending Article 3.05 Titled "Mechanical Code" by adopting the 2015 Edition of the International Mechanical Code with amendments; by amending Article 3.06 titled "Plumbing" by amending Division 2 titled "Plumbing Code" by adopting the 2015 Edition of the International Plumbing Code with amendments; by amending Article 3.07 titled "Electricity" by amending Division 3 titled "Electrical Code" by adopting the 2014 National Electrical Code with amendments; by amending Article 3.08 titled "Residential Code" by adopting the 2015 Edition of the International Residential Code with amendments and Appendices A, B, C, D, E, F, G, H, J, M, N, O, P, Q and U, save and except Sections R324.1 through R324.2 of the 2003 International Residential Code which remain unchanged to require Residential Fire Sprinklers; by amending Article 3.09 titled "Energy Conservation Code" by adopting the 2015 Edition of the International Energy Conservation Code with amendments; by amending Article 3.10 titled "Fuel Gas Code" by adopting the 2015 Edition of the International Fuel Gas Code with amendments; by adding a new Article 3.20 titled "Existing Building Code" to adopt the 2015 Edition of the International Building Code with amendments; by adding a new Article 3.21 titled "Swimming Pool and Spa Code" to adopt the 2015 Edition of the International Swimming Pool and Spa Code with amendments; by amending Chapter 5 titled "Fire Prevention and Protection" by amending Article 5.03 titled "Fire Code" by adopting the 2015 Edition of the International Fire Code with amendments and Appendices A-I and the latest edition of the National Fire Protection Association Standard 1, save and except Section 903.2 of the 2003 International Fire Code which remains unchanged to require the installation of automatic sprinkler systems throughout all levels of new Group A, B, E, F, H, I, M, R, S and Commercial U Occupancies.

Councilmember Fisher and Mayor Pro Tem Peele asked that Agenda Item 3C be removed from the Consent Agenda for further discussion.

**MOTION:** A motion was made by Councilmember Fisher, seconded by Councilmember Lawrence to approve Agenda Items A and B on the Consent Agenda. The motion passed unanimously by a 6 to 0 vote.

## Regular Agenda

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- 3C. Consider adopting Ordinance 2019-09-00900 of the City of Lucas, Texas, amending the Code of Ordinances by amending Chapter 3 titled “Building Regulations” by amending Article 3.04 titled “Building Code” by adopting the 2015 Edition of the International Building Code with amendments; by amending Article 3.05 Titled “Mechanical Code” by adopting the 2015 Edition of the International Mechanical Code with amendments; by amending Article 3.06 titled “Plumbing” by amending Division 2 titled “Plumbing Code” by adopting the 2015 Edition of the International Plumbing Code with amendments; by amending Article 3.07 titled “Electricity” by amending Division 3 titled “Electrical Code” by adopting the 2014 National Electrical Code with amendments; by amending Article 3.08 titled “Residential Code” by adopting the 2015 Edition of the International Residential Code with amendments and Appendices A, B, C, D, E, F, G, H, J, M, N, O, P, Q and U, save and except Sections R324.1 through R324.2 of the 2003 International Residential Code which remain unchanged to require Residential Fire Sprinklers; by amending Article 3.09 titled “Energy Conservation Code” by adopting the 2015 Edition of the International Energy Conservation Code with amendments; by amending Article 3.10 titled “Fuel Gas Code” by adopting the 2015 Edition of the International Fuel Gas Code with amendments; by adding a new Article 3.20 titled “Existing Building Code” to adopt the 2015 Edition of the International Building Code with amendments; by adding a new Article 3.21 titled “Swimming Pool and Spa Code” to adopt the 2015 Edition of the International Swimming Pool and Spa Code with amendments; by amending Chapter 5 titled “Fire Prevention and Protection” by amending Article 5.03 titled “Fire Code” by adopting the 2015 Edition of the International Fire Code with amendments and Appendices A-I and the latest edition of the National Fire Protection Association Standard 1, save and except Section 903.2 of the 2003 International Fire Code which remains unchanged to require the installation of automatic sprinkler systems throughout all levels of new Group A, B, E, F, H, I, M, R, S and Commercial U Occupancies.

Mayor Olk noted that Appendix Q related to swimming pools had been removed from the International Residential Code as it was already addressed in the International Building Code.

Mayor Pro Tem Peele and Councilmember Fisher were concerned that eliminating the exemption from the International Building Code for accessory buildings under 120 square feet would negatively impact single-family homes and agricultural properties.

Development Services Director Joe Hilbourn responded that the International Building Code only applied to non-residential structures and their accessory buildings. The International Residential Code applied to residential structures and their accessory buildings. Staff was not proposing to eliminate the exemption for small accessory structures from the International Residential Code, only the International Building Code.

**MOTION:** A motion was made by Councilmember Fisher, seconded by Councilmember Baney to approve Ordinance 2019-09-00900 of the City of Lucas, Texas adopting the International Codes as outlined above. The motion passed unanimously by a 6 to 0 vote.

**4. Consider amending the existing agreement with Barnes Waste Disposal for solid waste collection and disposal services and increase the rate for basic, expanded and expanded plus service by \$0.78.**

City Manager Joni Clarke stated that Barnes Waste Disposal notified the City of the disposal rate increase from the Melissa landfill, and that a \$0.78 increase was being requested by Barnes for each category of solid waste services. Ms. Clarke noted that Barnes was in year two of their five-year contract.

Norman Barnes, Barnes Waste Disposal stated that he received notice in early September that the Melissa landfill would be raising their rates from \$34.00 per ton to \$38.00 per ton to dispose of waste collected. Mr. Barnes stated that they were proposing to raise costs to cover the additional fees.

Councilmember Lawrence asked when the Melissa landfill had their last rate increase? Mr. Barnes responded approximately ten years ago.

**MOTION:** A motion was made by Councilmember Lawrence, seconded by Councilmember Duke to approve amending the existing agreement with Barnes Waste Disposal for solid waste collection and disposal services and increase the rate for basic, expanded and expanded plus service by \$0.78 monthly. The motion passed unanimously by a 6 to 0 vote.

**5. Provide an overview of Lucas Fire-Rescue's emergency medical services (EMS) billing policy and practices.**

EMS Officer Aaron Alderdice discussed with the Council the emergency medical services billing policy and practices provided by their outside vendor Emergicon. Mr. Alderdice discussed billing of Medicare and commercial insurances, and that the City had a 51 percent collection rate which was above average for the area. Mr. Alderdice noted that Emergicon receives 11 percent of what was collected. He also discussed how customers were billed depending on the level of service received.

The City Council was in agreement that the collection of services was being handled appropriately.

**6. Consider approving the updated Capital Improvement Plan from October 1, 2019 through September 30, 2025.**

City Engineer Stanton Foerster explained that the Capital Improvement Plan was updated to include 2019 Certificate of Obligation water and roadway projects, as well as updating completed projects with actual funds spent.

Councilmember Fisher asked that street maintenance identified in year 2021-2026 as well as year 2026-2031 be reduced from \$1,000,000 to \$750,000.

**MOTION:** A motion was made by Mayor Olk, seconded by Councilmember Baney to approve the updated Capital Improvement Plan from October 1, 2019 through September 30, 2025. The motion passed unanimously by a 6 to 0 vote.

**7. Consider appointments to the Technology Committee to fill vacant positions.**

Councilmember Fisher noted that the positions previously held by Trey Sleeper and John Frazier needed to be filled on the Technology Committee. Councilmember Fisher nominated Jamie Gibson and Troy Dechant to the Technology Committee.

**MOTION:** A motion was made by Councilmember Fisher, seconded by Councilmember Baney to appoint Jamie Gibson and Troy Dechant to the Technology Committee. The motion passed unanimously by a 6 to 0 vote.

**8. Consider approving Resolution R 2019-09-00489 nominating up to five board candidates to the Collin Central Appraisal District Board of Directors.**

Councilmember Fisher nominated Wayne Coltrane to the Collin Central Appraisal District Board of Directors, noting that he came highly recommended. He was an Appraisal Review Analyst and Certified Broker Appraiser and would be a good fit for this board.

Mayor Olk noted that Councilmember Millsap supported Wayne Mayo and the City of Allen requested the City also provide support for Gary Rodenbaugh. Mayor Olk reminded the Council that up to five members could be nominated.

**MOTION:** A motion was made by Mayor Pro Tem Peele, seconded by Councilmember Duke to approve Resolution R 2019-09-00489 nominating Wayne Coltrane, Wayne Mayo and Gary Rodenbaugh to the Collin Central Appraisal District Board of Directors. The motion passed unanimously by a 6 to 0 vote.

**9. Consider a request from the City of Lucas Farmers Market Committee to exempt participants from permitting fees for the October 12 and November 2 Farmers Market as required per the City's Code of Ordinances, Article 4.000 Health Department, Section 4.100 Commercial Business.**

City Manager Joni Clarke explained that two farmers markets were being held in October and November to assist in building the event and establishing a farmers market in Lucas. Staff was requesting to exempt participants from permitting fees for these two events to attract vendors and staff would come back at a future date where a fee schedule could be recommended. Ms. Clarke noted that over 30 vendors would be participating in the event.

The Council discussed the collection of fees at a future date, waiving fees for the first two events and having a place for donations. The application and approval process were also discussed and having an appropriate number of produce and food versus artisans.

**MOTION:** A motion was made by Councilmember Lawrence, seconded by Councilmember Duke to exempt participants from permitting fees for the October 12 and November 2 Farmers Market. The motion passed unanimously by a 6 to 0 vote.

## Executive Session Agenda

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### 10. Executive Session.

An Executive Session was not held at this meeting.

## Adjournment

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### 11. Adjournment.

**MOTION:** A motion was made by Mayor Olk, seconded by Councilmember Baney to adjourn the meeting at 8:10 pm. The motion passed unanimously by a 6 to 0 vote.

APPROVED:

ATTEST:

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Mayor Jim Olk

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Stacy Henderson, City Secretary





## **ORDINANCE 2019-10-00896**

[ADOPTING 2019 WATER CONSERVATION PLAN AND 2019 WATER RESOURCE AND EMERGENCY MANAGEMENT PLAN FOR THE CITY OF LUCAS]

**AN ORDINANCE OF THE CITY OF LUCAS, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 13 TITLED "UTILITIES" BY RETITLING ARTICLE 13.03 "WATER CONSERVATION PLAN AND WATER RESOURCE AND EMERGENCY MANAGEMENT PLAN"; BY RETITLING SECTION 13.03.001 "ADOPTION OF PLANS" AND SECTION 13.03.002 TITLED "PENALTY" TO ADOPT THE "2019 WATER CONSERVATION PLAN FOR THE CITY OF LUCAS" AND "2019 WATER RESOURCE AND EMERGENCY MANAGEMENT PLAN"; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; 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 Water Code and the regulations of the Texas Commission on Environmental Quality (the "Commission") require that the City adopt a Water Conservation Plan and a Water Resource and Emergency Management Plan; and

**WHEREAS**, the City has determined an urgent need in the best interest of the public to adopt a Water Conservation Plan and a Water Resource and Emergency Management Plan; and

**WHEREAS**, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such Ordinances necessary to preserve and conserve its water resources; and

**WHEREAS**, the City Council desires to amend the Code of Ordinances by adopting the "2019 Water Conservation Plan for the City of Lucas" and the North Texas Municipal Water District ("NTMWD") Model Water Resource and Emergency Management Plan" which shall be officially known as the "2019 Water Resource and Emergency Management Plan for the City of Lucas", attached hereto as Exhibit "A," incorporated herein by reference and made a part hereof, as official City policy;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS:**

**SECTION 1.** That the City of Lucas Code of Ordinances is amended by amending Chapter 13 titled “Utilities” by retitling Article 13.03 to “2019 Water Conservation Plan for the City of Lucas”, to read as follows:

**“Chapter 13  
UTILITIES**

....

**ARTICLE 13.03 WATER CONSERVATION PLAN AND WATER RESOURCE AND  
EMERGENCY MANAGEMENT PLAN**

**Sec. 13.03.001 Adoption of plans**

The city council hereby approves and adopts the “2019 Water Conservation Plan for the City of Lucas” and the “2019 Water Resource and Emergency Management Plan for the City of Lucas” (the “plans”), attached hereto as Exhibit “A”, as if recited verbatim herein. The city commits to implement the requirements and procedures set forth in the adopted plan.

Exhibit “A” is hereby adopted by reference for the city and made part hereof for all purposes, the same as if fully copied herein.

**Sec. 13.03.002 Penalty**

- (a) It is unlawful for any person to violate the provisions of the plan.
- (b) For a first violation of any provision of the 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.
- (c) For a second violation of any provision of the 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 dollar (\$2,000.00).
- (d) 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 2.** That all provisions of the Ordinances of the City of Lucas, Texas, 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 not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** An offense committed before the effective date of this ordinance is governed by 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 4.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

**SECTION 5.** That any person violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Lucas as heretofore amended and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

**SECTION 6.** This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provides.

**DULY PASSED AND APPROVED BY THE CITY COUNSEL OF THE CITY OF LUCAS, COLLIN COUNTY, TEXAS, ON THIS 3<sup>RD</sup> DAY OF OCTOBER, 2019.**

APPROVED:

\_\_\_\_\_  
Jim Olk, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Joseph J. Gorfida, Jr., City Attorney  
(09-25-2019:TM 111148)

\_\_\_\_\_  
Stacy Henderson, City Secretary

**EXHIBIT “A”**  
**2019 Water Conservation Plan for the City of Lucas and**  
**2019 Water Resource and Emergency Management Plan for the City of Lucas**



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

DATE 09/15/2019

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## 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 TCEQ has developed guidelines and requirements governing the development of water conservation and drought contingency plans for municipal uses by public water suppliers.<sup>2</sup> The TCEQ guidelines and requirements for wholesale suppliers are included in Appendix B. The North Texas Municipal Water District (“NTMWD or District”) has developed this Model Water Conservation Plan to be consistent with TCEQ guidelines and requirements. The best management practices established by the Water Conservation Implementation Task Force<sup>3</sup> were also considered in the development of the water conservation measures.

This Model Water Conservation Plan includes measures that are intended to result in ongoing, long-term water savings. This plan replaces the previous plans dated August 2004, April 2006, March 2008 and April 2014<sup>4</sup>.

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 maximize 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.



The water conservation plan presented in this document is a Model Water Conservation Plan intended for adoption by the NTMWD Member Cities and Customers. In order to adopt this plan, each Member City and Customer will need to do the following:

- Complete the water utility profile (provided in Appendix C).
- Set five-year and ten-year goals for per capita water use.
- Adopt ordinance(s) or regulation(s) approving the model plan.
- Complete the annual water conservation implementation report (in Appendix J).

The water utility profile, goals, and ordinance(s) or regulations should be provided to NTMWD in draft form for review and comments. Final adopted versions should also be provided to NTMWD, as well as TCEQ and should be attached to the adopted water conservation plan as Appendix G. This Model Water Conservation Plan includes all the elements of such plans required by TCEQ. Some elements of this model plan go beyond TCEQ requirements. Any water supplier wishing to adjust elements of the Model Water Conservation Plan should coordinate with NTMWD.

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\*Superscripted numbers match references listed in Appendix A.

## 2. DEFINITIONS AND ABBREVIATIONS

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 and league play sanctioned by the utility providing retail water supply.
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 NTMWD provides wholesale water that are not members of NTMWD.
4. **DRIP IRRIGATION** is a type of micro-irrigation system that operates at low pressure and delivers water in slow, small drips to individual plants or groups of plants through a network of plastic conduits and emitters; also called trickle irrigation.
5. **EVAPOTRANSPIRATION (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.
6. **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.
7. **IRRIGATION SYSTEM** means a permanently installed, custom-made, site-specific system of delivering water generally for landscape irrigation via a system of pipes or other conduits installed below ground.
8. **LANDSCAPE** means any plant material on a property, including any tree, shrub, vine, herb, flower, succulent, ground cover, grass or turf species, that is growing or has been planted out of doors.
9. **MEMBER CITIES** include the cities of Allen, Farmersville, Forney, Frisco, Garland, McKinney, Mesquite, Plano, Princeton, Richardson, Rockwall, Royse City, and Wylie, Texas, which are members of NTMWD.



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. REGULATED IRRIGATION PROPERTY means any (customer class, i.e. commercial) property that uses (over a certain amount) of water or more for irrigation purposes in a single calendar year or is greater than (certain size).
12. RESIDENTIAL GALLONS PER CAPITA PER DAY means (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. RETAIL CUSTOMERS include those customers to whom the utility provides retail water from a water meter.
14. TOTAL GALLONS PER CAPITA PER DAY (Total GPCD) means 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.
15. WATER CONSERVATION PLAN means the Member City or Customer water conservation plan approved and adopted by the utility.

**Abbreviations**

<b>Abbreviation</b>	<b>Full Nomenclature</b>
BMP	Best Management Practices
NTMWD or District	North Texas Municipal Water District
TCEQ	Texas Commission on Environmental Quality
TWDB	Texas Water Development Board
WCAC	Water Conservation Advisory Council
WCP	Water Conservation Plan

### **3. REGULATORY BASIS FOR WATER CONSERVATION PLAN**

#### **3.1 TCEQ Rules Governing Conservation Plans**

The TCEQ rules governing development of water conservation plans for municipal uses by public water suppliers are contained in Title 30, Chapter 288, Subchapter A, Section 288.2 of the Texas Administrative Code, which is included in Appendix B. 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 water.”<sup>2</sup> The water conservation plan elements required by the TCEQ water conservation rules that are covered in this water conservation plan are listed below.

#### Minimum Conservation Plan Requirements

The minimum requirements in the Texas Administrative Code for Water Conservation Plans for Municipal Uses by Public Water Suppliers are covered in this water conservation plan as follows:

- 288.2(a)(1)(A) – Utility Profile – Section 4 and Appendix C
- 288.2(a)(1)(B) – Record Management System – Section 6.1.5
- 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 – Sections 6.1.3 and 6.1.4
- 288.2(a)(1)(G) – Public Education and Information Program – Section 6.2
- 288.2(a)(1)(H) – Non-Promotional Water Rate Structure – Section 6.6
- 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) – 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. The template for this report is included in Appendix J.

In addition to the TCEQ required elements of a water conservation plan, NTMWD also requires the following water conservation strategies to be included in the Member City and Customer water conservation plans:

- 288.2(a)(3)(A) – Conservation Oriented Water Rates – Section 6.6
- 288.2(a)(3)(F) – Considerations for Landscape Water Management Regulations – Section 7.4 and Appendix E

TCEQ rules also include options of, conservation measures that may be adopted by public water suppliers but are not required. NTMWD recommends that the following strategies be included in Member City and Customer water conservation plans:

- 288.2(a)(3)(B) – Ordinances, Plumbing Codes or Rules on Water-Conserving Fixtures – Section 7.1
- 288.2(a)(3)(C) – Replacement or Retrofit of Water-Conserving Plumbing Fixtures – Section 7.5
- 288.2(a)(3)(D) – Reuse and Recycling of Wastewater – Section 7.2
- 288.2(a)(3)(F) – Considerations for Landscape Water Management Regulations – Section 7.3, 7.4
- 288.2(a)(3)(G) – Monitoring Method – Section 7.6
- 288.2(a)(3)(H) – Additional Conservation Practices – Section 7.5



### **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<sup>5</sup>, in consultation with the WCAC (the “Guidance”). The Guidance was developed in response to a charge by the 82<sup>nd</sup> 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 C to this Model Water Conservation Plan is a template water utility profile based on the format recommended by the TCEQ. In adopting this Model Water Conservation Plan, each Member City and Customer will provide a draft water utility profile to NTMWD for review and comment. A final water utility profile will be provided to NTMWD as well as to TCEQ.

## 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, each Member City and Customer must develop 5-year and 10-year goals for water savings, including goals for per capita municipal use and for water loss programs. These goals should be submitted to NTMWD in draft form for review. 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. NTMWD will publish the amount of reuse to be is calculating the credit for reuse.
- Maintain the water loss percentage in the system below 12 percent annually in 2018 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, such as rural systems, may adopt a higher percent nonrevenue water 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 7.4 and Appendix E. (This ordinance is required by NTMWD.)
- Decrease waste in lawn irrigation by implementation and enforcement of landscape water management regulations, as discussed in Section 7.5. (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	Current Average (GPCD)	5-Year Goal (GPCD)	10-Year Goal (GPCD)
Current 5-Year Average Total Per Capita Use with Credit for Reuse	159.24	154	150
Current 5-Year Average Residential Per Capita Use	150.07	145	140
Water Loss (GPCD) <sup>1</sup>	23.70	21	20
Water Loss (Percentage) <sup>2</sup>	12.42%	11.42%	10.42%
Expected Reduction due to Low-Flow Plumbing Fixtures	0.00	0	0
Projected Reduction Due to Elements in this Plan	5.24	4	4
<b>Water Conservation Goals (with credit for reuse)</b>	<b>159.24</b>	<b>154</b>	<b>150</b>

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

## **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 NTMWD using meters with accuracy of  $\pm 2\%$ . These meters are calibrated on an annual basis by NTMWD 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, Member Cities and Customers already meter retail and wholesale water users. For those Member Cities and Customers who do not currently meter all internal water uses, as well as all subsequent users.

Most Member Cities and Customers test and replace their customer meters on a regular basis. All customer meters should be replaced on a minimum of a 15-year cycle. Those who do not currently have a meter testing and replacement program should implement such a program.

#### **6.1.3 Determination and Control of Water Loss**

Total water loss is the difference between the water delivered to a Member City or Customer from NTMWD (and other supplies, if applicable) and the metered water sales to customers plus water authorized for use but not sold. (Authorized for use but not sold would include use for fire fighting, releases for flushing of lines, uses associated with new construction, etc.) Total water loss includes two categories:

- Apparent Losses – Includes inaccuracies in customer meters (customer meters tend to run more slowly as they age and under-report actual use); Losses due to

illegal connections and theft. (included in Appendix H); accounts that 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 and unreported losses.

Measures to control water loss should be part of the routine operations of Member Cities and Customers. Maintenance crews and personnel should look for and report evidence of leaks in the water distribution system. A leak detection and repair program is described in Section 6.1.4 below. Meter readers should watch for and report signs of illegal connections so that they can be quickly addressed.

Total water loss should be calculated in accordance with the provisions of Appendix J. With the measures described in this plan, Member Cities and Customers should maintain a water loss percentage below 12 percent in 2018 each year. If total water loss exceeds this goal, the Member City or Customer should implement a more intensive audit to determine the source(s) of loss and to reduce the water loss. The annual conservation report described below is the primary tool that should be used to monitor water loss.

As advance metering technology advances utilities that have these systems should consider as a BMP utilizing the capabilities of these system to provide leak alerts. Retail customers whose accounts demonstrate leaks can be notified by their water provider of potential leak situations for account holder remediation.

#### **6.1.4 Leak Detection and Repair**

As described above, water utility 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, Chapter 288, Section 288.2(a)(1)(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 should be included in an annual water conservation report, as described in Section 7.6 below.

Those entities whose record management systems do not currently comply with this requirement should move to implement such a system within the next five years.

## **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 NTMWD.
- Utilize the “Water4Otter” campaign for students.
- Insert water conservation information with water bills. Inserts will include material developed by Member Cities’ and Customers’ staff and material obtained from the TWDB, 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 NTMWD 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](http://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 the Member City’s or Customer’s website (if applicable) 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.
- NTMWD is an EPA Water Sense Partner and participates in the EPA Water Sense sponsored “Fix a Leak Week.” NTMWD encourages all member cities and customers to become EPA Water Sense Partners.
- Utilize the Water My Yard website and encourage customers to sign-up to receive weekly watering advice.

### **6.3 NTMWD Reservoir System Operation Plan**

Member Cities and Customers of NTMWD purchase treated water from NTMWD and do not have surface water supplies for which to implement a reservoir system operations 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 letter sent to the Chairs of the water planning group accompanied by this Model Water Conservation Plan. 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 a Member City and/or Customer 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, Chapter 288, of the Texas Administrative Code. This requirement extends to each successive wholesale customer in the resale of the water.

### **6.6 Increasing Block Water Rate Structure**

Each Member City and Customer must adopt, if it has not already done so, an increasing block rate water structure that is intended to encourage water conservation and to discourage excessive use and waste of water upon completion its next rate study or within five years. An example water rate structure is as follows:

#### Residential Rates

1. Monthly minimum charge. This can (but does not have to) include up to 2,000 gallons water use with no additional charge.
2. Base charge per 1,000 gallons up to the approximate average residential use.

3. 2<sup>nd</sup> tier (from the average to 2 times the approximate average) at 1.25 to 2.0 times the base charge.
4. 3<sup>rd</sup> tier (above 2 times the approximate average) at 1.25 to 2.0 times the 2<sup>nd</sup> tier.
5. Additional tiers with further increases if desired.
6. The residential rate can also include a lower tier for basic household use up to 4,000 gallons per month or a determined basic use.

#### Commercial/Industrial Rates

Commercial/Industrial rates should include at least 2 tiers, with rates for the 2<sup>nd</sup> tier set at 1.25 to 2.0 times that of the first tier. Higher water rates for commercial irrigation use are encouraged, but not required.



## **7. ENHANCED WATER CONSERVATION STRATEGIES**

### **7.1 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. As of January 1, 2014, the state requires maximum average flow rates of 1.28 gallons per flush (gpf) for toilets and 0.5 gpf for urinals. Similar standards are now required under federal law. These state and federal standards assure that all new construction and renovations will use water-conserving fixtures. Rebate programs to encourage replacement of older fixtures with water conservation programs are discussed in Section 7.5.

### **7.2 Reuse and Recycling of Wastewater**

Most Member Cities and Customers do not own and operate their own wastewater treatment plants. Their wastewater is treated by NTMWD. NTMWD currently has the largest wastewater reuse program in the state. NTMWD has water rights allowing reuse of up to 71,882 acre-feet per year of treated wastewater discharges from the Wilson Creek Wastewater Treatment Plant for municipal purposes. In addition, NTMWD has also developed the East Fork Reuse Project which can divert up to 157,393 acre-feet per year based on treated wastewater discharges by NTMWD. With the addition of the Main Stem Pump station the District will be able to increase flows through the East Fork Reuse Project up to an additional 56,100 acre-feet per year. When fully developed, these three reuse projects will provide up to 42 percent of the NTMWD's currently permitted water supplies. NTMWD also provides treated effluent from its wastewater treatment plants available for direct reuse for landscape irrigation and industrial use.

Those Member Cities and Customers who own and operate their own wastewater treatment plants should move toward reusing treated effluent for irrigation purposes at their plant site over the next three years. These entities should also seek other alternatives for reuse of recycled wastewater effluent.

### **7.3 Interactive Weather Stations / "Water My Yard" Program**

NTMWD has developed the Water My Yard program to install weather stations throughout its service area in order to provide consumers with a weekly e-mail and information through the "Water My Yard" website to assist consumers in determining an adequate amount of

supplemental water to maintain healthy grass in a specific location. This service represents the largest network of weather stations providing ET-based irrigation recommendations in the State of Texas, and provides the public advanced information regarding outdoor irrigation needs, thereby reducing water use. Through a series of selections on the type of irrigation system a consumer has, a weekly email is provided that will determine how long (in minutes) an irrigation system needs to run based on the past seven days of weather. This recommendation provides the actual amount of supplemental water that is required for a healthy lawn based on research of the Texas A&M Agrilife Extension Service and proven technologies. This innovative program has been available to those within the NTMWD service area since May 2013. The city/utility will encourage customers to subscribe to weekly watering updates through Water My Yard or other similar program in an effort to reduce outdoor water consumption.

#### **7.4 Compulsory Landscape and Water Management Measures**

The following landscape water management measures are required by NTMWD for this plan. These measures represent minimum measures 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 (April 1 – October 31), with education that less than twice per week is usually adequate. (NTMWD has identified assigning designated watering days as a BMP and suggests implementing a watering schedule as part of this measure). Additional watering of landscape may be provided by hand-held hose with shutoff nozzle, use of dedicated irrigation drip zones. An exception is allowed for landscape associated with new construction that may be watered as necessary for 30 days from the installation of new landscape features.
- Limit landscape watering with sprinklers or irrigation systems at each service address to no more than one day per week beginning November 1 and ending March 31 of each year, with education that less than once per week is usually adequate.



- Estimated savings from the year-round watering restrictions, mentioned above, since the District terminated drought stages in 2015 is approximately 2.5 to 3.5 percent on an average annualized basis.
- 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.
- Prohibit use of poorly maintained sprinkler systems that waste water.
- Prohibit excess water runoff or other obvious waste.
- Require rain and freeze sensors and/or ET or Smart controllers on all new irrigation systems. Rain and freeze sensors and/or ET or Smart controllers must be maintained to function properly.
- Prohibit overseeding, sodding, sprigging, broadcasting or plugging with cool season grasses or watering cool season grasses, except for golf courses and athletic fields.
- Require that irrigation systems be inspected at the same time as initial backflow preventer inspection.
- Requirement that all new irrigation systems be in compliance with state design and installation regulations (Texas Administrative Code Title 30, Chapter 344).
- Require the owner of a regulated irrigation property to obtain an evaluation of any permanently installed irrigation system on a periodic basis. The irrigation evaluation shall be conducted by an licensed irrigator in the State of Texas and be submitted to the local water provider (i.e., city, water supply corporation).

## **2. Additional Water Management Measures**

- Prohibit the use of potable water to fill or refill residential, amenity, and any other natural or manmade ponds. A pond is considered to be a still body of water with a surface area of 500 square feet or more.
- Non-commercial car washing can be done only when using a water hose with a shut-off nozzle.
- Hotels and motels shall offer a linen reuse water conservation option to customers.

- Restaurants, bars, and other commercial food or beverage establishments may not provide drinking water to customers unless a specific request is made by the customer for drinking water.

Member Cities and Customers are responsible for developing regulations, ordinances, policies, or procedures for enforcement of water conservation guidelines.

Appendix E is a summary of considerations for landscape water management regulations adopted as part of the development of this water conservation plan. These regulations are intended to minimize waste in landscape irrigation. Appendix E includes the required landscape water measures laid out in this section.

## **7.5 Additional Water Conservation Measures (Not Required)**

NTMWD also urges its Member Cities and Customers to consider including the following additional water conservation measures in their plans. Member Cities and Customers are responsible for developing regulations, ordinances, policies, or procedures for enforcement of water conservation guidelines.

### **1. Landscape Water Management Regulations**

- Requirement that all existing irrigation systems be retrofitted with rain and freeze sensors and/or ET or Smart controllers capable of multiple programming. Rain and freeze sensors and/or ET or Smart controllers must be maintained to function properly.
- Requirement that all new athletic fields be irrigated by a separate irrigation system from surrounding areas.
- Implementation of other measures to encourage off-peak water use.

### **2. Landscape Ordinance**

- Landscape ordinances are developed by a city to guide developers in landscaping requirements for the city. A sample landscape ordinance is provided in Appendix I and is intended as a guideline for adopting a landscape ordinance to promote water-efficient landscape design.
- Native, drought tolerant or adaptive plants should be encouraged.

- Drip irrigation systems should be promoted.
- ET/Smart controllers that only allow sprinkler systems to irrigate when necessary should be promoted.

### **3. Water Audits**

- Water audits are useful in finding ways in which water can be used more efficiently at a specific location. NTMWD recommends that Member Cities and Customers offer water audits to customers.

### **4. Industrial, Commercial, and Institutional Customers**

In order to target programs towards this customer base, the District hired Alan Plummer Associates to conduct the “North Texas Municipal Water District Industrial, Commercial, and Institutional Water Use Efficiency Study.” The primary scope items in the study are as follows:

- Develop ICI Customer Database
- Calculate per Capita Consumptions
- Identify, Define and Categorize
- Establish Base Use Estimates
- Identify Trends
- Select sectors for detailed analysis
- Benchmarking
- Identify Potential for Reduction
- Estimate Potential Demand Reduction by Strategy
- Program Development

The kick-off meeting was held on September 10, 2018 and the project is currently in the process of data collection. It is not anticipated that any recommended programs will be identified prior to the publication of this plan. Once the results are published, the District will develop, in cooperation with the District’s Member Cities and Customers and in collaboration with ICI water users within the District’s service area, a program to reduce the per unit or per capita ICI water use within the District.



## 5. Rebates

In addition to the conservation measures described above, NTMWD also recommends the following water conservation incentive programs for consideration by Member Cities and Customers:

- Commercial clothes washer rebates for the purchase and installation of high efficiency card- or coin -operated commercial clothes washers;
- Low-flow toilet replacement and rebate programs;
- Rebates for rain/freeze sensors and/or ET or Smart controllers;
- Low-flow showerhead and sink aerators replacement programs or rebates;
- Residential water efficient clothes washer rebates;
- Pressure reducing valve installation programs or rebates;
- Rain barrel rebates;
- Pool covers;
- On-demand hot water heater rebates; and/or
- Other water conservation incentive programs.

## 7.6 Monitoring of Effectiveness and Efficiency - NTMWD Annual Water Conservation Report

Appendix D is a form that should be used in the development of an annual water conservation report by Member Cities and Customers. This form should be completed by March 31 of the following year and 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. As part of the development of Appendix D, Member Cities and Customers will complete the tracking tool by March 31 of the following year and submit them to NTMWD. The annual water conservation report should be sent to NTMWD, which will monitor NTMWD Member Cities' and Customers' water conservation trends.



## **7.7 Water Conservation Implementation Report**

Appendix J 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 a draft ordinance, order, or resolution which may be tailored to meet Member or Customer City needs and may be adopted by the City Council or governing board regarding the Model Water Conservation Plan. The ordinance, order, or resolution designates responsible officials to implement and enforce the water conservation plan. Appendix E, the considerations for landscape water management regulations, also includes information about enforcement. Appendix H includes a copy of an ordinance, order, or resolution that may be adopted related to illegal connections and water theft.



## **9. REVIEW AND UPDATE OF WATER CONSERVATION PLAN**

TCEQ requires that the water conservation plans be updated every five years. The plan will be updated as required and as appropriate based on new or updated information.

# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix A**



## APPENDIX A

### LIST OF REFERENCES

1. Texas Commission on Environmental Quality Water Conservation Implementation Report.  
<https://www.tceq.texas.gov/assets/public/permitting/forms/20645.pdf>
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://jtexreg.sos.state.tx.us/public/readtacSext.ViewTAC?tacview=4&ti=30&pt=l&ch=288>,  
November 2019.
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. Freese and Nichols, INC.: Model Water Conservation Plan for NTMWD Members Cities and  
Customers, prepared for the North Texas Municipal Water District, Fort Worth, March 2014.
5. Texas Water Development Board, Texas Commission on Environmental Quality, Water  
Conservation Advisory Council: Guidance and Methodology for Reporting on Water  
Conservation and Water Use, December 2012
6. Freese and Nichols Inc., Alan Plummer and Associates, CP & Y Inc. and Cooksey  
Communications.  
"2016 Region C Regional Water Plan"

# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix B**

## APPENDIX B

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULESON MUNICIPAL WATER CONSERVATION PLANS

#### Texas Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART I	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER288	WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS
SUBCHAPTER A	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) 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.

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

(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 stateowned 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 coordinator--The person designated by a retail public water supplier that is responsible for implementing a water conservation plan.

(24) 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).

(25) 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.

(26) 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; amended to be effective August 16, 2018, 43 TexReg 5218

## Texas Administrative Code

TITLE 30	ENVIRONMENTAL QUALITY
PART I	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 288	WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS
SUBCHAPTER A	WATER CONSERVATION PLANS
RULE §288.1	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) multi-family;

(ii) commercial;

2019 Water Conservation Plan

(iii) institutional;

(iv) industrial;

(v) agricultural; and,

(vi) wholesale.

(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**

# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix C**

## Exhibit C



### Texas Commission on Environmental Quality

Water Availability Division

MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4691, FAX (512) 239-2214

### 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 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.

Water users can find best management practices (BMPs) at the Texas Water Development Board's website <http://www.twdb.texas.gov/conservation/BMPs/index.asp>. The practices are broken out into sectors such as Agriculture, Commercial and Institutional, Industrial, Municipal and Wholesale. BMPs are voluntary measures that water users use to develop the required components of Title 30, Texas Administrative Code, Chapter 288. BMPs can also be implemented in addition to the rule requirements to achieve water conservation goals.

#### Contact Information

Name of Water Supplier: City of Lucas

Address: 665 Country Club Road Lucas Texas 75002

Telephone Number: (972)727-8999 Fax: (972) 727-0091

Water Right No.(s): \_\_\_\_\_

Regional Water Planning Group: NTMWD

Water Conservation Coordinator (or person responsible for implementing conservation program): Joseph Hilbourn Phone: (972) 912-1207

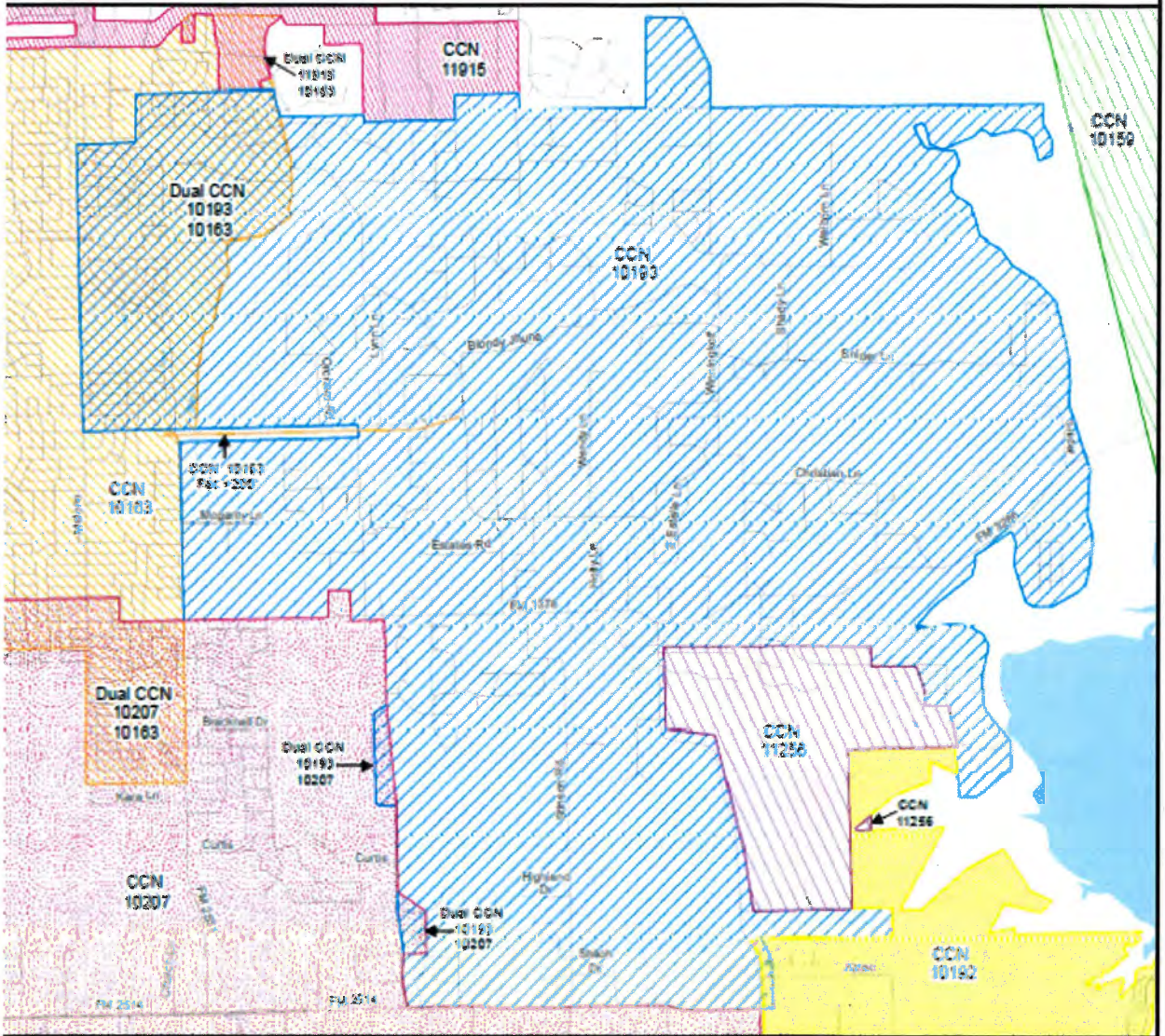
Form Completed by: Joseph Hilbourn

Title: Development Services Director

Signature: \_\_\_\_\_ Date:  / /

A water conservation plan for municipal use by retail public water suppliers must include the following requirements (as detailed in 30 TAC Section 288.2). If the plan does not provide information for each requirement, you must include in the plan an explanation of why the requirement is not applicable.

City of Lucas  
 Water CCN No. 10193  
 PUC Docket No. 48660  
 Amended CCN No. 10193 in Collin County



- | Water CCN   | Water CCN Facility +200'   |
|---|--|
|  10193 - City of Lucas               |  10163 - City of Allen |
|  11915 - City of Fairview            |  |
|  10159 - Culleoka WSC                |  |
|  11256 - Seis Lagos Utility District |  |
|  10192 - Wylie Northeast SUD         |  |
|  10207 - City of Parker              |  |



Public Utility Commission of Texas  
 1701 N. Congress Ave

Map by: Koral Patel  
 Date created: April 5, 2019  
 Project Path: n:\puc\collin\



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That  
City of Lucas**

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Lucas is entitled to this

## **Certificate of Convenience and Necessity No. 10193**

to provide continuous and adequate water utility service to that service area or those service areas in Collin County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48660 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Lucas to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 26<sup>th</sup> day of July 2019.

## 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: 8338
4. Current population served for:
  - a. Water 8147
  - b. Wastewater 40

5. Population served for previous five years:

<i>Year</i>	<i>Population</i>
2015	7134
2016	7599
2017	7775
2018	8147
2019	8338

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

<i>Year</i>	<i>Population</i>
2020	9,000
2030	11,000
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 plan, and City of Lucas future Comprehensive plan

*B. Customer 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. More guidance can be found at: <http://www.twdb.texas.gov/conservation/doc/SB181Guidance.pdf>



1. Quantified 5-year and 10-year goals for water savings:

	<i>Historic 5-year Average</i>	<i>Baseline</i>	<i>5-year goal for year 2024</i>	<i>10-year goal for year 2029</i>
Total GPCD	159.24		154	150
Residential GPCD	150.07		145	140
Water Loss GPCD	23.70		21	20
Water Loss Percentage	12.42%		11.42%	10.42%

**Notes:**

Total GPCD = (Total Gallons in System ÷ Permanent Population) ÷ 365

Residential GPCD = (Gallons Used for Residential Use ÷ Residential Population) ÷ 365

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

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

2. 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>	<i>Totals</i>
Residential			2647
Single-Family	2607	0	2647
Multi-Family			
Commercial	40	0	40
Industrial/Mining			
Institutional			
Agriculture			
Other/Wholesale			

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

<i>Year</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<i>Treated Water Users</i>			
Residential	74	56	130
Single-Family	74	56	130
Multi-Family	0	0	0
Commercial	2	4	3
Industrial/Mining			
Institutional	0	15	11
Agriculture			
Other/Wholesale	0		

4. 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>
Larsen, Brandon & Heather	18,128	Treated
Lovejoy High School	16,031	Treated
Lovejoy High School	15,120	Treated
CE Lucas HOA	14,867	Treated
Lovejoy High School	13,084	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>	2014	2015	2016	2017	2018
<i>Month</i>					
January	<u>17,685,900</u>	<u>19,188,800</u>	<u>16,187,800</u>	<u>18,555,500</u>	<u>20,895,800</u>
February	<u>15,469,000</u>	<u>17,412,500</u>	<u>21,664,500</u>	<u>20,774,600</u>	<u>20,353,100</u>
March	<u>19,722,100</u>	<u>13,202,900</u>	<u>18,093,300</u>	<u>17,361,100</u>	<u>19,269,700</u>
April	<u>22,975,100</u>	<u>14,498,400</u>	<u>24,831,900</u>	<u>27,565,500</u>	<u>31,516,500</u>
May	<u>34,810,200</u>	<u>34,810,200</u>	<u>29,090,100</u>	<u>34,530,300</u>	<u>37,964,600</u>
June	<u>34,200,300</u>	<u>26,579,100</u>	<u>26,750,900</u>	<u>45,460,000</u>	<u>66,607,000</u>
July	<u>44,171,900</u>	<u>41,603,300</u>	<u>69,692,100</u>	<u>40,498,900</u>	<u>74,689,900</u>
August	<u>37,923,900</u>	<u>78,179,300</u>	<u>63,482,100</u>	<u>59,412,200</u>	<u>86,343,200</u>
September	<u>50,182,300</u>	<u>106,421,900</u>	<u>45,469,900</u>	<u>53,254,900</u>	<u>63,810,700</u>
October	<u>39,354,300</u>	<u>61,441,700</u>	<u>53,291,000</u>	<u>53,805,700</u>	<u>33,033,500</u>
November	<u>32,740,900</u>	<u>21,109,100</u>	<u>42,721,100</u>	<u>46,462,700</u>	<u>19,253,600</u>
December	<u>17,974,800</u>	<u>20,554,900</u>	<u>23,777,600</u>	<u>34,739,500</u>	<u>20,225,900</u>
<b>Totals</b>	<u>367,210,700</u>	<u>435,813,300</u>	<u>435,052,300</u>	<u>452,420,900</u>	<u>493,963,500</u>

- Describe how the above figures were determined (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

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

<i>Year</i>	2014	2015	2016	2017	2018
<i>Account Types</i>					
Residential					
Single-Family	16,786,400	410,068,400	411,174,500	427,439,600	467,658,300
Multi-Family					
Commercial	873,900	30,685,500	25,888,100	22,783,100	26,077,800
Industrial/Minin g					
Institutional					
Agriculture					
Other/Wholesale					

- 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>
2018	70 MG	12.42%
2017	58 MG	11.14%
2016	70 MG	14%
2015	46 MG	9%
2014	45 MG	10%

#### *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		
Groundwater		
Other	NTMWD	2115

*B. Treatment and Distribution System (if providing treated water)*

1. Design daily capacity of system (MGD): N/A
2. Storage capacity (MGD):
  - a. Elevated .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>	2014	2015	2016	2017	2018
<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
<b>Totals</b>	0	0	0	0	0

## **Water Conservation Plan**

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. Record Management System*

The water conservation plan must include a record management system which allows for the classification of water sales and uses in to the most detailed level of water use data currently available to it, including if possible, the following sectors: residential (single and multi-family), commercial.

### *B. 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. These goals must be updated during the five-year review and submittal.

### *C. Measuring and Accounting for Diversions*

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.

### *D. 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.

### *E. Measures to Determine and Control Water Loss*

The water conservation plan must include 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.).

### *F. 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.

### *G. 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.

### *H. 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 in order to optimize available water supplies.

*I. 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.

*J. 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 public water supplier in order to ensure consistency with the appropriate approved regional water plans.

*K. 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 the next 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**



Any combination of the following strategies shall be selected by the water supplier, in addition to the minimum requirements of 30 TAC §288.2(1), 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.

#### **VIII. WATER CONSERVATION PLANS SUBMITTED WITH A WATER RIGHT APPLICATION FOR NEW OR ADDITIONAL STATE WATER**

Water Conservation Plans submitted with a water right application for New or Additional State Water must include data and information which:

1. support the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;
2. evaluates conservation as an alternative to the proposed appropriation; and
3. evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

Additionally, it shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix D**

**APPENDIX D  
NTMWD MEMBER CITY AND CUSTOMER WATER CONSERVATION REPORT**

Due: March 31 of every year

Water Utility Reporting:  
Filed Out By:  
Phone Number:  
Email:  
Date Completed:  
Year Covered:  
# of Connections  
Estimated Population  
Source:  
# of Irrigation Systems:

Admin: 6/1/20  
972-412-1300  
kash@ntmwd.com  
2/20/2019  
2018  
2,457  
6,147  
Station Forester, City Employee

Cite the source used for estimation of population.  
Indicate Irrigation Systems or Backflow Preventers using the Dropdown Menu

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

Month	Supplies other than NTMWD	Sales by Category					Metered Irrigation	Other
		Residential	Commercial	Public/Institutional	Industrial			
January		29,536	0,400	0,483	0,000	0,000		
February		28,998	0,487	0,353	0,011	0,011		
March		27,283	0,921	0,578	0,000	0,000		
April		28,454	0,507	1,145	0,000	0,000		
May		26,267	0,664	0,886	0,013	0,013		
June		16,770	1,038	1,850	0,028	0,028		
July		21,278	0,868	2,498	0,000	0,000		
August		18,438	1,500	2,455	0,041	0,041		
September		20,179	1,157	2,385	0,016	0,016		
October		16,481	0,907	1,373	0,004	0,004		
November		17,888	0,566	0,776	0,000	0,000		
December		18,813	0,708	0,886	0,000	0,000		

**Other Parameters:**

Peak Day (MG): 4,108 Total peak day use (Peak day delivery from NTMWD + other supplies)  
 Billed Unmetered: Estimated water that has been sold but not metered, for example, dust-control trucks and types of businesses using authorized water drawn from fire hydrants or other unmetered uses.  
 Unbilled Metered: Water that is metered but not billed, such as city/government offices, city park irrigation, water treatment facility use, and some fire department use.  
 Unbilled Unmetered: Estimated water not billed or metered, such as most fire flushing.  
 Goal for Total Loss Percent:  
 5-year Per Capita Goal  
 10-year Per Capita Goal

**Recorded Wholesale Sales by Month (in Million Gallons)**

Month	Sales to...					
	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						

**Information on Wholesale Customers:**

Customer	Estimated Total Population

**Unusual Circumstances (use additional sheets if necessary)**

January 2018, 2019, we flushed both elevated towers to boost our distribution mains. We flushed both again in September 2018 for the same reason to boost chlorine residuals with the abundance of rains received this year, customers did not use as much water resulting in residual drop so we were forced to drain the towers to offset that drop.

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

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

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

**Other (use additional sheets if necessary)**

**APPENDIX D**  
**NTMWD MEMBER CITY AND CUSTOMER WATER CONSERVATION REPORT**  
 Due: March 31 of every year

Water Utility Reporting: Lucas  
 Filled Out By: Adam Gerster  
 Phone Number: 972-912-1209  
 Email: agerster@lucastexas.us  
 Date Completed: 02/20/2019  
 Year Covered: 2018  
 # of Connections: 2,607  
 Estimated Population: 8,147  
 Source: Stanton Foerster, City Engineer  
 # of Irrigation Systems

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

Month	Deliveries from NTMWD	Other Supplies	Sales by Category					Total	
			Residential	Commercial	Public/Institutional	Industrial	Metered Irrigation		Wholesale
January	30.250		19.998	0.400	0.482	0.005			20.885
February	26.564		18.966	0.387	0.562	0.011			19.926
March	30.873		17.783	0.504	0.539	0.004			18.830
April	37.163		29.454	0.597	1.145	0.006			31.202
May	62.812		36.362	0.604	0.948	0.013			37.927
June	64.199		63.770	1.038	1.350	0.025			66.183
July	100.812		71.475	0.959	2.205	0.019			74.658
August	88.952		81.876	1.203	2.552	0.041			85.672
September	42.821		60.129	1.157	2.366	0.018			63.670
October	28.793		30.682	0.907	1.373	0.004			32.966
November	29.512		17.869	0.656	0.705	0.006			19.236
December	24.596		18.918	0.798	0.596	0.016			20.328
<b>TOTAL</b>	<b>567.347</b>		<b>467.282</b>	<b>9.210</b>	<b>14.823</b>	<b>0.168</b>			<b>491.483</b>

**Peak Day Usage**  
 Peak Day (MG) 4.886  
 Average Day (MG) 1.554  
 Peak/Average Day Ratio 3.143

**Authorized Consumption and Water Loss**

Total System Input Volume: 567.347  
 Billed Metered: 491.483  
 Billed Unmetered: 0.050  
 Unbilled Metered: 5.334  
 Unbilled Unmetered: 496.867  
 Total Authorized Consumption: 70.480  
 Water Losses: 12.42%  
 Total Loss Percent:  
 Goal for Total Loss Percent:

**Per Capita Use (Gallons per person per day)**

Municipal Use (MG) 567  
 Residential Use (MG) 467.282  
 Total Per Capita Use (gpcd) 191  
 Municipal Per Capita Use (gpcd) 191  
 Residential Per Capita Use (gpcd) 157  
 5-year Per Capita Goal  
 10-year Per Capita Goal

**Recorded Wholesale Sales by Month (in Million Gallons):**

Month	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Sales to...	Total Wholesale Sales	
January																					
February																					
March																					
April																					
May																					
June																					
July																					
August																					
September																					
October																					
November																					
December																					
<b>TOTAL</b>																					

**Information on Wholesale Customers:**

Customer	Estimated Total Population

**Unusual Circumstances (use additional sheets if necessary):**

January 4th, 2018, we flushed both elevated towers to boost our chlorine residuals. We flushed both again on September 28th, 2018 for the same reason to boost chlorine residuals. With the abundance of rain we received this year, customers did not use as much water resulting in residual drop so we were forced to drain the towers to offset that drop.

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

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

--

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

--

Other (use additional sheets if necessary):

--

Historical Water Use Data for Lucas

Year	Connections	Estimated Population	Deliveries from NTMWD (MG)	Other Supplies (MG)	Metered Sales by Category (Million Gallons)							Total	
					Residential	Commercial	Public/Institutional	Industrial	Metered Irrigation	Wholesale	Other		
1990	0	2,205	0	0	0	0	0	0	0	0	0	0	0
1991	0	2,273	0	0	0	0	0	0	0	0	0	0	0
1992	0	2,342	0	0	0	0	0	0	0	0	0	0	0
1993	0	2,410	0	0	0	0	0	0	0	0	0	0	0
1994	0	2,479	0	0	0	0	0	0	0	0	0	0	0
1995	0	2,547	0	0	0	0	0	0	0	0	0	0	0
1996	0	2,616	0	0	0	0	0	0	0	0	0	0	0
1997	0	2,684	0	0	0	0	0	0	0	0	0	0	0
1998	0	2,753	0	0	0	0	0	0	0	0	0	0	0
1999	0	2,821	0	0	0	0	0	0	0	0	0	0	0
2000	0	2,890	0	0	0	0	0	0	0	0	0	0	0
2001	0	3,117	0	0	0	0	0	0	0	0	0	0	0
2002	0	3,345	0	0	236	0	0	0	0	0	0	0	236
2003	0	3,573	0	0	248	0	0	0	0	0	0	0	248
2004	0	3,801	0	0	248	0	0	0	0	0	0	0	248
2005	0	4,100	0	0	369	0	0	0	0	0	0	0	369
2006	0	4,400	420	0	391	0	0	0	0	0	0	0	391
2007	0	5,100	294	0	249	0	0	0	0	0	0	0	249
2008	0	5,391	428	0	369	0	0	0	0	0	0	0	369
2009	1,859	5,473	385	0	323	0	0	0	0	0	0	0	323
2010	1,890	5,564	457	0	371	0	0	0	0	0	0	0	371
2011	1,940	5,704	593	0	507	0	0	0	0	0	0	0	507
2012	2,154	6,100	547	0	453	0	0	0	0	0	0	0	453
2013	2,215	6,414	538	0	407	31	0	0	0	0	0	0	437
2014	2,223	6,862	452	0	342	22	0	0	0	0	0	0	364
2015	2,354	7,134	514	0	411	30	0	0	0	0	0	0	441
2016	2,476	7,775	512	0	411	25	0	0	0	0	0	0	437
2017	2,420	7,599	519	0	427	11	11	0	0	0	0	0	450
2018	2,607	8,147	567	0	467	9	15	0	0	0	0	0	491



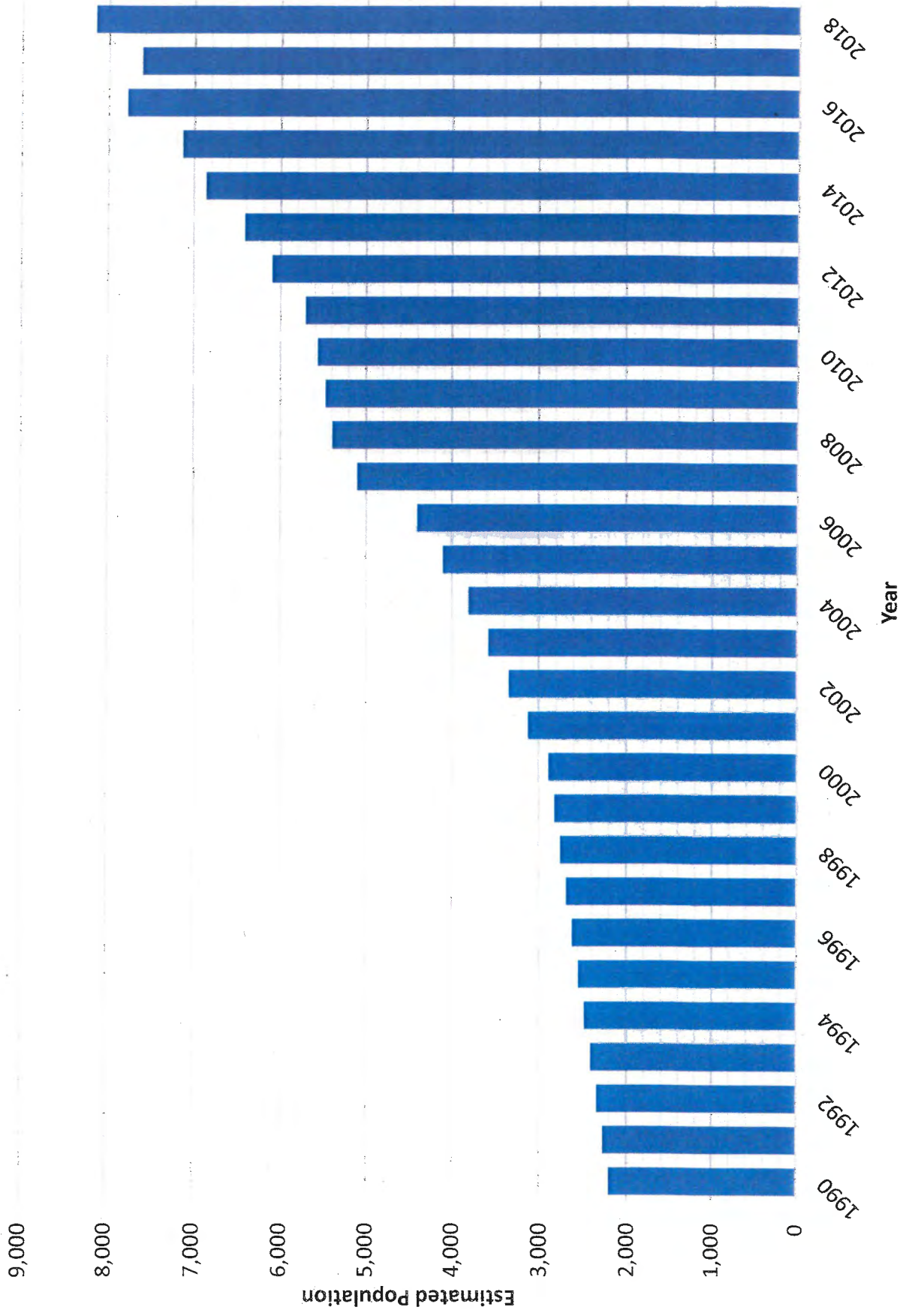
Historical Per Capita Use Data and Water Loss for Lucas

Year	Estimated Population	In-City Municipal Use (MG)	Per Capita Municipal Use (gpcd)	Per Capita Residential Use (gpcd)	Deliveries from NTMWD (MG)	Other Supplies (MG)	Wholesale Sales (MG)	Billed Metered (MG)	Billed Unmetered (MG)	Unbilled Metered (MG)	Unbilled Unmetered (MG)	Water Losses (MG)	% Water Loss
2002	0	0	0	0	0	0	0	236	0	0	0	0	0.00%
2003	0	0	0	0	0	0	0	248	0	0	0	0	0.00%
2004	0	0	0	0	0	0	0	248	0	0	0	0	0.00%
2005	0	0	0	0	0	0	0	369	0	0	0	0	0.00%
2006	4,400	420	262	243	420	0	0	391	0	0	0	29	6.90%
2007	5,100	294	158	133	294	0	0	249	0	0	0	45	15.31%
2008	5,391	428	217	187	428	0	0	369	0	0	0	59	13.82%
2009	5,473	385	193	161	385	0	0	323	0	1	1	61	15.73%
2010	5,564	457	225	182	457	0	0	371	0	1	4	80	17.60%
2011	5,704	593	285	243	593	0	0	507	0	1	4	81	13.65%
2012	6,100	547	246	203	547	0	0	453	0	2	8	85	15.52%
2013	6,414	538	230	173	538	0	0	437	0	2	14	86	16.00%
2014	6,862	452	181	136	452	0	0	364	0	2	41	45	10.00%
2015	7,134	514	197	157	514	0	0	441	0	3	23	46	9.00%
2016	7,775	512	180	145	512	0	0	437	0	0	5	70	14.00%
2017	7,599	519	187	154	519	0	0	450	0	0	11	58	11.14%
2018	8,147	567	191	157	567	0	0	491	0	0	5	70	12.42%

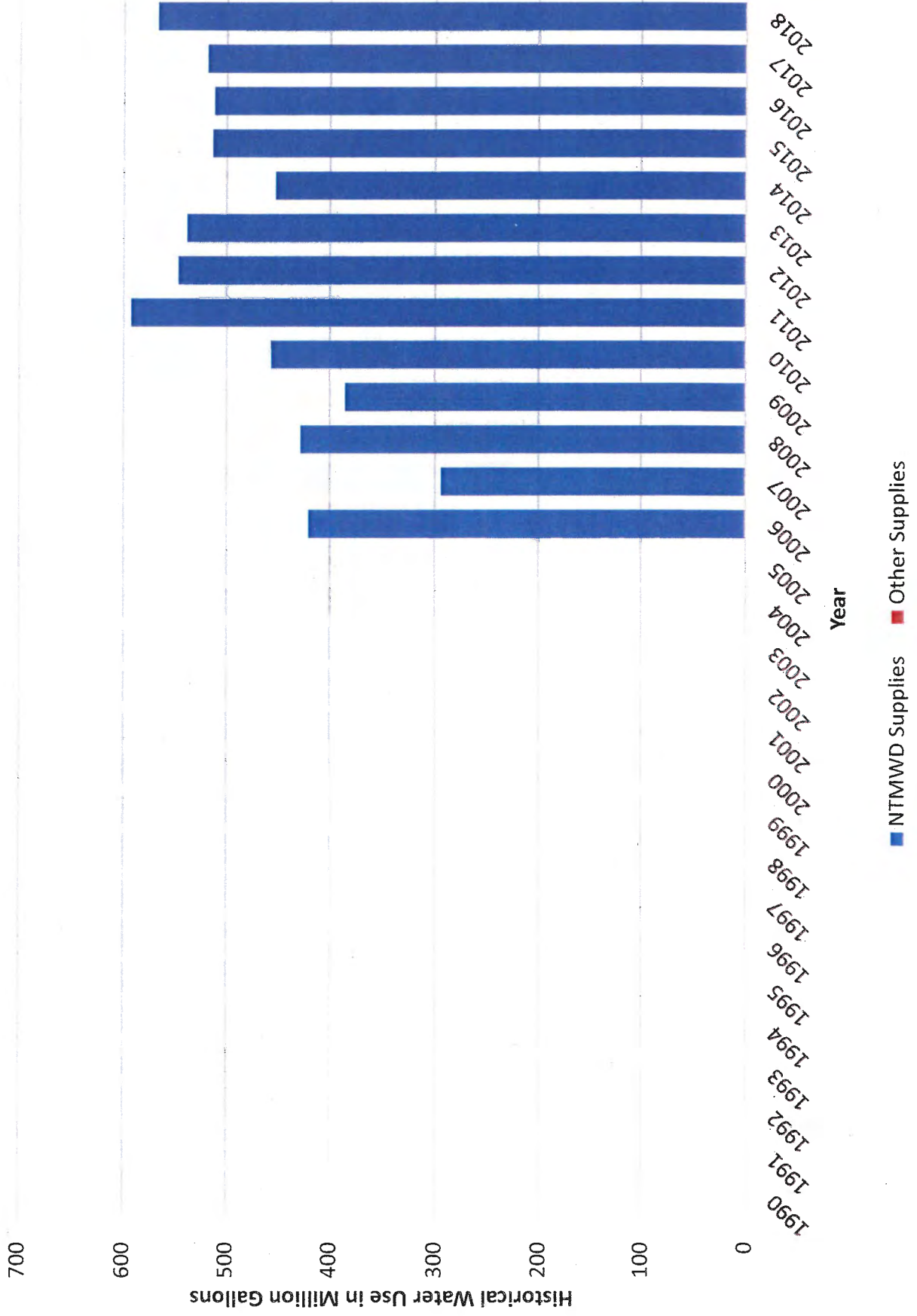
Note:

In-city municipal use = total water supplied less sales to industry, metered irrigation, wholesale sales and other sales. After 2017 - Unaccounted Water has been removed and replaced with Water Losses (per TWDB definition). This category is inclusive of real and apparent losses. Categories for authorized consumption were also added; Unbilled metered replaced estimated fire use, unbilled unmetered replaced estimated line flushing, and a new category for billed unmetered sales was added.

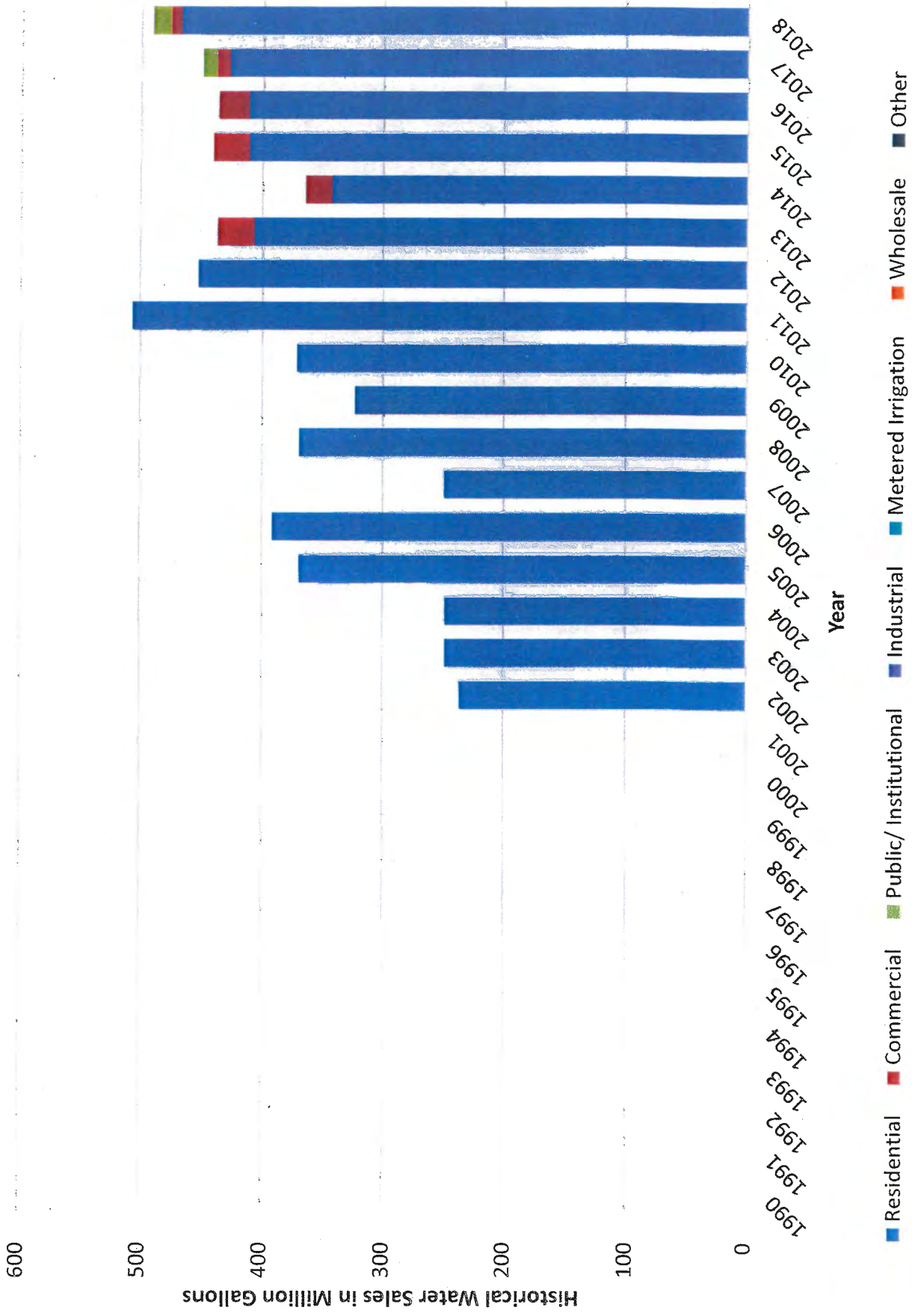
# Estimated Historical Population



# Historical Water Use



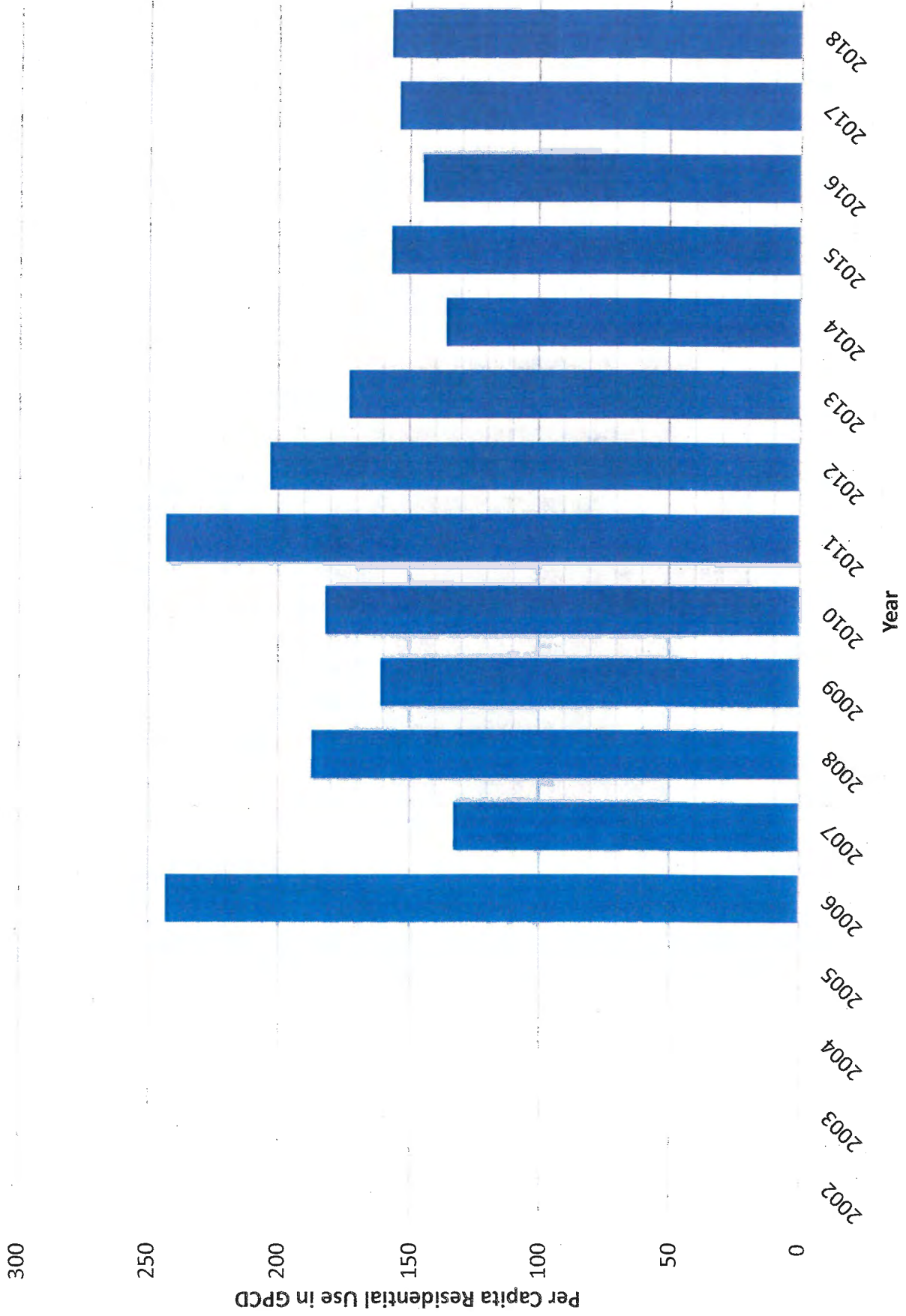
# Historical Water Sales by Classification



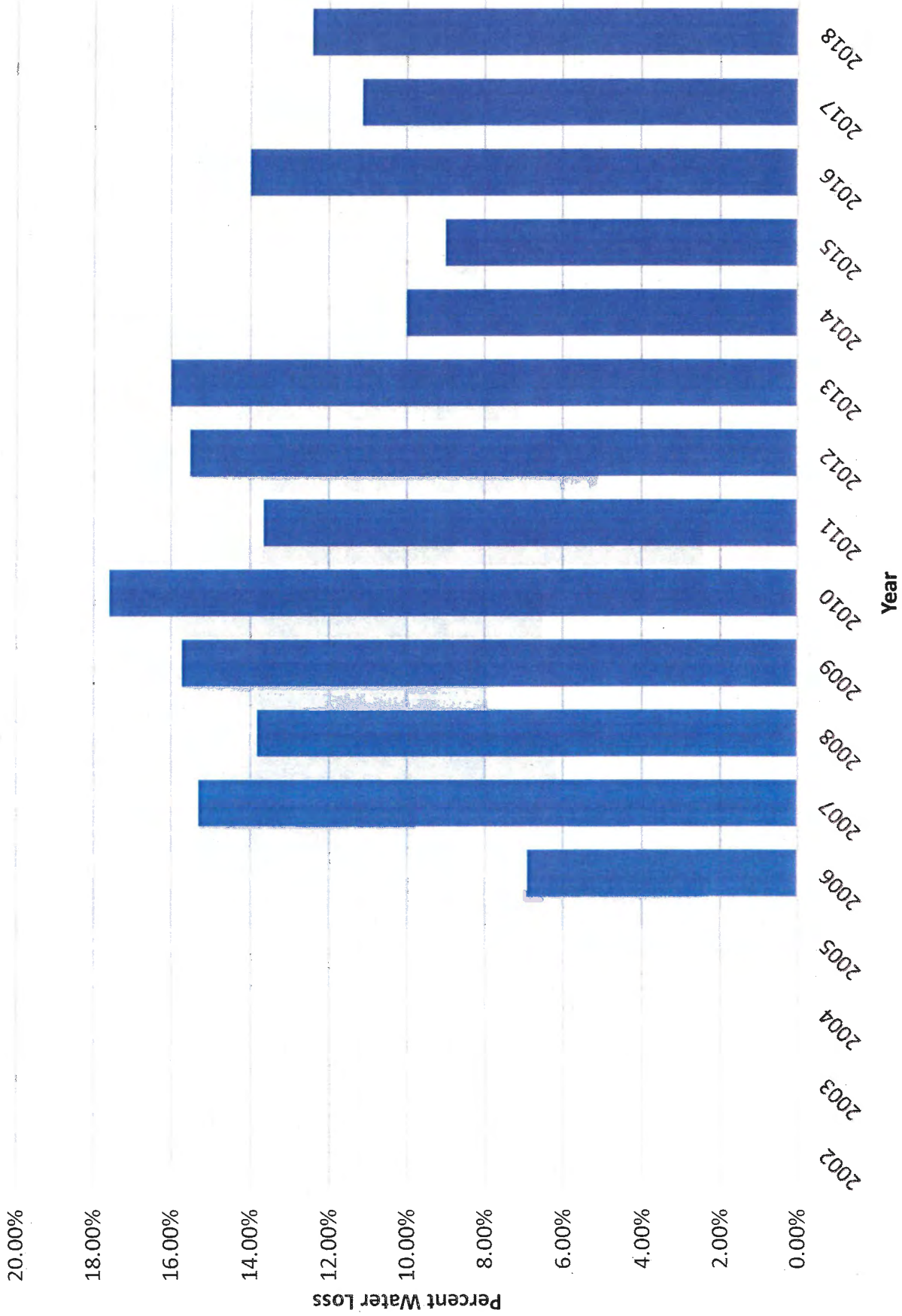
# Historical Per Capita for Municipal Use



# Historical Per Capita for Residential Use



# Historical Percent Water Loss



# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix E**



## **APPENDIX E**

### **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 man made 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

Violations of the ordinance, order, or resolution will result in fees outlined below.

First Offense

Courtesy Tag Warning

Second Offense

Certified Letter notifying of violation

Third Offense

\$100

Fourth and Subsequent Offenses \$300

### 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.

b. A person commits an offense if the person knowingly or recklessly overseeds a lawn with rye or winter grass on property that the person owns, leases, or manages. Golf courses and public athletic fields are exempt from this restriction.

c. All new athletic fields must have separate irrigation systems that are capable of irrigating the playing fields separately from other open spaces.

#### 2. Rain and Freeze Sensors

a. Existing irrigation systems must be retrofitted with similar rain and freeze sensors and be capable of multiprogramming within 5 years.

### D. Variances

1. In special cases, variances may be granted to persons demonstrating extreme hardship or need. Variances may be granted under the following circumstances:

a. the applicant must sign a compliance agreement agreeing to irrigate or water the lawn and/or landscape only in the amount and manner permitted by the variance; and

b. the variance must not cause an immediate significant reduction to the water supply; and

c. the extreme hardship or need requiring the variance must relate to the health, safety, or welfare of the person making the request; and

d. the health, safety, and welfare of the public and the person making the request must not be adversely affected by the requested variance.

2. A variance will be revoked upon a finding that:

a. the applicant can no longer demonstrate extreme hardship or need; or

b. the terms of the compliance agreement are violated; or

c. the health, safety, or welfare of the public or other persons requires revocation.

# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix F**

## Appendix F

Region C Water Planning Group  
c/o Trinity River Authority  
P.O. Box 60  
Arlington, TX 76004

Dear Sir:

Enclosed please find a copy of the Model Water Resource and Emergency Management Plan for Member Cities and Customers of the North Texas Municipal Water District. I am submitting a copy of this plan to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The Board of the North Texas Municipal Water District adopted the updated model plan on \_\_\_\_\_, 2019.

Sincerely,



Joseph Hilbourn  
City of Lucas

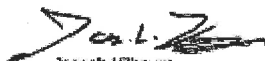
## Appendix F

Mr. Richard LeTourneau  
Chair, Region D Water Planning Group  
P.O. Box 12071  
Longview, TX 75607

Dear Mr. LeTourneau:

Enclosed please find a copy of the recently updated Model Water Resource and Emergency Management Plan for Member Cities and Customers of the North Texas Municipal Water District. I am submitting a copy of this plan to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The Board of the North Texas Municipal Water District adopted the updated model plan on \_\_\_\_\_, 2019.

Sincerely,

  
Joseph Hilbourn  
City of Lucas

# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix G**



## Appendix G

### SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

### SECTION 2

From and after the effective date of this Ordinance, Section 13.05.01, "Plan Adopted," of Article 13.05, "Water Conservation and Water Resource and Emergency Management Plan" of Chapter 13, "Utilities," of the City's Code of Ordinances is amended to read as follows:

#### **"Sec. 13.05.001 Plan Adopted**

The City Council hereby approves and adopts for the city, its citizens and water customers the new Water Conservation and Water Resource and Emergency Management Plan (the "Plan"), attached to this Ordinance as Exhibit A and incorporated herein for all purposes. A copy of this Ordinance and the Plan are available in the City Secretary's Office."

### SECTION 3

The City Council hereby approves and adopts the Plan, as referenced in Section 2 of this Ordinance, as if recited verbatim herein. The City commits to implement the requirements and procedures set forth in the adopted Plan.

### SECTION 4

From and after the effective date of this Ordinance, Section XVII, "Water Conservation and Enforcement Fees," of Appendix A, "Fee Schedule," to the City's Code of Ordinances is amended to read as follows:

#### **"Sec. XVII Water Conservation and Enforcement Fees**

**Administrative Fees.** Administrative fees for violations to the City's Water Conservation and Water Resource and Emergency Management Plan shall be added to water account holder's regular monthly utility bill as follows:

First Offense	Courtesy Tag Warning
Second Offense	Certified Letter notifying of violation
Third Offense and Subsequent offenses	\$100
Fourth Offense and Subsequent offenses	\$300

**Contesting Violations:** A water customer may request a hearing before a hearing officer(s) appointed by the Executive Director of Infrastructure Services within fifteen (15) business days after the date on the Notice. The hearing officer(s) shall evaluate all information offered by the petitioner at the hearing. The customer shall bear the burden of proof to show why, by preponderance of the evidence, the administrative fee should not be assessed. The hearing

officer(s) shall render a decision in writing within three (3) business days of the conclusion of the hearing. A customer may appeal the decision from the hearing officer(s) in writing to the Executive Director of Infrastructure Services within three (3) business days from the receipt of the written appeal. The decision by the Executive Director of Infrastructure Services is final and binding.

Unpaid assessed administrative fees related to violations of water use restrictions under the City Plan shall incur late payment penalties and may result in termination of water service."

#### **SECTION 5**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

#### **SECTION 6**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City of Lucas hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

#### **SECTION 7**

The City Manager or his designee is hereby directed to file a copy of the Plan and this Ordinance with the Commission in accordance with Title 30, Chapter 288 of the Texas Administrative Code, as amended.

#### **SECTION 8**

Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction, therefore, shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00), and each and every day that such violation continues shall be considered a separate offense; provided, however, that such penal provision shall not preclude a suit to enjoin such violation. City of Lucas retains all legal rights and remedies available to it pursuant to local, state and federal law.

#### **SECTION 9**

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of Lucas, Texas.

# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix H**

# Appendix H

## Section 1

Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

## Section 2

Offense Established. A person commits an offense of theft of water by any of the following actions:

(a) A person may not tamper, connect to, or alter any component of the City's water system including valves, meters, meter boxes, lids, hydrants, lines, pump stations, ground storage tanks, and elevated storage tanks. This shall include direct or indirect efforts to initiate or restore water service without the approval of the City.

(b) If, without the written consent of the City Manager or the Managers designee, the person causes, suffers or allows the initiation or restoration of water service to the property after termination of service(s). For purposes of this Section 2(b), it shall be assumed that the owner, occupant, or person in control of the property caused, suffered, or allowed the unlawful initiation or restoration of service(s).

(c) A person may not make or cause a false report to be made to the City of a reading of a water meter installed for metered billing.

(d) A person commits a separate offense each day that the person performs an act prohibited by this Section 2 or fails to perform an act required by this section.

## Section 3

Disconnections of Water Service and Reconnection Fee. Any violation of this Ordinance, including the first offense, will result in forfeiture of any and all deposits, removal of meters, and/or discontinuance of water service by the City. A five hundred (\$500.00) reconnection fee will be required before the City will restore water service.

## Section 4

Penalty. Any person violating the provisions of Section 2 of this Ordinance shall be deemed guilty of the offense of criminal mischief, their offense shall be classified, whether a misdemeanor or a felony, in accordance with Section 28.03 of the Texas Penal Code, as it exists or may be amended and, upon conviction thereof, shall be punished in accordance with Section 28.03 of the Texas Penal Code, as it exists or may be amended. For purposes of determining whether an offense has occurred, the presumption in Section 28.03(c) the Texas Penal Code, as it exists or may be amended, shall apply.

## Section 5

Savings/Repealing. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if

occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

#### **Section 6**

Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or **more** sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

#### **Section 7**

Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law.

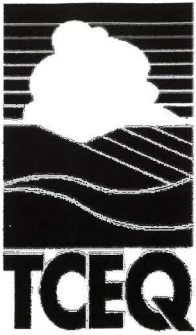
# WATER CONSERVATION PLAN FOR THE CITY OF LUCAS

DATE 09/05/2019

## **Appendix J**



## **Appendix J**



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
 Water Availability Division - MC-160, P.O. Box 13087 Austin, Texas 78711-3087  
 Telephone (512) 239-4691, FAX (512) 239-2214

**WATER CONSERVATION IMPLEMENTATION REPORT  
 FORM AND SUMMARY OF UPDATES/REVISIONS TO  
 WATER CONSERVATION PLAN**

(Texas Water Code §11.1271(b) and Title 30 Texas Administrative Code §288.30(1) to (4))

*Please note, this form replaces the following forms: TCEQ-20645 (Non-Public Water Suppliers) and TCEQ-20646 (Public Water Suppliers)*

**This Form is applicable to the following entities:**

1. **Water Right Holders of 1,000 acre-feet or more for municipal, industrial, and other non-irrigation uses.**
2. **Water Right Holders of 10,000 acre-feet or more for irrigation uses.**

The above noted entities are required by rule to submit updates to their water conservation plan(s) and water conservation implementation report(s) every five years. The most current five-year submittal deadline is **May 1<sup>st</sup>, 2019**. See 30 Texas Administrative Code (TAC) §288.30(1) to (4). Entities must also submit any revisions to their water conservation plan within 90 days of adoption when the plans are revised in between the five-year submittal deadlines. This form may be used for the five-year submittal or when revisions are made to the water conservation plans in the interim periods between five-year submittals. Please complete the form as directed below.

1. Water Right Holder Name: City of Lucas
2. Water Right Permit or Certificate Nos. ID 0430054

3. Please Indicate by placing an 'X' next to all that Apply to your Entity:

Water Right Holder of 1,000 acre-feet or more for non-irrigation uses

- Municipal Water Use by Public Water Supplier
- Wholesale Public Water Supplier
- Industrial Use
- Mining Use
- Agriculture Non-Irrigation

Water Right Holder of 10,000 acre-feet or more for irrigation uses

- Individually-Operated Irrigation System
- Agricultural Water Suppliers Providing Water to More Than One User

**Water Conservation Implementation Reports/Annual Reports**

4. Water Conservation Annual Reports for the previous five years were submitted to the Texas Water Development Board (TWDB) for each of the uses indicated above as required by 30 TAC §288.30(10)(C)? Yes  No

**TCEQ no longer requires submittal of the information contained in the detailed implementation report previously required in Forms TCEQ-20645 (Non-Public Water Suppliers) and TCEQ-20646 (Public Water Suppliers). However, the Entity must be up-to-date on its Annual Report Submittals to the TWDB.**



**Water Conservation Plans**

5. For the five-year submittal (or for revisions between the five-year submittals), attach your updated or revised Water Conservation Plan for each of the uses indicated in Section 3, above. Every updated or revised water conservation plan submitted must contain each of the minimum requirements found in the TCEQ rules and must be duly adopted by the entity submitting the water conservation plan. Please include evidence that each water conservation plan submitted has been adopted.
- Rules on minimum requirements for Water Conservation Plans can be found in 30 TAC 288.  
[http://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac\\_view=4&ti=30&pt=1&ch=288](http://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=4&ti=30&pt=1&ch=288)
  - Forms which include the minimum requirements and other useful information are also available to assist you. Visit the TCEQ webpage for Water Conservation Plans and Reports. [https://www.tceq.texas.gov/permitting/water\\_rights/wr\\_technical-resources/conserv.html](https://www.tceq.texas.gov/permitting/water_rights/wr_technical-resources/conserv.html)

*Call 512-239-4691 or email to [wcp@tceq.texas.gov](mailto:wcp@tceq.texas.gov) for assistance with the requirements for your water conservation plan(s) and report(s).*

6. For each Water Conservation Plan submitted, state whether the five and ten-year targets for water savings and water loss were met in your *previous* water conservation plan.  
Yes \_\_\_\_\_ No X \_\_\_\_\_

If the targets were not met, please provide an explanation.

<p>The city did not meet goals for two reasons:</p> <p>1. Building exceeded expectations 2. The city was required to flush both towers loosing in excess of 600k in water loss to obtain water residuals in compliance with state regulations.</p>
--

7. For each five-year submittal, does each water conservation plan submitted contain *updated* five and ten-year targets for water savings and water loss?

Yes X \_\_\_\_\_ No \_\_\_\_\_

If yes, please identify where in the water conservation plan the updated targets are located (page, section).

Chapter 5 page 5-2

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8. In the box below (or in an attachment titled "Summary of Updates or Revisions to Water Conservation Plans), please identify any other revisions/updates made to each water conservation plan that is being updated or revised. Please specify the water conservation plan being updated and the location within the plan of the newly adopted updates or revisions.


The previous plan defines "Regulated Irrigation Property" as any property that uses 1 million gallons of water or more for irrigation in a single calendar year or is greater than 1 acre in size. The new plan defines it as any property that uses 1 million gallons of water or more for irrigation purposes in a single calendar year.

Stage 1 Initiation  
Previous - Storage in Lavon Lake is less than 55% of NTMWD's total conservation pool capacity  
New - Storage in Lavon Lake is less than 70% of NTMWD's total conservation pool capacity  
April — October or less than 60%  
during November — March

Stage 2 Initiation  
Previous - Storage in Lavon Lake is less than 45% of NTMWD's total conservation pool capacity  
New - Storage in Lavon Lake is less than 55% of NTMWD's total conservation pool capacity  
April — October or less than 45%

9. Form Completed by (Point of Contact): Joseph Hilbourn  
*(If different than name listed above, owner and contact may be different individual(s)/entities)*
- Contact Person Title/Position: Development Services Director
- Contact Address: 665 Country Club Road Lucas Texas 75002
- Contact Phone Number: 972-912-1206 Contact Email Address: jhilbourn@lucastexas.us

Signature:  Date: 9/10/19



**2019 WATER RESOURCE AND EMERGENCY  
MANAGEMENT PLAN  
CITY OF LUCAS**

JANUARY 2019



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## APPENDICES

APPENDIX A List of References

APPENDIX B Texas Commission on Environmental Quality Rules on Drought Contingency Plans

- Texas Administrative Code Title 30, Chapter 288, Section 288.20 – Drought Contingency Plans for Municipal Uses by Public Water Suppliers

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

APPENDIX D Adoption of Water Resource and Emergency Management Plan

- Municipal Ordinance Adopting Water Resource and Emergency Management Plan
- Municipal Utility District Order Adopting Water Resource and Emergency Management Plan
- Special Utility District Order Adopting Water Resource and Emergency Management Plan
- Water Supply Corporation Resolution Adopting Water Resource and Emergency Management Plan

## 1. INTRODUCTION AND OBJECTIVES

This document has been prepared as a Model Water Resource and Emergency Management Plan (Model WREMP), intended to be available for use by North Texas Municipal Water District (NTMWD) Member Cities and Customers as they develop their own respective WREMPs. This Model WREMP addresses all of the current TCEQ requirements for a drought contingency plan.<sup>1</sup> This Model WREMP will replace the plans dated August 2004, April 2006, March 2008, and April 2014.

The measures included in this Model WREMP are intended to provide short-term water savings during drought or emergency conditions. Water savings associated with ongoing, long-term strategies are discussed in the document entitled *Model Water Conservation Plan for North Texas Municipal Water District Member Cities and Customers*.<sup>2</sup>

The purpose of this Model WREMP is as follows:

- To conserve the available water supply in times of drought, water supply shortage, 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.

NTMWD supplies treated potable water to its Member Cities and Customers. This Model WREMP was developed by NTMWD in consultation with its Member Cities and Customers. In order to adopt this Model WREMP, each NTMWD Member City and Customer will need to adopt ordinance(s) or regulation(s) implementing the WREMP, including the establishment of fines and enforcement procedures. The Model WREMP calls for each Member City and Customer to adopt Water Resource Management Stages initiated by NTMWD during a drought or water supply emergency. Member Cities and Customers may also adopt more stringent Water Resource Management Stages than NTMWD if conditions so warrant.

In the absence of drought response measures, water demands tend to increase during a drought due to increased outdoor irrigation. The severity of a drought depends on the degree of depletion of supplies



and on the relationship of demand to available supplies. NTMWD considers a drought to end when all of NTMWD's supply reservoirs refill to conservation storage pool levels.

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<sup>1</sup> Superscripted numbers match references listed in Appendix A.

## **2. DEFINITIONS AND ABBREVIATIONS**

1. **AQUATIC LIFE** means a vertebrate organism dependent upon an aquatic environment to sustain its life.
2. **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 and league play sanctioned by the utility providing retail water supply.
3. **COMMERCIAL FACILITY** means business or industrial buildings and the associated landscaping, but does not include the fairways, greens, or tees of a golf course.
4. **COMMERCIAL 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 inventory.
5. **CUSTOMERS** include those entities to whom NTMWD provides wholesale water that are not Member Cities of NTMWD.
6. **DESIGNATED OUTDOOR WATER USE DAY** means a day prescribed by rule on which a person is permitted to irrigate outdoors\*\*.
7. **DRIP IRRIGATION** is a type of micro-irrigation system that operates at low pressure and delivers water in slow, small drips to individual plants or groups of plants through a network of plastic conduits and emitters; also called trickle irrigation.
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. **EVAPOTRANSPIRATION (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.



10. EXECUTIVE DIRECTOR means the Executive Director of the NTMWD and includes a person the Executive 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.
11. FOUNDATION WATERING means an application of water to the soils directly abutting (within 2 feet) the foundation of a building, structure .
12. INTERACTIVE WATER FEATURES means water sprays, dancing water jets, waterfalls, dumping buckets, shooting water cannons, inflatable pools, temporary splash toys or pools, slip-n-slides, or splash pads that are maintained for recreation.
13. IRRIGATION SYSTEM means a permanently installed, custom-made, site-specific system of delivering water generally for landscape irrigation via a system of pipes or other conduits installed below ground.
14. LANDSCAPE means any plant material on a property, including any tree, shrub, vine, herb, flower, succulent, ground cover, grass or turf species, that is growing or has been planted out of doors.
15. MEMBER CITIES include the cities of Allen, Farmersville, Forney, Frisco, Garland, McKinney, Mesquite, Plano, Princeton, Richardson, Rockwall, Royse City, and Wylie, Texas, which are members of NTMWD.
16. NEW LANDSCAPE means : (a) vegetation installed at the time of the construction of a residential or commercial facility; (b) installed as part of a governmental entity's capital improvement project; or (c) installed to stabilize an area disturbed by construction.
17. ORNAMENTAL FOUNTAIN means an artificially created structure (up to a certain diameter) from which a jet, stream, or flow of treated water emanates and is not typically utilized for the preservation of aquatic life.
18. RETAIL CUSTOMERS include those customers to whom the Supplier provides retail water from a water meter.
19. 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 rate.





- 20. SPRINKLER means an above-ground water distribution device that may be attached to a garden hose.
- 21. SUPPLIER means a Member City or Customer that purchases wholesale water from NTMWD and provides water to retail and/or wholesale customers.
- 22. 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 point.
- 23. 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 plan.

**Abbreviations**

<b>Abbreviation</b>	<b>Full Nomenclature</b>
ED	NTMWD Executive Director
NTMWD or District	North Texas Municipal Water District
TCEQ	Texas Commission on Environmental Quality
TWDB	Texas Water Development Board
Model WREMP	Model Water Resource and Emergency Management Plan for Member Cities and Customers

### **3. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES**

The TCEQ rules governing development of drought contingency plans for public water suppliers are contained in Title 30, Chapter 288, Section 288.20 of the Texas Administrative Code, a current copy of which is included in Appendix B. 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.”<sup>1</sup>

#### Minimum Requirements

TCEQ’s minimum requirements for drought contingency plans are addressed in the following subsections of this report:

- 288.20(a)(1)(A) – Provisions to Inform the Public and Provide Opportunity for Public Input – Section 4.1
- 288.20(a)(1)(B) – Program for Continuing Public Education and Information – Section 4.2
- 288.20(a)(1)(C) – Coordination with the Regional Water Planning Group – Section 4.6
- 288.20(a)(1)(D) – Description of Information to be Monitored and Criteria for the Initiation and Termination of Water Resource Management Stages – Section 4.3
- 288.20(a)(1)(E) – Water Resource Management Stages – Section 4.3
- 288.20(a)(1)(F) – Specific, Quantified Targets for Water Use Reductions During Water Shortages – Section 4.3
- 288.20(a)(1)(G) – Water Supply and Demand Management Measures for Each Stage – Section 4.3
- 288.20(a)(1)(H) – Procedures for Initiation and Termination of Water Resource Management Stages – Section 4.3
- 288.20(a)(1)(I) - Procedures for Granting Variances – Section 4.4
- 288.20(a)(1)(J) - Procedures for Enforcement of Mandatory Restrictions – Section 4.5
- 288.20(a)(3) – Consultation with Wholesale Water Supplier – Sections 1 and 4.3
- 288.20(b) – TCEQ Notification of Implementation of Mandatory Measures – Section 4.3
- 288.20(c) – Review and Update of WREMP – Section 4.7

## **4. WATER RESOURCE AND EMERGENCY MANAGEMENT PLAN**

### **4.1 PROVISIONS TO INFORM THE PUBLIC AND OPPORTUNITY FOR PUBLIC INPUT**

Member Cities and Customers will provide opportunity for public input in the development of this WREMP by the following means:

- Providing written notice of the proposed WREMP and the opportunity to comment on the WREMP by newspaper, posted notice, and notice on the utility's web site and social media (if available).
- Making the draft WREMP available on the supplier's web site (if available).
- Providing the draft WREMP to anyone that requests a copy.
- Supplier may hold a public meeting providing advance public notice of such meeting.

### **4.2 PROGRAM FOR CONTINUING PUBLIC EDUCATION AND INFORMATION**

Member Cities and Customers will inform and educate the public about the Water Resource and Emergency 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 through the supplier's web site (if available).
- Including information about the Water Resource and Emergency Management Plan on the supplier's web site (if available).
- Notifying local organizations, schools, and civic groups that utility staff are available to make presentations on the Water Resource and Emergency Management Plan (usually in conjunction with presentations on water conservation programs).
- At any time that the Water Resource and Emergency Management Plan is activated or changes, Member Cities and Customers will notify local media of the issues, the Water Resource Management Stage (if applicable), and the specific actions required of the public. The information will also be publicized on the supplier's web site (if available). Billing inserts will also be used as appropriate.

### **4.3 CRITERIA FOR INITIATION AND TERMINATION OF WATER RESOURCE AND EMERGENCY MANAGEMENT STAGES AND TARGETS FOR WATER USE REDUCTIONS**

#### Initiation of a Water Resource Management Stage

The City Manager, General Manager, Mayor, Chief Executive, or official designee may order the implementation of a Water Resource Management Stage when one or more of the trigger conditions for that stage is met.

- Water Resource and Emergency Management Plan stages imposed by NTMWD action must be initiated by Member Cities and Customers.
- For other trigger conditions internal to a city or water supply entity, the City Manager, General Manager, Mayor, Chief Executive, or official designee may decide not to order the implementation of a Water Resource Management Stage or Water Emergency even though one or more of the trigger criteria for the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.

The following actions will be taken when a water resource management stage is initiated:

- The public will be notified through local media and the supplier's web site (if available) as described in Section 4.2.
- Wholesale customers (if any) and NTMWD will be notified by e-mail with a follow-up letter that provides details of the reasons for initiation of the Water Resource Management Stage.
- If any mandatory provisions of the Water Resource and Emergency Management Plan are activated, Member Cities and Customers will notify the TCEQ Executive Director and the NTMWD Executive Director within 5 business days.

#### Termination of a Water Resource Management Stage

WREMP stages initiated by NTMWD may be terminated after NTMWD has terminated the stage. For WREMP stages initiated by the Supplier, the City Manager, General Manager, Mayor, Chief Executive, or

official designee may order the termination of a Water Resource Management Stage when the conditions for termination are met or at their discretion.

The following actions will be taken when a Water Resource Management Stage is terminated:

- The public will be notified through local media and the supplier's web site (if available) as described in Section 4.2.
- Wholesale customers (if any) and NTMWD will be notified by e-mail with a follow-up letter.
- If any mandatory provisions of the Water Resource and Emergency Management Plan that have been activated are terminated, Member Cities and Customers will notify the TCEQ Executive Director and the NTMWD Executive Director within 5 business days.

The City Manager, General Manager, Mayor, Chief Executive, or official designee may decide not to order the termination of a Water Resource Management Stage even though the conditions for termination of the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, or the anticipation of potential changed conditions that warrant the continuation of the Water Resource Management Stage. The reason for this decision should be documented.

## **Water Resource and Emergency Management Plan Stages and Corresponding Measures**

### **4.3.1 Stage 1**

#### **Initiation and Termination Conditions for Stage 1**

**NTMWD has initiated Stage 1, which may be initiated due to one or more of the following:**

- The Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 1.
- Water demand is projected to approach the limit of NTMWD's permitted supply.
- The storage level in Lavon Lake as published by the Texas Water Development Board (TWDB),<sup>3</sup> is less than 70 percent of the total conservation pool capacity during any of the months of April through October or less than 60 percent of the total conservation pool capacity during any of the months of November through March.



- The Sabine River Authority (SRA) has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a Stage 1 drought.
- NTMWD has concern that Lake Texoma, Jim Chapman Lake, the East Fork Water Reuse Project, the Main Stem Pump Station, or some other NTMWD water source may be limited in availability within the next six (6) months.
- Water demand exceeds 95 percent of the amount that can be delivered by NTMWD to Customers for three (3) consecutive days.
- Water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.
- Supply source is interrupted or unavailable due to contamination, invasive species, equipment failure, or other cause.
- Water supply system is unable to deliver water due to the failure or damage of major water system components.
- Part of the system has a shortage in supply or damage to equipment. NTMWD may implement measures for only that portion of the NTMWD system impacted.

**Supplier has initiated Stage 1 due to one or more of the following reasons:**

- Supplier's water demand exceeds 95 percent of the amount that can be delivered to customers for three consecutive days.
- Supplier's water demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate.
- Supply source becomes contaminated.
- Supplier's water system is unable to deliver water due to the failure or damage of major water system components.
- Supplier's individual plan may be implemented if other criteria dictate.

**NTMWD has terminated Stage 1, which may be terminated due to one or more of the following:**

- The Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the termination of Stage 1.



- The storage level in Lavon Lake, as published by the TWDB,<sup>3</sup> is greater than 75 percent of the total conservation pool capacity during any of the months of April through October or greater than 65 percent of the total conservation pool capacity during any of the months of November through March.
- Other circumstances that caused NTMWD initiation of Stage 1 no longer prevail.

**The circumstances that caused the Supplier's 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 two percent (2%) reduction in the amount of water produced by NTMWD from the previous corresponding annual payment period prior to institution of drought restrictions. **If circumstances warrant, or if required by NTMWD, the City Manager, General Manager, Mayor, Chief Executive, or official designee can set a goal for greater or lesser water use reduction under Stage 1.** The City Manager, General Manager, Mayor, Chief Executive, or official designee may order the implementation of any or all of the actions listed below, as deemed necessary, to achieve a two-percent reduction. Measures described as “requires notification to TCEQ” are those that impose mandatory requirements on customers. The supplier must notify TCEQ and NTMWD within five (5) business days if such mandatory measures are implemented.

- Continue actions established by the Water Conservation Plan.
- Notify any wholesale customers of actions being taken and request that they implement similar procedures.
- Initiate engineering studies to evaluate alternative water sources and/or alternative delivery mechanisms should conditions worsen.
- Further accelerate public education efforts on ways to reduce water use.
- Halt non-essential city government water use. Examples include street cleaning, vehicle washing, operation of ornamental fountains, etc.
- Encourage the public to wait until the current drought or emergency situation has passed before establishing New Landscape.
- Encourage all users to reduce the frequency of draining and refilling swimming pools.



- **Requires Notification to TCEQ** – Increase enforcement of the following landscape watering restrictions established by the Water Conservation Plan: (1) limit landscape watering with sprinklers or irrigation systems at each service address to no more than two (2) days per week, on designated days, between April 1 and October 31; and (2) limit landscape watering with sprinklers or irrigation systems at each service address to once every week, on designated days, between November 1 and March 31. Exceptions are as follows:
  - An exception is allowed for New Landscape associated with new construction that may be watered as necessary for 30 days from the date of installation of new landscape features.
  - An exception for additional watering of landscape may be provided by hand-held hose with shutoff nozzle, and/or use of dedicated irrigation drip zones provided no runoff occurs.
  - Foundation (within 2 feet), New Landscape Watering, watering of new plantings (first year) of shrubs, and watering of trees (within a ten foot radius of its trunk) may occur by a hand-held hose, a soaker hose, or a dedicated zone using a Drip Irrigation system provided no runoff occurs.
  - Locations using alternative sources of water supply only for irrigation may irrigate without day of the week restrictions provided proper signage is employed. However, irrigation using alternative sources of supply is subject all other restrictions applicable to this stage. If the alternative supply source is a well, proper proof of well registration with the North Texas Groundwater Conservation District or Red River Ground Water Conservation District is required. Other sources of water supply may not include imported treated water.
- **Requires Notification to TCEQ** – Initiate a rate surcharge for all water use over a certain level.
- **Requires Notification to TCEQ** – Parks, golf courses and Athletic Fields using potable water for landscape watering are required to meet the same reduction goals and measures outlined in this stage. Exception for golf course greens and tee boxes that may be hand-watered as needed.

#### 4.3.2 Stage 2

##### Initiation and Termination Conditions for Stage 2



**NTMWD has initiated Stage 2, which may be initiated due to one or more of the following:**

- The Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 2.
- Water demand is projected to approach the limit of NTMWD's permitted supply.
- The storage level in Lavon Lake, as published by the TWDB,<sup>3</sup> is less than 55 percent of the total conservation pool capacity during any of the months of April through October or less than 45 percent of the total conservation pool capacity during any of the months of November through March.
- SRA has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a Stage 2 drought.
- NTMWD has concern that Lake Texoma, Jim Chapman Lake, the East Fork Water Reuse Project, the Main Stem Pump Station, or some other NTMWD water source may be limited in availability within the next three (3) months.
- Water demand exceeds 98 percent of the amount that can be delivered to Customers for three (3) consecutive days.
- Water demand for all or part of the delivery system equals delivery capacity, because delivery capacity is inadequate.
- Supply source is interrupted or unavailable due to contamination, invasive species, equipment failure, or other cause.
- Water supply system is unable to deliver water due to the failure or damage of major water system components.
- Part of the system has a shortage in supply or damage to equipment. NTMWD may implement measures for only that portion of the system impacted.

**Supplier has initiated Stage 2 due to one or more of the following reasons:**

- Supplier's water demand exceeds 98 percent of the amount that can be delivered to customers for three consecutive days.

- Supplier's water demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate.
- Supply source becomes contaminated.
- Supply source is interrupted or unavailable due to invasive species.
- Supplier's water supply system is unable to deliver water due to the failure or damage of major water system components.
- Supplier's individual plan may be implemented if other criteria dictate.

**NTMWD has terminated Stage 2, which may be terminated due to one or more of the following:**

- The Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the termination of Stage 2.
- The storage level in Lavon Lake, as published by the TWDB,<sup>3</sup> is greater than 70 percent of the total conservation pool capacity during any of the months of April through October or greater than 60 percent of the total conservation pool capacity during any of the months of November through March.
- Other circumstances that caused the NTMWD's initiation of Stage 2 no longer prevail.

**The circumstances that caused the Supplier's 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 reduction of ten percent (10%) in the amount of water obtained from NTMWD from the previous corresponding annual payment period prior to the institution of drought restrictions. **If circumstances warrant, or if required by NTMWD, the City Manager, General Manager, Mayor, Chief Executive, or official designee can set a goal for greater or lesser water use reduction.** The City Manager, General Manager, Mayor, Chief Executive, or official designee may order the implementation of any or all of the actions listed below, as deemed necessary to achieve a ten percent reduction. Measures described as "requires notification to TCEQ" are those that impose mandatory requirements on customers. The supplier must notify TCEQ and NTMWD within five (5) business days if such mandatory measures are implemented.

- Continue or initiate any actions available under the Water Conservation Plan and Stage 1.
- Notify any wholesale customers of actions being taken and request that they implement similar procedures.
- Implement viable alternative water supply strategies.
- Encourage all users to reduce the frequency of draining and refilling swimming pools.
- **Requires Notification to TCEQ** – Limit landscape watering with sprinklers or irrigation systems at each service address to once per week on designated days between April 1 and October 31. Limit landscape watering with sprinklers or irrigation systems at each service address to once every other week on designated days between November 1 and March 31. Exceptions are as follows:
  - New Landscape may be watered as necessary for 30 days from the date of the installation of new landscape features.
  - Foundation Watering (within 2 feet), New Landscape Watering, watering of new plantings (first year) of shrubs, and watering of trees (within a ten foot radius of its trunk) may occur for up to two hours on any day by a hand-held hose, a dedicated zone using a Drip Irrigation system and/or Soaker Hose, provided no runoff occurs.
  - Athletic Fields may be watered twice per week.
  - Locations using alternative sources of water supply only for irrigation may irrigate without day-of-the-week restrictions, provided proper signage is employed to notify the public of alternative water source(s) being used. However, irrigation using alternative sources of supply is subject all other restrictions applicable to this stage. If the alternative supply source is a well, proper proof of well registration with the North Texas Groundwater Conservation District or Red River Groundwater Conservation District is required. Alternative sources of water supply may not include imported treated water.
  - An exemption is allowed for Drip Irrigation systems from the designated outdoor water use day limited to no more than one day per week. Drip Irrigation systems are however subject to all other restrictions applicable under this stage.
  - Hand watering with shutoff nozzle, drip lines, and Soaker Hoses are allowed before 10 am and after 6 pm, provided no runoff occurs.

- **Requires Notification to TCEQ** – Prohibit hydro seeding, hydro mulching, and sprigging.
- **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** – If NTMWD has imposed a reduction in water available to Member Cities and Customers, impose the same percent reduction on any wholesale customers.
- **Requires Notification to TCEQ** – Parks and golf courses using potable water for landscape watering are required to meet the same reduction goals and measures outlined in this stage. Exception for golf course greens and tee boxes which may be hand watered as needed.

#### 4.3.3 Stage 3

##### Initiation and Termination Conditions for Stage 3

**NTMWD has initiated Stage 3, which may be initiated due to one or more of the following:**

- The Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the declaration of Stage 3.
- Water demand is projected to approach or exceed the limit of the permitted supply.
- The storage level in Lavon Lake, as published by the TWDB,<sup>3</sup> is less than 30 percent of the total conservation pool capacity during any of the months of April through October or less than 20 percent of the total conservation pool capacity during any of the months of November through March.
- SRA has indicated that its Upper Basin water supplies used by NTMWD (Lake Tawakoni and/or Lake Fork) are in a Stage 3 drought.
- The water supply from Lake Texoma, Jim Chapman Lake, the East Fork Water Reuse Project, Main Stem Pump Station, or some other NTMWD water source has become limited in availability.
- Water demand exceeds the amount that can be delivered to Customers.
- Water demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate.

- Supply source is interrupted or unavailable due to contamination, invasive species, equipment failure or other cause.
- Water supply system is unable to deliver water due to the failure or damage of major water system components.
- Part of the system has a shortage in supply or damage to equipment. NTMWD may implement measures for only that portion of the system impacted.

**Supplier has initiated Stage 3 due to one or more of the following reasons:**

- Supplier's water demand exceeds the amount that can be delivered to customers.
- Supplier's water demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate.
- Supply source becomes contaminated.
- Supplier's water supply system is unable to deliver water due to the failure or damage of major water system components.
- Supplier's individual plan may be implemented if other criteria dictate.

**NTMWD has terminated Stage 3, which may be terminated due to one or more of the following:**

- The Executive Director, with the concurrence of the NTMWD Board of Directors, finds that conditions warrant the termination of Stage 3.
- The storage level in Lavon Lake, as published by the TWDB,<sup>3</sup> in Lavon Lake is greater than 55 percent of the total conservation pool capacity during any of the months of April through October or greater than 45 percent of the total conservation pool capacity during any of the months of November through March.
- Other circumstances that caused the NTMWD's initiation of Stage 3 no longer prevail.

**When other circumstances that caused the Supplier's 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 designated by NTMWD in the amount of water obtained from NTMWD from the corresponding previous annual

payment period prior to institution of drought restrictions. **If circumstances warrant or if required by NTMWD, the City Manager, General Manager, Mayor, Chief Executive, or official designee can set a goal for greater or lesser water use reduction.** The City Manager, General Manager, Mayor, Chief Executive, or official designee may order the implementation of any or all of the actions listed below, as deemed necessary. Measures described as “requires notification to TCEQ” are those that impose mandatory requirements on Member Cities and Customers. The supplier must notify TCEQ and NTMWD within five (5) business days if such mandatory measures are implemented.

- Continue or initiate any actions available under the Water Conservation Plan and Stages 1 and 2.
- Notify any wholesale customers of actions being taken and request them to implement similar procedures.
- Implement viable alternative water supply strategies.
- **Requires Notification to TCEQ** – Initiate mandatory water use restrictions as follows:
  - Hosing and washing of paved areas, buildings, structures, windows or other surfaces is prohibited except by variance and performed by a professional service using high efficiency equipment.
  - Prohibit operation of ornamental fountains or ponds that use potable water except where supporting aquatic life or water quality.
- **Requires Notification to TCEQ** – Prohibit new sod, hydro-seeding, hydro-mulching, and sprigging.
- **Requires Notification to TCEQ** – Prohibit the use of potable water for the irrigation of New Landscape.
- **Requires Notification to TCEQ** – Prohibit all commercial and residential landscape watering, except that Foundation Watering (within 2 feet) and watering of trees (within a ten foot radius of its trunk) may occur for two hours one day per week with a hand-held hose or with a dedicated zone using a Drip Irrigation system and/or Soaker Hose, provided no runoff occurs. Drip Irrigation systems are not exempt from this requirement.
- **Requires Notification to TCEQ** – Prohibit washing of vehicles except at a Commercial Vehicle Wash Facility.



- **Requires Notification to TCEQ** – Landscape watering of parks, golf courses, and Athletic Fields with potable water is prohibited. Exception for golf course greens and tee boxes that may be hand watered as needed. Variances may be granted by the water provider under special circumstances.
- **Requires Notification to TCEQ** – Prohibit the filling, draining, and/or refilling of existing swimming pools, wading pools, Jacuzzi and hot tubs except to maintain structural integrity, proper operation and maintenance, or to alleviate a public safety risk. Existing pools may add water to replace losses from normal use and evaporation. Permitting of new swimming pools, wading pools, Jacuzzi, and hot tubs is prohibited.
- **Requires Notification to TCEQ** – Prohibit the operation of interactive water features such as water sprays, dancing water jets, waterfalls, dumping buckets, shooting water cannons, inflatable pools, temporary splash toys or pools, slip-n-slides or splash pads that are maintained for recreation.
- **Requires Notification to TCEQ** – Require all commercial water users to reduce water use by a percentage established by the City Manager, General Manager, Mayor, Chief Executive, or official designee.
- **Requires Notification to TCEQ** – If NTMWD has imposed a reduction in water available to Member Cities and Customers, impose the same percent reduction on any wholesale customers.
- **Requires Notification to TCEQ** – Initiate a rate surcharge over normal rates for all water use or for water use over a certain level.

#### **4.4 PROCEDURES FOR GRANTING VARIANCES TO THE PLAN**

The City Manager, General Manager, Mayor, Chief Executive, or official designee may grant temporary variances for existing water uses otherwise prohibited under this Water Resource and Emergency 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.

Variations shall be granted or denied at the discretion of the City Manager, General Manager, Mayor, Chief Executive, or official designee. All petitions for variations 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 and the level of water use reduction.
- Other pertinent information.

#### **4.5 PROCEDURES FOR ENFORCING MANDATORY WATER USE RESTRICTIONS**

Mandatory water use restrictions may be imposed in Stage 1, Stage 2 and Stage 3. The penalties associated with the mandatory water use restrictions will be determined by each entity and will be laid out in each entity's WREMP.

Appendix D contains potential ordinances, resolutions, and orders that may be adopted by the city council, board, or governing body approving the Water Resource and Emergency Management plan, including enforcement of same.

#### **4.6 COORDINATION WITH THE REGIONAL WATER PLANNING GROUP AND NTMWD**

Appendix C includes a copy of a letter sent to the Chairs of the Region C Water Planning Group and the Chairs of the North East Texas Water Planning Group in conjunction with this model Water Resource and Emergency Management Plan.





The suppliers will send a draft of its ordinance(s) or other regulation(s) implementing this plan to NTMWD for NTMWD's review and comment. The supplier will also send the final ordinance(s) or other regulation(s) to NTMWD.

#### **4.7 REVIEW AND UPDATE OF WATER RESOURCE AND EMERGENCY MANAGEMENT PLAN**

As required by TCEQ rules, Member Cities and Customers must review their respective Water Resource and Emergency Management plans every five years. The plan will be updated as appropriate based on new or updated information, such as the revision of the regional water plans.



# City of Lucas

## City Council Agenda Request

### October 3, 2019

Item No. 04

Requester: City Engineer Stanton Foerster

#### **Agenda Item Request**

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Consider authorizing the City Manager to enter into a contract for the construction of On-Call Miscellaneous Grading, Excavation, and Finish Work via Work and Purchase Orders (Bid #014-18a) with Four Star Excavation, Inc. in the amount not to exceed \$100,000 from account Improvements Roads 11-8209-301.

#### **Background Information**

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On August 15, 2019, the City entered into a \$50,000 contract with Four Star Excavation, Inc. for On-Call Miscellaneous Grading, Excavation, and Finish Work via Work and Purchase Orders. In a timely and efficient manor, Four Star completed the following projects via Work Orders #1 and #2:

1. Clean out five culvers on the north side of East Winningkoff Road between Winningkoff Road and Welborn Lane and riprap ends;
2. Clean out culvert under Snider Lane immediately east of Shady Lane and riprap ends;
3. Remove and reinstall Toole Drive culvert for 7791 East Parker Road;
4. Reestablish ditch, install culvert across Snider Lane on the north side of 2250 Snider Lane, and riprap northside inlet;
5. Clean out culvert under Lime Cove immediately north of Citrus Way;
6. Repair culvert and riprap westside outfall at 1865 Shady; and
7. Extend culvert and riprap southside outfall at 1780 Snider.

#### **Attachments/Supporting Documentation**

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1. Four Star Contract for FY 19-20
2. Exhibit A

#### **Budget/Financial Impact**

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Use \$100,000 from budgeted \$750,000 Improvements Roads (11-8209-301).

#### **Recommendation**

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City staff recommends entering into an agreement with Four Star Excavation for the following projects as well as other projects to be named later:



# City of Lucas

## City Council Agenda Request

### October 3, 2019

- Mandarin Cove at Citrus Way – replace culvert with correct size;
- 133 Brockdale Park Road – repair separation;
- Several (4 or 5) culverts across Orchard Road – cleanout inlet and outlet sides, riprap if necessary;
- Christian Lane at Lakeview Drive – extend culvert and add riprap;
- 3 Harvest Way – remove parallel culvert pipe and riprap culvert; and
- 895 Bentwater Drive – clean out culvert and riprap outfall.

#### **Motion**

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I make a motion to approve/deny authorizing the City Manager to enter into a contract for the construction of On-Call Miscellaneous Grading, Excavation, and Finish Work via Work and Purchase Orders (Bid #014-18a) with Four Star Excavation, Inc in the amount not to exceed \$100,000 from account Improvements Roads (11-8209-301).

**CITY OF LUCAS, TEXAS**

**PUBLIC WORKS CONSTRUCTION PROJECT**

**Four Star Excavation, Inc.**

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# City of Lucas, Texas

This Agreement is made by and between the City of Lucas, Texas, a home-rule municipality (hereinafter referred to as the "City") and Four Star Excavation, Inc. (hereinafter referred to as the "Contractor") for construction of On-Call Miscellaneous Grading, Excavation, and Finish Work via Work and Purchase Orders, (hereinafter referred to as the "Project"), the City and the Contractor hereby agreeing as follows:

## ARTICLE I

### THE CONTRACT AND THE CONTRACT DOCUMENTS

#### 1.1 THE CONTRACT

1.1.1 The contract between the City and the Contractor, of which this agreement (sometimes referred to herein as the "Contract") is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

#### 1.2 THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this agreement, the General Conditions, the Special Conditions, the Invitation to Bid, Requirements and Instructions to Bidders, the Specifications, the Drawings, the Shop Drawings, the Project Manual, all Change Orders and Field Orders issued hereafter, the addenda, exhibits and attachments thereto, any other amendments hereto executed by the parties hereafter, together with the following (if any): Exhibit "A" containing the following: 1) Certificate(s) of Liability Insurance; 2) Bid #014-18a application; and 3) any work and purchase orders issued pursuant to the turns of this contract.

#### 1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the City and Contractor not expressly made a part hereof.

#### 1.4 NO PRIVITY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.

#### 1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The word "City" includes the City of Lucas, Texas, a municipal corporation, and its public officials, officers, employees, agents and employees. The word "Contractor" includes the Contractor and its officers, employees, agents and representatives. The word "include", "includes", or "including", as used in this subparagraph and in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the City or the Engineer of the Contract Documents, Shop Drawings or Product Data, shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Engineer to only prepare documents for the Project, including the Drawings, Plans and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. THE CONTRACTOR ASSUMES ALL RISK OF ERRORS, AMBIGUITIES AND INACCURACIES. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## **1.6 OWNERSHIP OF CONTRACT DOCUMENTS**

1.6.1 The Contract Documents, and each of them individually and collectively, shall remain the property of the City. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

## **ARTICLE II**

### **THE WORK**

**2.1** The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract.



## **2.2 WORK**

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, permits and licenses required of the Contractor, power, water, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Approximate quantities for On-Call Pavement and Roadway Work via Work and Purchase Orders include items detailed within the said Work and Purchase Orders; and other miscellaneous improvements as shown on the plans and in accordance with the specifications.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

## **ARTICLE III**

### **CONTRACT TIME**

#### **3.1 SUBSTANTIAL COMPLETION**

3.1.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

#### **3.2 TIME**

3.2.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed and shall achieve Substantial Completion of the Work no later than number of calendar days listed in the Work and Purchase Orders from the date specified in the Notice to Proceed. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the Contract Time" and the "scheduled completion date." The execution of this Contract by the Contractor constitutes an agreement that adequate time has been allotted for this Contract, given the Contract Price.

3.2.2 Work may proceed on any day of the week, including weekends, and at any time of the day. However, work shall not occur on such days or at such times as, in the City's or Engineer's discretion, may be a violation of noise or environmental regulations or ordinances, or when the presence of workers, equipment or materials may create an abnormally hazardous condition.

3.2.3 The Contractor shall submit and comply with construction schedules establishing completion timelines and deadlines for each component of the Project. Construction schedules shall be submitted to and approved by the Engineer and the City on a regular basis as required by the Contract Documents. If no reference is made to construction schedules in the Contract Documents, then construction schedules shall be submitted with each Application for Payment.

### **3.3 TIME IS OF THE ESSENCE**

3.3.1 The scheduled completion date is based on public necessity. The scheduled completion date is factored into and is a material component of the Contract Price. All limitations of time set forth in the Contract Documents are of the essence of this Contract.

3.3.2 **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE WORK AND THE COMPLETION OF THE PROJECT ON OR BEFORE THE SCHEDULED COMPLETION DATE. THE SCHEDULED COMPLETION DATE IS A DEADLINE. THE CITY EMPLOYS A ZERO-TOLERANCE POLICY REGARDING THE TIME FOR COMPLETION.** The time for completion is an essential and material term of this Contract and the Contractor's failure to achieve substantial completion on the date stated herein, to comply with work schedules, or achieve milestones in approved construction schedules, shall be a material breach and default of this Contract.

3.3.3 The City will assess liquidated damages for late or untimely performance and may, at the City's sole option, elect to allow Contractor to continue with the Work, or may declare Contractor to be in breach and default of the Contract and order Contractor to remove all equipment and personnel from the work site. All remedies for Contractor's late performance shall be nonexclusive and cumulative without waiver of any other, and the City's election of one shall not preclude the City from pursuing any other.

3.3.4 It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and in the contract price and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors or of utilities that may be performing work at the Project site unrelated to this Contract. These delays have been considered and included in the determination of the scheduled completion date and the Contract Price.

### **3.4 LIQUIDATED DAMAGES; EARLY COMPLETION BONUS**

(This section has been removed)

### **3.5 NO DAMAGES FOR DELAY; NO BACK-CHARGES; DAMAGE WAIVER**

3.5.1 No claim shall be made by the Contractor to the City, and no damages, costs or extra compensation shall be allowed or paid by the City to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance, regardless of cause, shall be to request time extensions by written change orders as provided for hereinafter. The failure to seek or obtain a change order for time extension shall be deemed a waiver thereof and Contractor shall be regarded as having made a determination that the delay will not affect the completion of the Work. Should the Contractor be delayed by an act of the City, or should the City order a stoppage of the Work for sufficient cause unrelated to any act or omission of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.2 The City shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the City or City's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm. The Contractor shall not be compensated for periods of delay caused by a suspension of the work by the City. If work is suspended due to unsuitable conditions through no fault of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.3 The Contractor shall not have or assert any claim against the City for damages or back-charges of any kind for any reason, including but not limited to claims for Extra Work, damages, economic loss, additional costs, unknown latent site conditions, and refusals by the City to grant extensions of time, unless supported and authorized by a written Change Order or separate agreement signed by all parties. The Contractor, in entering into this Contract, hereby

waives, releases, quitclaims, discharges and holds harmless the City from and against any and all claims, damages, liabilities and losses, save and except those arising under Paragraph 12.1 of this Contract.

## **ARTICLE IV**

### **CONTRACT PRICE**

#### **4.1 THE CONTRACT PRICE**

4.1.1 The City shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of detailed in the Work and Purchase Orders. The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract, or the assessment of liquidated damages or the award of an early completion bonus. The total sum of this contract shall not exceed \$100,000.00.

## **ARTICLE V**

### **PAYMENT OF THE CONTRACT PRICE**

#### **5.1 SCHEDULE OF VALUES**

5.1.1 The Schedule of Values, submitted to and accepted by the City and Engineer at the time of the Contractor's bid, allocates the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall have been prepared, or at the City's or Engineer's request shall be amended prior to the commencement of construction, in such form, with such detail, and supported by such data as the Engineer or the City may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Engineer and the City.

#### **5.2 PAYMENT PROCEDURE**

5.2.1 The City shall pay the Contract Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the City by the Engineer, the City shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 **APPLICATION FOR PAYMENT** - On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the City or the Engineer may require. The Contractor may request payment for that portion of the Contract Price properly allocable to Contract requirements properly provided and to labor, materials and equipment properly incorporated in the Work, less retainage and less the total amount of previous payments received from the City. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the City the amount properly owing to the Contractor. The City shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such

amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow.

5.2.4 STATEMENT OF DELAY - Each Application for Payment shall include a Statement of Delay showing the number of days lost due to inclement weather, conflicts with other City contractors, utilities, or design specifications, or other proper reasons. The failure to submit the Statement of Delay shall be a waiver of any claim for additional days or extensions of the scheduled completion date.

5.2.5 RETAINAGE - If the Contract Price set forth in Subparagraph 4.1.1 exceeds \$400,000, the City shall withhold retainage of ten (10) percent from each progress payment to secure performance of the Contract and shall deposit in an interest-bearing account that portion of the retainage withheld that exceeds five (5) percent of the progress payment. If a different percentage is set forth in the Invitation to Bid, then that percentage shall apply.

5.2.6 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City when installed at the Project site, regardless of the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.7 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

5.2.8 No progress payment, nor any use or occupancy of the Project by the City, shall be interpreted to constitute an acceptance of any Work not in strict compliance with this Contract.

### **5.3 WITHHELD PAYMENT**

5.3.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- (a) defective Work not remedied by the Contractor or, in the opinion of the City, likely to be remedied by the Contractor;
- (b) claims of third parties against the City or the City's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion (final completion meaning the full and final completion of all work called for by this Contract and final acceptance by the Engineer and the City);
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the City or a third party to whom the City is, or may be, liable.
- (h) failure to submit an updated project schedule in accordance with Subparagraph 3.2.3.

- (i) failure to submit record drawings in accordance with Subparagraph 7.9.1.

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The City shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

#### **5.4 UNEXCUSED FAILURE TO PAY**

5.4.1 If within twenty (20) days after the date established herein for payment to the Contractor by the City, the City, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the City and the Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the City have been received. Late payments shall not accrue interest or other late charges.

#### **5.5 CERTIFICATE OF SUBSTANTIAL COMPLETION**

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer a list of items to be completed or corrected. When the Engineer and the City on the basis of an inspection determine that the Work is in fact substantially complete, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the City and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. In no event, however, shall the date of Final Completion be delayed. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work; however, the maintenance bond required herein, and the assurances given thereunder, shall commence of and from the date of final acceptance of the work by the City. The Certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the City and the Contractor of the Certificate of Substantial Completion, the City shall pay the Contractor for all work completed to date, less retainage.

#### **5.6 COMPLETION AND FINAL PAYMENT**

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price (including retainage and the interest accrued on the retainage in excess of five (5) percent if the Contract Price is in excess of \$400,000), plus an early completion bonus, if any, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the City from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the City the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that final completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part

thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Liquidated damages shall be deducted first from any earned early completion bonus, then from any sums otherwise due to the Contractor.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the City; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

5.6.3 The City shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Other than interest on retainage in excess of 5% under Paragraph 5.2.5, under no circumstances shall Contractor be entitled to receive interest on any payments or monies due Contractor by the City, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

## **ARTICLE VI**

### **THE CITY**

#### **6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM CITY**

6.1.1 The City shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The City shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the City shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The City shall furnish the Contractor, free of charge, two copies of the Contract Documents for execution of the Work.

#### **6.2 RIGHT TO STOP WORK**

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, if the Contractor fails to meet milestones set forth in approved construction schedules, if the City has sufficient reason to believe that the Contractor is not and will not complete the Project by the scheduled completion date, or if the best interests of the public health, safety or welfare so require, the City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

**6.3 CITY'S RIGHT TO PERFORM WORK**

6.3.1 If the Contractor's Work is stopped by the City under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City.

**ARTICLE VII**

**THE CONTRACTOR**

**7.1 MUST FOLLOW CONTRACT**

7.1.1 The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction. The Contractor shall perform the Work strictly in accordance with this Contract

**7.2 PROSECUTION OF WORK**

7.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the City for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.2 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.3 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.3.4 The City will not interfere with the Contractor's manner and means of performing the Work. However, the City's insistence on strict compliance with the Contract shall not be regarded as an interference with the Contractor's manner and means. In the event that any part of the Work is not in strict compliance with the Contract, the Contractor is and shall be estopped from claiming any interference by the City or Engineer with the Contractor's manner and means of performing that part of the Work.

**7.4 WARRANTY**

7.4.1 The Contractor warrants to the City that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective. **THE CONTRACTOR WARRANTS AND GUARANTIES THAT IT SHALL COMPLETE THE WORK AND ACHIEVE SUBSTANTIAL COMPLETION BY THE SCHEDULED COMPLETION DATE, STRICTLY IN ACCORDANCE WITH THIS CONTRACT. DEFECTIVE WORK OR MATERIALS SHALL BE FIXED, REPAIRED OR REPLACED FREE OF CHARGE OR COST TO THE CITY.**

## **7.5 PERMITS; FEES; LICENSES**

The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

## **7.6 SUPERVISION**

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the City or the Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

**Chris Butterfield, Principal, 940-273-1415, and [chrisb@selectexcavation.com](mailto:chrisb@selectexcavation.com)**

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

## **7.7 WORK SCHEDULE**

7.7.1 At the pre-construction meeting, the Contractor shall submit to the City and the Engineer for their information, the Contractor's schedule for completing the Work (also referred to herein as the construction schedule). The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the City and the Engineer.

7.7.2 The Contractor's schedule for completing the Work and any revised schedules, shall demonstrate achievement of substantial completion by the scheduled completion date. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a default and a material breach of this Contract.

## **7.8 ON-SITE DRAWINGS**

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the City and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the City and Engineer the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the City.

## **7.9 RECORD DRAWINGS/PLANS, AS-BUILT PLANS, SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

7.9.1 The Contractor shall submit, with each Application for Payment, As-Built plans for any and each part or portion of the Project that varies from the Engineer's plans and specifications and the Contract Documents.

7.9.2 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.3 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract.



## **7.10 CLEANING THE SITE AND THE PROJECT**

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. The Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials during construction and, upon completion of construction, shall clean the site and remove all such material together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a landfill approved by the Texas Commission on Environmental Quality. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the contract price.

## **7.11 ACCESS TO WORK AND INSPECTIONS**

7.11.1 The City and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the City or the Engineer, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

## **7.12 INDEMNITY AND DISCLAIMER**

7.12.1 CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, INJURY OR LOSS TO ANY PROPERTY, OR ECONOMIC LOSS, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF CITY, WITHOUT WAIVING THE CITY'S GOVERNMENTAL, SOVEREIGN OR OTHER IMMUNITIES OR DEFENSES AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR HEREIN IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE CITY'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

7.12.2 The Contractor will secure and maintain contractual liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the City for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with City a standard form Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type

of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **7.13 NONDISCRIMINATION**

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

### **7.14 PREVAILING WAGE RATES**

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request (or attached to this contract as a part of the exhibits), which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the City, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the City to insure compliance with this provision.

### **7.15 JOB SITE SAFETY PRECAUTIONS**

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Engineer during the progress of the Work.

### **7.16 WARNING DEVICES AND BARRICADES**

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Engineer to protect persons or property in, near or adjacent to the jobsite. No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

### **7.17 PROTECTION OF UTILITIES AND OTHER CONTRACTORS**

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense. The Contractor shall coordinate any utility conflicts with the owner of the utility and no extension of time will be requested or given if adequate coordination is not provided by Contractor.

7.17.2 The Contractor understands and acknowledges that other contractors of the City or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the scheduled completion date. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Engineer and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

## **ARTICLE VIII**

### **CONTRACT ADMINISTRATION**

#### **8.1 THE ENGINEER**

8.1.1 When used in this Contract the term "Engineer" does not necessarily denote a duly licensed, trained or certified engineer; as used herein, the term shall be used interchangeably and shall mean a designated Engineer, Engineer, or Contract Administrator (who may not be an architect or engineer) for the City, said person to be designated or re-designated by the City prior to or at any time during the Work hereunder. The Engineer may be an employee of the City or may be retained by the City as an independent contractor but, in either event, the Engineer's duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Engineer notwithstanding the contractual relationship between the City and Engineer, the title of Contract Administrator, or the fact that the Engineer is an employee of the City.

In the event the City should find it necessary or convenient to replace the Engineer, the City shall retain a replacement Engineer and the status of the replacement Engineer shall be that of the former Engineer.

#### **8.2 ENGINEER'S ADMINISTRATION**

8.2.1 The Engineer, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made.

8.2.2 The City and the Contractor shall communicate with each other in the first instance through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

### **8.3 CLAIMS BY THE CONTRACTOR**

8.3.1 The Engineer shall determine all claims and matters in dispute between the Contractor and City with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Engineer within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute and the Engineer shall render a written decision within a reasonable time thereafter. The Engineer's decisions shall be final and binding on the parties. In the event that either party objects to the Engineer's determination as to any submitted dispute, that party shall submit a written objection to the Engineer and the opposing party within ten (10) days of receipt of the Engineer's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the City's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown condition which may affect the Work. No claims for extra work or additional compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

### **8.4 EXTRA WORK**

8.4.1 The Contractor shall not claim, request or demand any sum from the City for Extra Work or for additional costs, and hereby waives all such claims, requests and demands and any right to assert same, unless the conditions of this subparagraph are strictly complied with. "Extra Work" is defined herein to mean any labor, service, materials, equipment, supplies or charges that are directly or indirectly related to the Work, the Project or the Project site, that is not necessarily or fairly required or implied by the Contract Documents.

8.4.2 The parties acknowledge and agree that there shall be no payment made by the City to the Contractor without a written agreement (either a separate contract or a written Change Order) signed by the parties. Should the Contractor perform Extra Work or be requested to perform Extra Work by the Engineer or City, it shall be the Contractor's obligation and duty to first apply for and obtain a written Change Order, approved by the Engineer and executed by the City. The Contractor's failure to obtain a written, signed Change Order prior to commencement of Extra Work shall constitute a complete and final waiver of any right for compensation for the Extra Work.

## **8.5 CLAIMS FOR ADDITIONAL COSTS OR TIME; CONTRACT PRICE INCREASE**

8.5.1 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefor, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any right to or claim for additional compensation.

8.5.2 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors. The City shall not be liable to the Contractor for any claims based upon delay to the Contractor for any reason whatsoever including any act or neglect on the part of the City.

8.5.3 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived. The procedures and remedies provided by this provision shall be the sole remedy of Contractor and Contractor shall not assert nor be entitled to any additional delays or damages associated therewith.

## **8.6 FIELD ORDERS**

8.6.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

## **8.7 MEDIATION**

8.7.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Engineer and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Engineer's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.7.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Engineer in accomplishing the timely completion of the Project.

**ARTICLE IX**  
**SUBCONTRACTORS**

**9.1 DEFINITION**

9.1.1 A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the City.

**9.2 AWARD OF SUBCONTRACTS**

9.2.1 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the City against the Contractor herein, including those rights afforded to the City by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the City.

9.2.3 The Contractor shall indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the City by or on behalf of any Subcontractor.

**ARTICLE X**  
**CHANGES IN THE WORK**

**10.1 CHANGES PERMITTED**

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

**10.2 CHANGE ORDER DEFINED**

10.2.1 Change Order shall mean a written order to the Contractor executed by the City and the Engineer, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

**10.3 CHANGES IN THE CONTRACT PRICE**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto,

being initialed by both parties, and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the City and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the City or the Engineer require, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

#### **10.4 MINOR CHANGES**

10.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Contractor. The Contractor shall promptly carry out such written Field Orders.

#### **10.5 EFFECT OF EXECUTED CHANGE ORDER**

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

#### **10.6 NOTICE TO SURETY; CONSENT**

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the City that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

## **ARTICLE XI**

### **UNCOVERING AND CORRECTING WORK**

#### **11.1 UNCOVERING WORK**

11.1.1 If any of the Work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or the City, be uncovered for the Engineer's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time or Contract Price.

11.1.2 If any of the Work is covered in a manner consistent with the Engineer's request or the provisions of this Contract, it shall, if required by the Engineer or City, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the City. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

#### **11.2 CORRECTING WORK**

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Engineer as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the City for the Engineer's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the four year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

#### **11.3 CITY MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK**

11.3.1 If the City chooses to accept defective or nonconforming Work, the City may do so at its sole discretion. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or nonconforming Work.

## **ARTICLE XII**

### **CONTRACT DEFAULT AND TERMINATION**



## **12.1 TERMINATION BY THE CONTRACTOR**

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon fifteen (15) days' written notice to the City and the Engineer, terminate performance under this Contract and recover from the City payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the City shall have fifteen (15) days to remedy its failure and if not so cured, the Contractor may terminate performance under this Contract by written notice to the Engineer and the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

## **12.2 TERMINATION BY THE CITY**

### **12.2.1 FOR CONVENIENCE**

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 (a) The Contractor shall submit a termination claim to the City and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

- (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

12.2.1.5 The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly by amounts withheld by the City and reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

## 12.2.2 FOR CAUSE

12.2.2.1 The following constitute grounds for termination of this Contract by the City:

- (a) the Contractor's failure or refusal to prosecute the Work in a timely manner;
- (b) The Contractor abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the City;
- (c) the Contractor fails to meet milestones or comply with approved construction schedules;
- (d) the Contractor fails to grant or allow access to the jobsite by the City or Engineer;
- (e) the Contractor fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials;
- (f) the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- (g) the Contractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or,
- (h) the Contractor is otherwise guilty of a violation of a material provision of this Contract.

In the event of the occurrence of any one or more of the above events, the City may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor, exclude the Contractor from the job site, and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

## 12.3 USE OF THIRD-PARTY OVERSIGHT OR CONSTRUCTION MANAGER

12.3.1 Should the City allow the Contractor to continue its performance of Work notwithstanding an event of default specified in Subparagraph 12.2.2.1, or should there be an imminent potential of default, the City, at its sole option and within its sole discretion, may retain a third-party construction manager to document the events of default and oversee further progress of the Work. The use of a third-party construction manager shall not prevent the City from declaring the Contractor to be in default and the City may, at its sole option and within its sole discretion, terminate this Contract at any time. Should the City retain a third-party construction manager, the costs thereof shall be withheld from any

amounts due Contractor upon termination. The City's exercise of this option shall be without prejudice to any other right or remedy available to the City by law or under this Contract.

**ARTICLE XIII  
INSURANCE**

**13.1 CONTRACTOR SHALL MAINTAIN INSURANCE**

13.1.1 The Contractor at its own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this Contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

**13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE**

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

<b><u>Type of Insurance</u></b>	<b><u>Amount</u></b>
Worker's Compensation	As set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence.
Liability (Public)	\$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate.
City's Protective	\$600,000 per occurrence
Liability Insurance	\$1,000,000 aggregate
Automobile Liability	\$500,000 Combined single limit per occurrence.

**13.3 ADDITIONAL INSURED**

13.3.1 The City and the Engineer shall be named as an additional insured on the Commercial General Liability (Public), City's Protective Liability, and Excess/Umbrella Liability Insurance Policies furnished by the Contractor.

**13.4 WRITTEN NOTIFICATION**

13.4.1 Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the City of Lucas, Attention: City Engineer, 665 Country Club Road, Lucas, TX 75002-7561.

**13.5 PREMIUMS AND ASSESSMENTS; SUBROGATION**

13.5.1 Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor. Insurance Companies shall have no right of subrogation against the City or the Engineer.

**13.6 CERTIFICATE OF INSURANCE**

13.6.1 Proof that the insurance is in force shall be furnished to the City on Standard Certificate of Insurance Forms. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City, the contractor shall furnish the City proof of identical continued coverage no later than thirty (30) days prior to the expiration date shown on the Certificate of Insurance.

**13.7 PRIMARY COVERAGE**

13.7.1 The coverages provided herein shall be primary and noncontributory with any other insurance maintained by the City, for its benefit, including self-insurance.

**13.8 WORKER'S COMPENSATION INSURANCE COVERAGE**

13.8.1 The Contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
  - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice shall comply with the requirements established by the Division of Workers Compensation of the Texas Department of Insurance, or its successor agency.

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:

- (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
- (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
- (C) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (D) obtain from each other person with whom it contracts, and provide to the Contractor:
  - (i) a certificate of coverage, prior to the other person beginning work on the project; and
  - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (E) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (G) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A) - (G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

## **ARTICLE XIV**

### **MISCELLANEOUS**

#### **14.1 LAWS AND ORDINANCES**

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

#### **14.2 GOVERNING LAW**

14.2.1 The Contract shall be governed by the laws of the State of Texas. Exclusive venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the state courts of Collin County, Texas.

#### **14.3 SUCCESSORS AND ASSIGNS**

14.3.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the City.

#### **14.4 SURETY BONDS**

14.4.1 The Contractor shall furnish separate performance and payment bonds to the City, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract by the Contractor and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the full Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the City and shall be executed by a surety, or sureties, reasonably suitable to the City and authorized to do business in the State of Texas.

14.4.2 If the single Work Order Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the City a two-year maintenance bond in the amount of one hundred percent (100%) of the Work Order Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas.

#### **14.5 FORCE MAJEURE**

14.5.1 As used herein, "force majeure" means an incident, situation, or act of a third party that is beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots. The Contractor will not be liable or responsible for its failure to perform any obligation under this Contract because of an event of Force Majeure, provided, however, that the Contractor submits notice thereof to the City and Engineer within seven (7) days of such an event, obtains a written Change Order, signed by all parties, that allows an extension of the scheduled completion date, and identifies the specific causes and number of days in the Statement of Delay submitted with the next ensuing Application for Payment. Notwithstanding, if the Contractor's failure to perform continues for more than twenty (20) calendar days, the City may at its option terminate this Agreement immediately and pursue such rights and remedies as may be allowed under Subparagraph 12.2.2 of this Contract.

#### **14.6 IMMUNITIES; DEFENSES**

14.6.1 Nothing in this Contract shall be deemed to waive any immunity, sovereign, governmental, official, qualified or otherwise, from liability or suit, which the City may have or assert, except as may be provided by law, all such immunities being hereby expressly retained.

#### **14.7 NO RIGHTS IN THIRD PARTIES**

14.7.1 The indemnification provisions of this Contract and the rights and remedies afforded herein are solely for the benefit of the parties to this Contract. Nothing in this Contract is intended nor shall be construed to grant, create or confer any right, benefit, interest or cause of action in any person not a party to this Contract, or to the public in general.

#### **14.8 SEVERABILITY**

14.8.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

#### **14.9 AMENDMENTS; NO WAIVER**

14.9.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the City to object to any nonperformance or nonconforming work or to enforce any provision hereof shall

in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce estop the City from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

**14.10 NO BOYCOTT ISRAEL**

14.10.1 Pursuant to Texas Government Code Chapter 2270, the Contractor agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the contract.

**14.11 COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS.**

14.11.1 Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms that is it not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organizations.

**14.12 NOTICES**

14.12.1 All notices required by this Contract shall be in writing and presumed received when deposited in the mail properly addressed to the other party or Engineer at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Engineer.

EXECUTED in single or multiple originals, this \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF LUCAS, TEXAS**

**CONTRACTOR:**

Four Star Excavation, Inc.  
6825 Levelland Road, Suite 2B  
Dallas, TX 75252

\_\_\_\_\_  
City Manager Joni Clarke

\_\_\_\_\_  
Antonio Evangelista

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED TO FORM

\_\_\_\_\_  
City Attorney

Exhibit “A”



## Miscellaneous Grading, Excavation, and Finish Work Bid #014-18a



The City of Lucas is seeking bids for miscellaneous grading, excavation, and finish work relating to various projects and locations. There is no detailed scope for this work. The purpose of this contract is the conduct maintenance of various drainage facilities throughout the City of Lucas with benefits to the health, safety, and welfare of the general public in Lucas.

Bids labeled “**Miscellaneous Grading, Excavation, and Finish Work Bid #014-18a**” for this work shall be submitted to the City of Lucas Attention: Purchasing at any time at City of Lucas City Hall (665 Country Club Road, Lucas, Texas 75002-7651) or email it to [lmaduro@lucastexas.us](mailto:lmaduro@lucastexas.us) and [stanton@lucastexas.us](mailto:stanton@lucastexas.us). There is no bid date for this bid.

The bidder will be responsible for all personnel and equipment needed to complete the work. Prior to starting on a particular task, the bidder will determine the hours needed for a particular task, and once the City and the bidder agree on the hours, the bidder may begin working. The City will issue “Task Order” to the bidder during the next three years. The City may contract with more than one bidder. The minimum task order will be for eight hours or the equivalent work done in a single day.

Please contact City Engineer Stanton Foerster at [stanton@lucastexas.us](mailto:stanton@lucastexas.us) with any questions.

The bid shall include the following items:

1) Bidder's Name FOUR STAR EXCAVATING

Address 6925 LEVELAND RD., SUITE 2B DALLAS TX  
75252

Telephone Number 972-330-6767

Email Address fourstarexavating@gmail.com

2) List an hourly rate for each piece of equipment which includes the operator:

Cost per hour for miscellaneous grading, excavation, and finish work \$ 645 per Hour.

Cost per square-yard for miscellaneous grading, excavation, and finish work \$ \_\_\_\_\_ per SY of material excavated.

Skid steer \$ \_\_\_\_\_ per Hour

Backhoe \$ 80 per Hour

Excavator \$ 120 per Hour

Dozer \$ 100 per Hour

Mortar Grader \$ \_\_\_\_\_ per Hour

Sheep foot compactor \$ 80 per Hour

Dump truck (truck size - 20 Yards) \$ 90 per Hour

Water truck (truck size 2000 Gallons) \$ 65 per Hour.

Other Loader \$ 110 per Hour



# City of Lucas

## City Council Agenda Request

### October 3, 2019

Requester: City Engineer Stanton Foerster

#### **Agenda Item Request**

---

Consider approving Resolution R 2019-10-00490 supporting the application to the 2019/2020 Collin County Call for City Projects for West Lucas Road thoroughfare improvements.

#### **Background Information**

---

City staff would like to submit an application to the Collin County Call for City Projects for West Lucas Road thoroughfare improvements from Country Club Road to Angel Parkway. Improvements would include reconstruction of the existing three-lane asphalt roadway to a four-lane divided concrete curb and gutter roadway with a ten-foot concrete community trail.

The resolution declares support of the project, commitment to developing, implementing, constructing, maintaining, managing and financing the project, as well as a commitment to providing a 20 percent match to the project.

A project estimate was received from Birkhoff, Hendricks & Carter, as well as outlined in the Capital Improvement Plan at a cost of \$12,550,000. A 20 percent match would consist of support in the amount of \$2,510,000, of which \$420,783 has been committed through 2019 Certificates of Obligation, leaving \$2,089,217 of the project that would require committed funding.

#### **Attachments/Supporting Documentation**

---

1. Resolution R 2019-10-00490 supporting the Collin County Call for City Projects
2. Collin County Call for City Projects submittal process

#### **Budget/Financial Impact**

---

Commitment of funding in the amount of \$2,089,217.

#### **Recommendation**

---

City staff recommends approving Resolution R 2019-10-00490 supporting the City of Lucas application for the Collin County Call for Projects for West Lucas Road thoroughfare improvements.



**City of Lucas**  
**City Council Agenda Request**  
**October 3, 2019**

Item No. 05

**Motion**

---

I make a motion to approve/deny Resolution R 2019-10-00490 supporting the application to the 2019/2020 Collin County Call for City Projects for West Lucas Road thoroughfare improvements.



## **RESOLUTION R-2019-10-00490**

[2019/2020 Collin County Call for City Projects]

**A RESOLUTION SUPPORTING THE APPLICATION TO THE 2019/2020 COLLIN COUNTY CALL FOR CITY PROJECTS FOR WEST LUCAS ROAD THOROUGHFARE IMPROVEMENTS BY THE CITY OF LUCAS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Collin County issued a call for projects in September 2019 for cities to apply for funding assistance for thoroughfare improvements; and

**WHEREAS**, the City of Lucas desires to improve West Lucas Road from a three-lane asphalt roadway to a four-lane divided concrete curb and gutter roadway with a 10-foot concrete community trail; and

**WHEREAS**, the City has appropriate approvals to begin or advance the project immediately through design, right of way, utility adjustment and construction; and

**WHEREAS**, the City has secured funding for a 20 percent match to participate in the Collin County Call for City Projects from Certificates of Obligation and the City of Lucas General Fund, Street Maintenance; and

**WHEREAS**, the City of Lucas is concerned about county wide congestion mitigation and has estimated that approximately 70 percent of the vehicles traveling on West Lucas Road originate outside the City of Lucas.

**WHEREAS**, the City of Lucas is working closely with the Texas Department of Transportation and Collin County on regional issues and congestion mitigation with improvements to the intersection of FM 1378 and FM 3286 in the City of Lucas; and

**WHEREAS**, the City of Lucas is not involved with any litigation with Collin County.

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

**SECTION 1.** The City of Lucas supports funding the West Lucas Road project as described in the 2019/2020 Collin County Call for City Projects Application and is willing to commit to all aspects of development, implementation, construction, maintenance, management, and financing of the West Lucas Road Project. The City of Lucas is willing by resolution to enter into an agreement with Collin County should the project be selected for funding.

**SECTION 2.** This Resolution shall become effective immediately from and after its passage.

**DULY PASSED** and approved by the City Council of the City of Lucas, Collin County, Texas, on this the 3rd day of October 2019.

APPROVED:

ATTEST:

\_\_\_\_\_  
Jim Olk, Mayor

\_\_\_\_\_  
Stacy Henderson, City Secretary

## 2019/20 Collin County Call for City Projects

Collin County cities are hereby invited to submit thoroughfare improvement projects for possible funding from Collin County's 2018 Bond Program. Information was distributed to all the cities on January 31, 2019, so cities could plan and prepare submittal packages at this time. General information is below, as well as specific information about eligibility of cities and projects to receive funding and ranking of the projects. A form is included to use to provide the necessary information for the County to evaluate the projects submitted. Submissions are due October 31 at the end of business. It is anticipated that it may take several months to review and score the projects. Funding will be available in March or April, 2020.

### Submittal Process

Complete the attached submittal form, which will be helpful to the County in reviewing the proposals. Attach additional documents as directed on the form. Additional information can be attached if the cities feel it is helpful in explaining the value of the project. The form is an Excel spreadsheet; the explanation boxes can be expanded as necessary to provide the room necessary for pertinent information about the project. It is the County's intent for the cities and the County to make decisions based on the most accurate information possible; therefore, cities are encouraged to contact the County Engineering Department to clarify any confusion about these instructions.

The form can be submitted by email or mail, or both. Submit to

Teresa Nelson  
4690 Community Ave, Ste 200  
McKinney, Texas 75071  
[tnelson@collincountytx.gov](mailto:tnelson@collincountytx.gov)

### Eligibility

1. The thoroughfare must be on the Collin County Thoroughfare Plan
2. City must have adequate funding with addition of County's contribution to totally fund the project. At least one-half of the City's share must come from City funds; not grants or loans from other agencies such as the North Central Texas Council of Governments, TxDOT, etc., nor from previously allocated bond funds from Collin County (developer participation is allowable). A letter from the City Manager/Administrator/Mayor/Secretary must be included in the submittal that certifies that the funds are available for the City's share of the project.
3. City must have appropriate approvals to begin or advance the project through design, ROW, utility adjustment and construction immediately. Project does not have to be completed immediately, but must start immediately and must be ready for work to be prosecuted continuously until construction is completed. Milestones (ex. beginning design, award of construction contract, complete construction, etc.) will be negotiated in the ILAs. Documentation of City Council action approving/authorizing the project must be included in the

submittal. If any other approvals were needed, documents verifying that the approvals have been obtained must also be included in the submittal.

4. Must have impact broader than just local city value.
5. Cities must agree to cooperate in regional issues and priorities, such as freeways and improvement of roadways in their city that are to the benefit of the surrounding area and other cities.
6. If for whatever reason the project assigned is unable to be implemented, the funds will go back to the County for the Court to decide usage.
7. City is not in litigation with County.

### **Ranking Process**

Projects submitted will first be reviewed for eligibility.

Eligible projects will then be ranked with the following criteria to determine the order of priority and the number of projects that will be able to be funded.

The amount of growth throughout the County is putting tremendous stress on the transportation system in the cities in various parts of the County. The number of projects is large and the County bonds available for funding city thoroughfare projects is small (\$36 million in this "call for projects"). Therefore, the Collin Commissioners Court has put a priority on relieving congestion.

Each city will be limited to funding for only one project, although more than one project can be submitted. It is possible, depending on the number and total amount of projects submitted, that the Commissioners Court may limit the total amount the County will approve for any one project. The City will be contacted in that case to determine whether or not the City has the capability to implement the project with that limit. Capacity improvements, new or extended thoroughfares and re-construction projects will be eligible. Landscaping, irrigation and street lighting will not be eligible (those elements of a project's cost estimate must not be included).

Step 1: The eligible projects will first be given a value from 1 to 10 according to congestion determined by applying a ratio of the current volume (provided by the city) divided by a "daily service volume" (see "Congestion Score").

✚ Step 2: One point will be added to the congestion score if the city submits data that documents that the current condition of the thoroughfare includes a serious safety issue that can be solved with the proposed project.

Step 3: One point will be added to the congestion score if the proposed project is determined by the County to be a high priority in terms of County-wide congestion relief.

Step 4: One point will be added to the congestion score if the City has no other County transportation projects being funded in the City, either from Proposition A or B (County or State projects).

Exceptions:

Exceptions may be made at the discretion of the Commissioners Court for new thoroughfares on new alignments and for thoroughfares that must be re-constructed to maintain optimum traffic volumes. The case must be made by the City how this project (which must be on the County's Thoroughfare Plan) is necessary at this time to either relieve or prevent congestion on that thoroughfare and the surrounding thoroughfare system. A congestion score will be assigned according to the case made by the City. The other points will be the same.

**Matching Percentages – see listing in Appendix A**

Cities with populations equal to or greater than 100,000, city match will be 50% and County match will be 50%

Cities with populations equal to or greater than 10,000 but less than 100,000, the city match will be 30% and the County match will be 70%

Cities with populations less than 10,000, the city match will be 20% and the County match will be 80%

**Congestion Score**

City will submit the current average daily traffic (ADT) along with the documentation that this has been actually measured on the roadway. The ADT will be divided by the daily service volume for thoroughfares as defined below.

**Daily Service Volume:**

6-lane 45,000 vehicles per day (vpd)  
4-lane 30,000 vpd  
2-lane 15,000 vpd

**Score: Current ADT/Daily Service Volume**

.00 - .14 = 1  
.15 - .29 = 2  
.30 - .44 = 3  
.45 - .59 = 4  
.60 - .74 = 5  
.75 - .89 = 6  
.90 - 1.04 = 7  
1.05 - 1.19 = 8  
1.20 - 1.34 = 9  
> 1.75 = 10



**Appendix A**  
**Percentage Match of Cities**

Based on Population  
NCTCOG Estimates, January 1, 2019

<u>City</u>	<u>Population</u>	<u>City Match</u>
Dallas	1,301,970	50%
Plano	284,070	
McKinney	188,500	
Frisco	183,560	
Richardson	113,710	
<hr/>		
Allen	99,020	30%
Wylie	51,730	
Sachse	24,910	
Prosper	25,630	
Murphy	20,080	
Anna	15,010	
Celina	17,680	
Royse City	12,400	
Princeton	12,680	
Melissa	10,820	
<hr/>		
Fairview	9,610	20%
Lucas	7,960	
Parker	4,840	
Lavon	3,860	
Farmersville	3,340	
Lowry Crossing	1,710	
Josephine	1,550	
St. Paul	1,090	
Blue Ridge	<1,000	
Nevada	<1,000	
New Hope	<1,000	
Weston	<1,000	



# City of Lucas City Council Agenda Request October 3, 2019

Requester: City Attorney Joe Gorfida

## **Agenda Item Request**

---

Review the City Charter and provide direction to the City Attorney regarding any proposed amendments and consider proceeding with a Charter amendment election on May 2, 2020.

## **Background Information**

---

Section 12.03 of the City's Home Rule Charter requires that the City Council review the charter at least once every five years to determine whether any amendments are necessary.

During 2019, the City Council and City staff reviewed the City Charter to determine if amendments were needed. A redline version of the City Charter is attached outlining possible amendments that were discussed throughout the review process.

Staff is seeking guidance regarding any items that should be brought forward to be considered by the voters in the May 2, 2020 election.

## **Attachments/Supporting Documentation**

---

1. Redlined version of City Charter
2. Minutes excerpts from February 2019 through June 2019

## **Budget/Financial Impact**

---

NA

## **Recommendation**

---

Staff recommends proceeding with proposed charter amendments during the May 2, 2020 election.

## **Motion**

---

I make a motion to approve/deny proceeding with the following proposed charter amendments for the May 2, 2020 election:

- 1.



# HOME RULE CHARTER

## City of Lucas, Texas

Home Rule Charter Adoption  
May 10, 2008  
Ordinance 2008-05-00612

Home Rule Charter for the City of Lucas, Texas, May 2008.

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**HOME RULE CHARTER  
FOR  
THE CITY OF LUCAS, TEXAS**

**PREAMBLE**

We, the citizens of Lucas, Texas, in order to establish a Home Rule municipal government, provide for the progress of our City, secure fully the benefits of local self-government, promote economic and cultural prosperity, provide for the common welfare, insure health and safety, support municipal cooperation, and encourage all citizens to participate in the process of self-governing, hereby adopt this Home Rule Charter, as an expression of our city's purpose and in accordance with the statutes of the State of Texas; and we declare the City of Lucas (hereinafter referred to as "City"), in Collin County, to be a political subdivision of the State of Texas with all powers, rights, privileges, authorities, duties and immunities of local self-government as are provided and limited in this Charter.

**ARTICLE I**

**Form of Government and Boundaries**

**SECTION 1.01 Form of Government**

- (1) The municipal government provided by this Charter shall be known as the "Council - Manager" form of government. Pursuant to its provisions and subject only to the limitations imposed by the Constitution of the United States, the Texas Constitution, the statutes of the State of Texas, and this Charter, all powers of the City of Lucas shall be vested in an elected City Council which shall enact local legislation, adopt budgets, determine policies, and provide for the adoption and execution of the laws of the City as provided in this Charter.
- (2) The City Council shall appoint a City Manager who shall be responsible to the City Council for the management and administration of the offices of the City, except as otherwise provided by this Charter.

**SECTION 1.02 Boundaries**

The boundaries of the City of Lucas shall be the same as have been heretofore established and now exist as recorded on the official City map as provided by this Charter. The citizens of the City of Lucas residing within its corporate limits, as heretofore or hereafter established, are hereby constituted and shall continue to be a municipal body politic and corporate, in perpetuity, under the name of the "City of Lucas", in the State of Texas, hereinafter referred to as the "State", with such powers, privileges, rights, duties, authorities, and immunities, as are herein provided.

**SECTION 1.03 Extension and Alteration of Boundaries**

- (1) The boundaries of the City of Lucas may be enlarged and extended by the annexation of additional territory or decreased by disannexation in any manner and by any procedure now or hereafter provided by law. The City shall, hereafter, by ordinance, amend the official map of the boundaries to include such properties so annexed or disannexed.
- (2) Upon completion of the annexation procedure, the annexed territory shall become a part of the City, and said land and its residents shall be entitled to all the rights and privileges provided by the City for its citizens and shall be bound by the acts, ordinances, resolutions and regulations of the City.
- (3) If, after the date of annexation, there exists land within and adjacent to the corporate limits of the City of Lucas not receiving governmental or proprietary services of the city within the time required by the service plan or Chapter 43 of Texas Local Government Code, or its successor statute, then a majority of the qualified voters residing within this particular area may petition the city council to disannex the area as provided in Chapter 43 of Texas Local Government Code, or its successor statute.

**ARTICLE II**

**Powers of the City**

**SECTION 2.01 Powers of the City**

- (1) The City is made a body politic and corporate by the legal adoption of this Charter. The City shall have all the powers vested in home rule municipal corporations except as may be limited by the Constitution of the United States, the Texas Constitution, and the statutes of the State.
- (2) The enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated therein or implied thereby, or appropriate to exercise of such powers, it is intended that the City shall have, and may exercise all powers except as limited by this Charter. All powers of the City, whether expressed or implied, shall be exercised as prescribed by this Charter or, if not prescribed therein, then as provided by ordinance or resolution of the City Council.

**SECTION 2.02 Legislative Authority**

The City by and through its City Council shall have the power to enact and enforce all ordinances and resolutions necessary to protect health, life and property; and to prevent and summarily abate and remove all nuisances; and preserve and enforce good government and order and security of the City and its inhabitants; and to enact and enforce all ordinances and resolutions on any and all subjects which shall be consistent with the provisions of this Charter.



### **SECTION 2.03   Municipal Court**

- (1)   Establishment -- The City shall have the power to create and establish a municipal court to be known as the Municipal Court of the City of Lucas, Texas. The Municipal Court shall have jurisdiction of all criminal cases arising under the ordinances of the City and concurrent jurisdiction with the Justice of the Peace of the precinct of which the City is or may be situated of all criminal cases arising under State law, where such offenses are committed either within the territorial limits of the City or in an area lying outside the corporate limits of the City in which area the City is authorized to exercise its police powers as set forth but not necessarily limited to the areas provided by State law and where the punishment is by fine only and the maximum of said fine does not exceed the maximum fine authorized to be imposed by municipal courts under State law or any amendments thereto. The Municipal Court shall have all the powers and duties as are now, or as may be prescribed by the laws of the State of Texas.
  
- (2)   Additional Courts -- The City shall have the power to create and establish additional municipal courts, and to appoint one or more judges of each municipal court, whether one or more, each of whom shall be a magistrate and each judge of a municipal court, now existing or hereinafter created, shall be appointed by the City Council, for a term of 2 years; and the City shall have the power to create and establish additional courts as may from time to time be authorized by the legislature of the State.
  
- (3)   Rules -- All complaints, prosecutions, the service of process, commitment of those convicted of offenses, the collection and payment of fines, the attendance and service of witnesses and juries, punishment for contempt, bail and the taking of bonds shall be governed by the provisions of the rules established by the Supreme Court of Texas applicable to municipal courts.
  
- (4)   Appeals -- Appeals from convictions in the Municipal Court shall lie to the county criminal court, and such appeals shall be governed by the same rules of practice and procedure as are provided by State law in cases of appeals from the justice court to said county criminal court, as far as said rules are applicable.
  
- (5)   Clerk -- The Clerk of Municipal Court and such deputies as shall be appointed by the City Manager, shall have the power to administer oaths and affidavits, make certificates, affix the seal of the Municipal Court thereto; and generally do and perform any and all acts usual and necessary by clerks of courts in issuing processes of courts and conducting the business thereof.
  
- (6)   Expense and Fines -- All special expense and fines imposed by the Municipal Court(s) shall be paid into the City general fund for the use and benefit of the City, as may be consistent with present and future laws.

**SECTION 2.04 Enumerated Governmental Powers**

- (1) Real Estate -- The City has full authority as a home rule municipal corporation and as such it has authority to acquire and own real estate in fee simple title, or held by lease, sufferance, easement or otherwise, all public buildings and improvements, and structure or whatever type and character, and any and all property, whether real or personal, of whatever kind, character or description now owned or controlled by the City shall vest in, inure to, remain and be the property of said City under this Charter. In the event that the City shall grant a lease for any real property in excess of twenty (20) years, the City Council shall hold a public hearing.
- (2) Public Rights-Of-Way -- The City shall have the power to lay out, establish, open, alter, widen, lower, extend, grade, construct, abandon and improve streets, alleys, sidewalks, squares, parks, public places, bridges and public thoroughfares or rights-of-way; and to otherwise regulate and control the use thereof for any and all public purposes all obstructions, telegraph, telephone or other poles, carrying electric wires or signs, and all showcases and encroachments of every nature and character upon any said street, right-of-way and sidewalk and to vacate and close public ways; and the City shall have the power to make any improvements as provided by State law.
- (3) Regulation of Vehicles -- The City Council shall have the power by ordinance or otherwise to license and control the operation of any vehicle using public streets or rights-of-way.
- (4) Regulation of Public Utilities -- The City shall have the power to buy, own, sell, construct, lease, maintain, operate and regulate public services and utilities; and to manufacture, distribute and sell the output of such services and utility operations. The City shall not supply any utilities service outside the City limits, except by written contract. The City shall have such regulatory and other powers as may or hereafter be granted under State law; and, by ordinance, to determine, fix and regulate the charges, fares or rates of compensation to be charged by any person, firm or corporation enjoying a franchise for utilities in the City.
- (5) Operation of Public Services or Utilities by City -- The City shall have the power to build, construct, purchase, own, lease, maintain and operate, inside or outside the City limits, light and power systems, water systems, sanitary wastewater disposal, natural gas, parks, drainage, municipal solid waste disposal and any other public service or utility in this section, as deemed in the public interest. The City shall not enter into an agreement for the construction, purchase, lease or operation of a sanitary wastewater disposal system until after two separate public hearings being held on two separate dates with such approval requiring five (5) affirmative votes of the City Council prior to the May 2009 election. Effective after the May 2009 election and thereafter, an affirmative vote by five (5) members of the City Council shall be required for such approval. Such notice for said public hearings shall state with specificity the type of sanitary wastewater disposal system (ex: sanitary wastewater disposal system) and the proposed location (common address) of the proposed sanitary wastewater disposal system.

- (6) Purchase Utility Services -- The City shall have the power to purchase electricity, gas, oil or any other article or service essential to protect the health, safety and welfare of its inhabitants on such terms as the City Council may deem proper.
- (7) Transportation Facilities -- The City may acquire, maintain, operate and regulate any and all modes of transportation facilities or services; and, use public funds for such purposes, and issue such debt or funds as permitted by this Charter.
- (8) Parks and Recreation -- The City may acquire, maintain, operate and regulate within its exclusive control all City parks and recreation facilities whether inside or outside the City limits.
- (9) Underground Utilities -- The City may require the placing under the surface of the ground all wires or any above ground construction of any public utilities inside the limits of the City under such regulation as may be prescribed by the City Council from time to time.
- (10) Fire Prevention -- The City shall provide by ordinance for the establishment and designation of fire limits and prescribe the kind and character of buildings or structures or improvements to be erected therein; provide for the erection of fire resistant buildings within certain limits; and provide for the condemnation of dangerous structures of buildings or dilapidated buildings or buildings calculated to increase the fire hazard, and the manner of their removal or destruction.
- (11) Public Safety -- The City has the power and may by ordinance establish and maintain a police and fire department(s) by whatever name known and to prescribe the duties of the members of each such department(s) and regulate their conduct and their salary ranges. The head of the police department of the City shall be known and designated as "Chief of Police", and the head of the fire department of the City shall be known and designated as "Fire Chief". The City Council shall provide by ordinance staff requirements for each such department.
- (12) Contracts -- The City shall have the power to enter into contracts for goods and services. Such authority is subject to the limitation regarding competitive bidding as provided by State law or as may otherwise be limited by this Charter. The City hereby adopts the requirements and exceptions concerning the provisions of State law regarding goods and acquisition.
- (13) Land Use -- The City shall have full power and authority to zone and regulate the subdivision of land in the City and to pass all necessary ordinances, rules and regulations governing the same under and by virtue of the authority given to cities and legislative bodies in accordance with State law. The City will maintain an official city map describing the official city limits as required by State law.
- (14) Franchises -- The City shall have full power and authority to franchise as provided by this Charter.

- (15) Occupations -- The City shall have the authority to license or register such occupations or business as may be established by ordinance, except as may be in conflict with State law.

**SECTION 2.05 Health Regulations**

- (1) Regulations -- The City shall have the power to provide for the health, safety and welfare of its inhabitants by establishing all necessary rules and regulations protecting the health, safety and welfare of the City.
- (A) The City Council shall have the power by ordinance or otherwise to regulate, license and inspect public or private persons, firms, institutions, corporations, common carriers, or associations operating, managing, or conducting any activities including, but not limited to, any of the following:
1. place of public accommodation, hotel or any other public sleeping or eating place;
  2. place or vehicle where food or drink of any kind is manufactured, prepared, stored, packed, served, sold or otherwise handled within the City or limits of said City;
  3. any and all health conditions; and
  4. sanitary wastewater disposal systems.
- (B) The City shall have the power to define all nuisances and prohibit the same within the City and outside the City limits for a distance in accordance with State law; to have power to police in all parks or grounds, street right-of-way owned by the City or under lease to the City and lying both outside and inside said City; to prohibit the pollution of air or waterways, walkways of any kind, water deposit and reservoir, whether above or below the ground, which may constitute the source of storage of water supply, and to provide for policing the same, as well as to provide for the protection of any watersheds and the policing of the same.
- (2) Penalties or Fines -- The City shall have the power to provide for the fixing of penalties for failure of any person, firm, corporation or association to comply with any such rules and regulations so prescribed by the City Council under the provisions of this section; it being the intention to vest in the City Council not only the powers expressly enumerated in this section but all other powers reasonably necessary for the protection of the health of the City and its citizens.

**ARTICLE III**

**City Council**

**SECTION 3.01 Governing Body**

The governing body of the City shall be known as the "City Council" and shall consist of a Mayor and six (6) Councilmembers.

**SECTION 3.02 Elected Officers**

- (1) Members -- The members of the City Council of the City, which include the Mayor and six (6) Councilmembers, shall be the only elected officers of the City, and they shall be elected and hold office and be compensated as provided herein.
- (2) Terms -- The Mayor and Councilmembers shall be elected by the qualified voters of the entire City for a term of three (3) years, or until a successor has been duly elected and qualified, but each Councilmember shall be elected to and occupy an at-large, non-geographical seat on the Council, such seats being numbered 1, 2, 3, 4, 5 and 6, respectively. The seats of the Councilmembers shall be designated on the official ballot as Councilmember Seats 1, 2, 3, 4, 5 and 6.

**SECTION 3.03 Candidacy of the Mayor and Councilmembers**

- (1) Qualification -- No person shall be a candidate for the office of Mayor or Councilmember unless such candidate is a qualified voter of the City and shall have resided in the City for not less than one (1) year preceding the day of election. Members of the City Council shall hold no other elected office or appointed public office or position of emolument, except as authorized by state law. If a member of the City Council shall cease to possess any of the qualifications or shall be convicted of a felony or a crime involving moral turpitude, such person shall immediately forfeit such office. The City Council shall be the judge of the election and qualifications of its own members.
- (2) Declaration -- Candidates of the office of Mayor or Councilmember may have their names printed upon the official ballot being nominated for such office by written application. The order of the names of the candidates on the ballot shall be determined by lot in a public drawing to be held under the supervision of the City Secretary in accordance with the Texas Election Code.
- (3) Filing -- An application stating a declaration of candidacy shall be filed with the City Secretary or a duly appointed designee, who shall affix the date and time stamp on the ballot application, during regular office hours not earlier than the 75th day before the day

**Deleted:** ~~<#>Transition Provisions~~ -- To establish staggered terms for the Mayor and Councilmembers, the following transition provisions shall be applied:¶  
<#>¶  
<#>Beginning with the May 2009 election, the Mayor and Councilmember for Seat 3 will be elected for a three (3) year term. Councilmember for Seat 1 and Seat 2 will be elected for a two (2) year term. ¶  
<#>In May 2010, Councilmember for Seat 5 and Seat 6 will be elected for a three (3) year term. Councilmember for Seat 4 will be elected for a two (2) year term. ¶  
<#>In May 2011, Councilmember for Seat 1 and Seat 2 will be elected for a three (3) year term. ¶  
<#>In May 2012, the Mayor and Councilmember for Seat 3 and Seat 4 will be elected for a three (3) year term. ¶  
<#>In May 2013, Councilmember for Seat 5 and Seat 6 will be elected for a three year term. ¶  
<#>¶  
<#>Current Terms -- The current terms of Councilmembers in office when this Section takes effect shall not be shortened by the transition provision in (3) above.¶  
<#>¶  
<#>Pattern -- Beginning in 2012, a pattern of electing the Mayor and a number of Councilmembers on a "3-2-2" annual rotation basis shall be in effect and continue thereafter. ¶  
**Deleted:** and should not be in arrears in the payment of any City taxes....

of the election as provided by State law. The candidate's ballot application must be filed not later than 5 p.m. on the date provided in accordance with State law.

**Deleted:** The City Hall shall not remain open to the general public after such time to accept ballot applications.

#### **SECTION 3.04 Election**

- (1) All candidates running for Mayor or Councilmember seat, respectively, shall be elected by a majority vote of all votes cast in the regular municipal election for the office which the candidate seeks election.
- (2) In the event that a candidate does not receive a majority of votes, it shall be the duty of the City Council to order a runoff election for every Councilmember seat or Mayor to which no one was elected. Such runoff election shall be held in accordance with State law.
- (3) Should any person who was a candidate at the regular municipal election and who is entitled to become a candidate at the runoff election die, refuse or otherwise be unable to appear on the runoff election ballot, the candidate for such office standing next highest in the computation of vote for that office shall succeed to the rights of such candidate who failed to appear on the ballot at said runoff election. This method for selecting alternate runoff candidates shall be employed until there are two (2) candidates for each office in each runoff election and should there be only one candidate for office after the conclusion of this process, that candidate shall be declared the winner. However, if at the date of the election, there is no runoff candidate left from those who sought to be elected to that seat or Mayor in the regular election, the City Council shall declare no one elected to such seat or Mayor and shall call a Special Election on such date provided by State law to elect a person to such seat or Mayor; and said Special Election shall be conducted pursuant to State law prescribing special elections to fill vacancies in municipal offices.

#### **SECTION 3.05 Judge of Election**

- (1) The City Council shall be the judge of the qualifications of its own members and of the Mayor, subject to review of the courts in case of an election contest. The City Council shall, in accordance with State law, canvass the returns for any election and declare the results of such election. Should a runoff election be necessary, such election shall be held in accordance with the Texas Election Code and other applicable statutes.
- (2) In the event of a tie vote between candidates, the respective candidates so tied may agree to cast lots to determine who shall be the duly elected officer. In the event such tied candidates do not agree to determine the results of the election by casting lots, a run-off election shall be called and the respective candidates so tied shall cast lots to determine the order their names shall appear on the ballot for such run-off elections. The candidate receiving the highest number of votes of the entire City cast at said run-off election shall be elected to such office.

#### **SECTION 3.06 Date and Conduct of Election**

The regular municipal election of the City Council shall be held on the uniform election day in May, in accordance with this Charter, and the same shall be conducted and the results canvassed and announced in accordance with the laws of the State regulating all municipal elections and in accordance with the ordinances adopted by the City Council for the conduct of elections.

**SECTION 3.07 Qualifying of Officers**

The Mayor, Councilmembers, and other officers appointed under this Charter shall qualify by taking the oath prescribed by the Texas Constitution and by executing such bond as may be required under the provisions of this Charter and the ordinances and resolutions of the City at the first meeting following the canvass.

**SECTION 3.08 Candidates Holding Special Positions with the City**

- (1) In the event any Councilmember shall become a candidate for office of Mayor or in the event the Mayor or any Councilmember shall become a candidate for election to any seat on the City Council other than the office the Mayor or Councilmember is presently holding, such candidate shall tender and attach to their ballot application a resignation from said office, which shall be effective as of the date of such election without any further act of acceptance.
- (2) In the event any member of any body appointed by the City Council shall become a candidate for the office of Mayor or Councilmember, such position on such board shall be considered vacated upon election and qualification.
- (3) Any City employee who shall become a candidate for the office of Mayor or Councilmember shall immediately forfeit such position of employment and such ballot application shall be accompanied by said employee's written resignation, the acceptance of which shall require no further act.

**SECTION 3.09 City Council Vacancies and Attendance**

- (1) In the event of a vacancy existing in the office of Mayor or any Councilmember from any cause whatsoever, the vacancy or vacancies occurring shall be filled by the qualified voters at an election within one hundred twenty (120) days after such occurs, as prescribed by State law. If the term of office or offices is or are unexpired, the number of members elected at such election shall serve in such office or offices for the remainder of the unexpired term of such office or offices following the date of the election.
- (2) Any member of the City Council remaining absent for three (3) consecutive regular meetings of the City Council, without first having obtained a leave of absence through City Council action at a regular meeting, such office may be declared vacated by a majority vote of all the remaining members of the City Council. Any member of the City Council remaining absent for six (6) consecutive regular meetings of the City Council shall be deemed to have forfeited such office through City Council action.

- (3) Any person elected to serve on the City Council, who, subsequent to taking office is convicted of a felony or a crime of moral turpitude shall automatically be deemed to have forfeited such office.
- (4) In case of disaster when a legal quorum of the City Council cannot be assembled due to multiple deaths or injuries, the surviving members of the City Council, or the highest surviving City official if no elected official remains, must, within twenty-four (24) hours of such disaster, or as soon as practicable, take such action as to ensure the basic health, safety and welfare of the citizens and undertake whatever action is necessary under the laws of the State to call for a special election. Until such election is held and the City Council qualified, the remaining members or highest ranking officer, if no elected official remains, shall only undertake those actions necessary to protect the basic health, safety and welfare of the citizens which such action may be subsequently ratified by the full City Council.

#### **SECTION 3.10 Mayor Pro-Tem**

- (1) At the first regular meeting after each regular election of the city council members and/or mayor, City Council shall select from among the Councilmembers a Mayor Pro-Tem to serve at the pleasure of the City Council.
- (2) The Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor, and in this capacity shall have the rights conferred upon the Mayor.
- (3) During the disability or absence of the Mayor and the Mayor Pro-Tem, any Councilmember may be appointed by the remaining five (5) Council members to act as Mayor and in this capacity shall have the rights conferred upon the Mayor.

#### **SECTION 3.11 Compensation for the Mayor and Councilmembers**

- (1) The Mayor and Councilmembers may by ordinance establish reasonable compensation, but no increase in such compensation shall take effect until commencement of the terms of mayor and/or councilmember elected at the next regular election.
- (2) The City Council shall establish by ordinance the standards and policies concerning reimbursement of reasonable expenses incurred by the Mayor and Councilmembers in the performance of their official duties.

#### **SECTION 3.12 Duties of Mayor**

- (1) The Mayor shall preside at all meetings of the City Council and shall have full voting rights.
- (2) The Mayor shall perform such other duties consistent with the office as may be imposed by this Charter or the ordinances and resolutions of the City.



- (3) The Mayor shall sign all ordinances, resolutions, capital improvement contracts, conveyances made or entered into by the City, all bonds issued under the provisions of this Charter, and such other documents as authorized by the City Council.
- (4) The Mayor shall be recognized as the official head of the City for all ceremonial purposes.
- (5) The Mayor shall be recognized by the governor for the purpose of enforcing martial law. In time of danger or emergency, the Mayor may, in accordance with State law and with the consent of the Councilmembers, take command of the police and govern the City by proclamation and maintain order and enforce all laws.

**SECTION 3.13 Duties of City Council**

Except as otherwise provided by this Charter, all powers of the City and the determination of all matters of policy shall be vested in the City Council. Without limitation of the foregoing powers of the City Council, the City Council shall have the power to:

- (1) Fix the compensation of all appointive officers and employees.
- (2) Adopt the budget of the City.
- (3) Authorize the issuance of bonds by a bond ordinance.
- (4) By majority vote, inquire into the conduct of any office, department or agency of the City and make investigations as to municipal affairs. Nothing contained herein shall be construed to prohibit an inquiry into an operational issue.
- (5) Enact resolutions and ordinances.
- (6) The City Council shall adopt a periodic fiscal reporting policy, with such policy not providing for less than quarterly reporting.
- (7) To appoint members of the planning and zoning commission, the zoning board of adjustments and other such boards, committees, commissions and directors to corporations as may be authorized by State law. Any member appointed to such board, committee, commission or corporation shall have been a resident of the City of Lucas for a minimum of ~~twelve (12)~~ months at the time of their appointment.
- (8) Govern the affairs of the City in conformance with this Charter and the state and federal constitutions and laws, and to determine by majority vote the best and most appropriate method and manner of efficiently performing the functions and providing the services of the City, consistent with the council-city manager form of government; and, except as provided in this Charter with respect to certain departments that must be maintained in effect, the City Council may after considering the recommendation of the City Manager, create, change, merge, or abolish offices, departments or agencies of the City, and may contract for services

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by interlocal agreement or otherwise as it deems advisable to improve the services of the efficiency of government.

#### **SECTION 3.14 Meetings of City Council**

- (1) The City Council shall hold at least one (1) regular meeting each month and as many additional meetings as the City Council deems necessary to transact the business of the City. The City Council shall fix by ordinance the date and time of the regular meetings.
- (2) Special meetings of the City Council shall be held at the call of the Mayor or a majority of the Councilmembers upon provision of public notice in accordance with State law.
- (3) All meetings of the City Council, except those authorized by law to be closed to the public, shall be open to the public.

#### **SECTION 3.15 Quorum of City Council and Minutes of City Council Meetings**

- (1) A majority of the City Council shall constitute a quorum to do business, and, unless otherwise provided by law, the affirmative vote of a majority of a quorum shall be necessary to adopt any ordinance or resolution.
- (2) Minutes of all proceedings shall be kept, to which any citizen may have access at all reasonable times and which shall constitute one of the archives of the City. The vote on all ordinances and resolutions shall be recorded and entered in the minutes; and, every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer. The minutes of all meetings shall record the attendance of all members of the City Council present and those absent.

#### **SECTION 3.16 Ordinances and Resolutions**

- (1) Enactment -- Each proposed ordinance and resolution shall be introduced in written or printed form. Ordinances or resolutions may be passed at any regular or special meeting called in accordance with State law.
- (2) Captions -- Each ordinance and resolution shall contain a brief caption of the subject matter of the ordinance or resolution.
- (3) Publication -- A descriptive title or caption stating in summary the purpose of the ordinance and the penalty for violation thereof, of each ordinance imposing a penalty, fine or forfeiture, shall after passage be published in one issue of the official newspaper of the City and proof of such publication shall be made by the printer or publisher of such paper making affidavit before some officer authorized to administer oaths. Such affidavit shall be filed with the City Secretary and shall be prima facie evidence of such publication and promulgation of such ordinance so published; said ordinances shall take effect and be in full force and effect from and after the date of publication, unless otherwise expressly provided. Ordinances not

required to be published shall take effect and be in force from and after the date of passage thereof unless otherwise provided.

- (4) Savings -- All ordinances and resolutions of the City now in existence and not inconsistent with provisions of this Charter shall remain in full force and effect until altered, amended or repealed by the City Council.
- (5) Pleading -- It shall be sufficient in all judicial proceedings to plead any ordinances of the City by caption without embodying the entire ordinance in the pleadings, and all pleaded ordinance(s) or codes shall be admitted as evidence in any suit and shall have the same force and effect as the original ordinances. Certified copies of the ordinances may also be used in evidence in lieu of original ordinances.
- (6) Codification -- The Code of Ordinances of the City shall be codified and shall be revised at least annually and kept up-to-date by causing any amendments to be published in the form of supplemental pages. An official copy of the Code shall be maintained in the office of the City Secretary for public examination.
- (7) Emergency -- The City Council shall have the authority to pass such emergency ordinances and resolutions as necessary to protect the health, safety and welfare of the City in accordance with State law.
- (7) Miscellaneous -- The City Council may adopt such other procedures that do not conflict with this Charter or State law.

### **SECTION 3.17 Official Newspaper**

The City Council shall designate by resolution a newspaper of general circulation in the City as the official newspaper of the City as provided by State law.

### **SECTION 3.18 Influence of Appointments**

Neither the City Council nor any of its members shall direct or request the appointment of any person to or such person's removal from any office under the control of the City Manager. In regard to administrative and executive duties under the City Manager, the City Council shall deal solely through the City Manager and neither the City Council nor any of its members thereof shall give orders to any subordinate of the City Manager, either publicly or privately. Any knowing violation of the foregoing provisions of this Charter by any member of the City Council shall constitute official misconduct and shall authorize the City Council by a vote of a majority of its membership to expel such offending member from the City Council if found guilty after a public hearing, and thereby create a vacancy in the seat held by such member.

### **SECTION 3.19 Public Comment**

The opportunity for citizens of the City to provide public comment on any and all subjects regardless of the agenda shall be provided at each regular meeting. This opportunity shall be called "Citizens'

City of Lucas, Texas  
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Input" and shall begin prior to any vote at a regular meeting of the City Council. The City Council may provide reasonable regulations to implement this provision.

**SECTION 3.20 Code of Ethics**

The City Council by ordinance shall establish a Code of Ethics governing the City Council and all city employees which shall include at least the following: wrongful influence, wrongful interference, employees' political activities, penalties, conflict of interest, and acceptance of gifts.

**ARTICLE IV**

**City Manager**

**SECTION 4.01 Appointment**

The City Council by five (5) affirmative votes shall appoint a City Manager who shall be the chief executive officer of the City and shall be responsible to the City Council for the proper administration of the offices of the City, except as otherwise provided by this Charter. The City Manager shall be chosen by the City Council on the basis of executive and administrative training, experience and ability.

**Deleted:** . Prior to the 2009 election, four (4) affirmative votes of the City Council are required to appoint a City Manager.

**SECTION 4.02 Compensation**

The City Manager shall receive a salary, benefits and compensation as set by the City Council.

**SECTION 4.03 Duties**

The duties of the City Manager shall include the following:

- (1) Provide that all laws and ordinances of the City are enforced.
- (2) Appoint or hire all employees of the City, except as otherwise provided in this Charter.
- (3) Suspend and remove, at will, employees, except as otherwise provided in this Charter.
- (4) Provide for the efficient administration and operation of all departments, under the City Manager's control including the maintenance of and public information request for all records thereof, except as otherwise provided in this Charter.
- (5) Prepare and recommend to the City Council an annual operating budget and capital improvement program, as provided by this Charter, and administer and execute the budget as adopted by the City Council.
- (6) Provide supervision and control over all departments and offices that are created by the City Council and employees appointed by the City Manager, except as otherwise provided in this Charter.
- (7) Attend all meetings of the City Council with the right to take part in the discussion.
- (8) Make recommendations to the City Council as the City Manager may deem necessary and expedient.

(9) Perform such other duties as may be prescribed by the Charter or which may be required by ordinance or resolution of the City Council.

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Deleted: Provide written reports no less than quarterly of the current financial conditions and future needs of the City to be presented orally at an open meeting of the City Council, and make such recommendations concerning the affairs of the City, as the City Manager or the City Council deems desirable or necessary.

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#### SECTION 4.04 Absence of City Manager

The City Manager may, by letter filed with the City Secretary, designate a qualified city employee to exercise the powers and perform the duties of City Manager during the City Manager's temporary absence. To perform the duties of the City Manager during the absence or disability exceeding thirty (30) days, the City Council may by resolution appoint an officer of the City to perform the duties of the City Manager until the City Manager shall return or such disability shall cease. In case of absence, disability, or illness exceeding thirty (30) days, where the duties of the City Manager could not be performed properly, the City Manager's salary may be continued at the discretion of the City Council.

#### SECTION 4.05 Removal

The City Manager shall be removed, with or without cause, by five (5) affirmative votes of the City Council.

Deleted: Prior to the 2009 election, four (4) affirmative votes of the City Council are required to remove the City Manager.

### ARTICLE V

#### City Officers

##### SECTION 5.01 City Secretary

- (1) Appointment -- The City Council shall appoint the City Secretary, by at least five (5) affirmative votes of the City Council. The City Council shall consider the City Manager's recommendations regarding the appointment of the City Secretary. Prior to the 2009 election, four (4) affirmative votes of the City Council are required to appoint the City Secretary.
- (2) Duties -- The City Secretary shall:
  - (A) Give notice of all official public meetings of the City Council as consistent with this Charter and State law;
  - (B) Attend all public meetings and hearings of the City Council;
  - (C) Keep the minutes of the proceedings of all public meetings and hearings of the City Council as prescribed by the City Council consistent with applicable law;
  - (D) Act as custodian of all official records of the City Council;

- (E) Hold and maintain the seal of the City and affix this seal to all appropriate documents;
  - (F) Authenticate and record all ordinances, resolutions and proclamations of the City by signature and seal;
  - (G) Perform other duties as may be required by the City Council;
  - (H) Shall conduct all municipal elections;
  - (I) Act as agent for the purposes of serving civil process;
  - (J) Assist the City ~~Manager~~ with the maintenance and public information request of all records as directed by the City Council;
  - (K) Prepare and recommend to the City Council the annual budget for the office and staff of the City Secretary; and
  - (L) Work with the City Manager in performing additional duties, as may be necessary, to assist in carrying out the day to day functions of the City.
- (3) Compensation -- The City Council shall fix the compensation, salary and benefits of the City Secretary in accordance with the City Secretary's experience, qualifications and performance.
- (4) Removal -- The City Secretary may be removed, with or without cause, by five (5) affirmative votes of the City Council.

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#### SECTION 5.02 Municipal Judge

- (1) Appointment -- The City Council shall appoint by five (5) affirmative votes of the City Council such Municipal Judges of the Municipal Court as may be necessary, all of whom shall be competent, duly qualified attorneys licensed and practicing for at least two (2) years in the State. The Municipal Judge(s) shall be appointed by ordinance of the City Council and their salary may be fixed by ordinance or resolution. The Municipal Judge(s) shall be appointed for a term of two (2) years and may be appointed to additional consecutive terms.
- (2) Duties -- The Municipal Judge shall:
- (A) The Chief Judge of said Municipal Court shall have the power to punish for contempt to the same extent and under the same circumstances as the Justice of the Peace may punish for contempt of criminal cases.
  - (B) The Municipal Judge shall preside over any associate judge(s) who shall be a licensed attorney(s) in the State.
- (3) Compensation -- The Municipal Judge(s) shall receive compensation as may be determined by the City Council.
- (4) Removal -- The Municipal Judge shall be removed, with or without cause, by five (5) affirmative votes of the City Council.

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**SECTION 5.03 City Attorney**

- (1) Appointment -- The City Council shall appoint by five (5) affirmative votes of the City Council a competent, duly qualified licensed and practicing attorney in the State who shall serve as the City Attorney.
- (2) Duties --The City Attorney shall:
  - (A) Serve as the legal advisor to the City Council;
  - (B) Represent the City in litigation and legal proceedings as directed by the City Council;
  - (C) Review and provide opinions as requested by the City Council on contracts, legal instruments, and ordinances of the City and other City business; and
  - (D) Serve as the legal advisor to the officers and their departments, as directed by the City Council.
- (3) Special Counsel -- The City Council shall have the right to retain special counsel at any time that it may deem necessary and appropriate to collect delinquent and ad valorem taxes and liens or for such purposes the City Council deems appropriate.
- (4) Compensation -- The City Attorney and Special Counsel shall receive compensation as may be determined by the City Council.
- (5) Additional Counsel --The City Attorney, with the approval of the City Council, may select additional attorneys to act for said City Attorney and the City in its representation and/or litigation.

Removal -- The City Attorney may be removed, with or without cause, by five (5) affirmative votes of the City Council.

**SECTION 5.04 Official Bond of City Employees**

The directors of all administrative departments whose duties include the handling of monies, and all employees whose duties include the handling of monies belonging to the City shall, before entering upon the duties of their office or employment, make bond in a responsible surety company, acceptable to the City Council for such amount as the City Council may prescribe, the premium of such bond shall be paid by the City; the City Council may also require any such surety bond to be further conditioned that the principal thereon will faithfully perform and/or discharge the duties of said person's office and if there are provisions of State law bearing upon the functions of said person's office under which the execution of a surety bond is required, it shall be further conditioned to comply therewith.

**ARTICLE VI**

**Financial**

**SECTION 6.01 Audit and Examination of City Books and Accounts**

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At the close of each fiscal year, and at such other times as may be necessary, the City Council shall call for an independent audit of all accounts of the City by a certified public accountant. The same firm or certified public accountant shall complete no more than five (5) consecutive annual audits. The certified public accountant selected shall have no personal interest, directly or indirectly, in the financial affairs of the City or any of its officers. The written report of audit will be presented to and discussed by the City Council at a regular meeting. The auditor's recommendations will be read into the record of the meeting. Copies of the audit shall be placed on file as a public record with the City Secretary.

**SECTION 6.02 Budget**

The fiscal year of the City shall begin on the first day of October and end on the last day of September of each calendar year. Each year and in sufficient time to provide for all necessary hearings, the City Manager shall prepare and submit to the City Council a budget to cover all proposed expenditures of the City for the succeeding fiscal year. Such budgets shall be prepared and administered pursuant to the applicable general laws of this state. In the event that the budget is not enacted prior to October 1<sup>st</sup>, the preceding fiscal year budget shall be deemed adopted, which may be amended or supplemented, as the City Council deems appropriate.

**SECTION 6.03 Taxes and Taxation**

(1) Powers --

- (A) The City Council may levy, assess and collect taxes of any type or character not prohibited by state law. The maximum ad valorem tax rate shall be as provided in the Constitution and laws of the State of Texas,
- (B) The procedure, limitations and requirements for the levy, assessment and collection of any tax or lien thereof shall be as established by State law; provided that, if not established by State law, such procedures, limitations and requirements shall be established by ordinance.

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(2) Office of Tax Collection – The finance director shall have the responsibility and duty for assessing and collecting taxes and the City Manager may appoint an officer in such department to perform such duties; provided that the City may contract for such services at the discretion of the City Council.

(3) Taxes: When Due and Payable --

- (A) All taxes due to the City shall be payable at the office of the city tax collector, or at such location or locations as may be designated by the City Council, and may be paid at any time after the tax rolls for the year have been completed and approved. Taxes for each year shall be paid before February 1st of the next succeeding year, and all such taxes not paid prior to that date shall be deemed delinquent, and shall be subject to penalty and interest as the City Council shall provide by ordinance.



The City Council may provide discounts for the payment of taxes prior to January 1st in amounts not to exceed those established by the laws of the State of Texas.

- (B) Failure to levy and assess taxes through omission in preparing the appraisal rolls shall not relieve the person, firm or corporation so omitted from obligation to pay such current or past due taxes as shown to be payable by recheck of the rolls and receipts for the years in question, omitting penalty and interest.

(4) Tax Liens, Liabilities and Suits --

- (A) All taxable property located in the City on January 1st of each year shall stand charged from that date with special lien in favor of the City for taxes due. All persons purchasing any such property on or after January 1st of any year shall take the property subject to the liens provided above. In addition to the liens herein provided, on January 1st of any year, the owner of property subject to taxation by the City shall be personally liable for the taxes due for that year.
- (B) The City shall have the power to sue for and recover personal judgment for taxes without foreclosure, or to foreclose its lien or liens, or to recover both personal judgment and foreclosure. In any such suit where it appears that the description of any property in the City appraisal rolls is insufficient to identify such property, the City shall have the right to plead a good description of the property to be assessed, to prove the same, and to have its judgment foreclosing the tax lien or for personal judgment against the owners for such taxes.

**SECTION 6.04 Designation of Depository for City Funds**

The City Council shall select a depository for City funds in accordance with State law, and to follow all the terms and provisions of State law.

**ARTICLE VII**

**Bonds, Warrants and Other Evidence of Indebtedness**

**SECTION 7.01 Authority to Issue**

The City shall have the right and power to borrow money for public purposes by whatever method it may deem to be in the public interest and as allowed by law. The City shall have the right and power to issue tax bonds, revenue bonds, and any other evidences of indebtedness for permanent public improvements or for any other public purpose not prohibited by law or this Charter and to issue refunding bonds to refund outstanding evidences of indebtedness previously issued. All such bonds or other evidences of indebtedness shall be issued in conformity with the laws of the State applicable at the time of issuance of such obligations.

**SECTION 7.02 Manner of Issuance**

Bonds and warrants of the City shall be issued as provided by the General Laws of Texas applicable to cities and towns.

## **ARTICLE VIII**

### **Recall**

#### **SECTION 8.01 Procedure**

The Mayor or any Councilmember may be removed from office in the following manner:

- (1) Any qualified voter of the City may make and file with the City Secretary an affidavit containing the name of any member of the City Council whose removal is sought, which said affidavit shall distinctly and specifically state the ground or grounds upon which removal is predicated. The City Attorney shall review the affidavit for legal sufficiency and determine the validity of the allegations.
- (2) The City Secretary shall deliver a copy of such affidavit to the party so charged and also to the other members of the City Council. The City Secretary shall then place the matter on the agenda of the next regular City Council meeting for the purpose of giving the affiant an opportunity to present such charges to the City Council and to give the Mayor or Councilmember so charged an opportunity to answer such charge or charges. Such matter may be considered by the City Council in an executive session which is closed to the public, unless such officer requests a public hearing. If, after such meeting, such officer has not tendered such resignation or such affiant has not withdrawn such charges, the City Secretary shall deliver to the affiant making such charges, copies of petition blanks for demanding such removal, printed on forms which shall be kept on hand. Such blanks shall be issued by the City Secretary with the City Secretary's signature thereto attached, and they shall be dated and addressed to the City Council, indicate the person to whom issued, state the name of the member whose removal is sought, and such petition must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and, if there be more than one ground, such as for incompetency, misconduct or malfeasance in office, shall specifically state each ground with certainty, as was required in the initial affidavit, so as to give the officer sought to be removed and those signing the petition, notice of the matters and things with which such officer is charged. A copy of the petition shall be recorded in a record book for that purpose to be kept in the office of the City Secretary.
- (3) For a recall petition to be effective, the petition must be returned and filed with the City Secretary within thirty (30) days after its issuance. Such petition must bear the signatures of qualified voters of the City equal in number to at least fifty-one percent (51%) of the total number of voters casting votes for such office at the last regular election or the signatures of two hundred fifty (250) qualified voters of the City, whichever is the greatest.
- (4) Signatures to a recall petition need not be appended to one paper, but to each such petition paper there shall be attached an affidavit of the circulator thereof, stating that each signature

thereto was made in the circulator's presence and is the genuine signature of the person whose name it purports to be. Each signer of a recall petition shall sign in ink or indelible pencil and shall place after such signature, said name printed, the date when said signature was made, signer's residence by street and number, or other description to identify signer's place of residence, and if available, signer's voter registration certificate number. Inclusion of the voter registration number is not required and may be placed on the petition by the signer or added to the petition by the person circulating the petition. It shall serve only as an aid to assist the City Secretary in the task of determining whether or not the signer is a qualified voter. Provided, however, nothing in regard to the inclusion of such registration number shall affect the validity of the petition including, but not limited to, errors in regard to the number supplied or its total omission. Recall petition papers provided by the City Secretary shall be in form that substantially complies with the form in Appendix A.

- (5) All papers and affidavits comprising a recall petition shall be assembled and filed with the City Secretary as one instrument, with a notarized statement attached thereto giving the names and addresses of three (3) qualified voters, who as a committee of the petitioners, shall be officially regarded as filing the petition. Within twenty (20) business days of the date of filing a recall petition, the City Secretary shall determine the sufficiency thereof and attach thereto a certificate showing the result of the examination. If the City Secretary shall certify that the petition is insufficient, the City Secretary shall set forth in the certificate the particulars in which it is defective and shall within three (3) business days notify the committee of petitioners of such finding.
- (6) A recall petition may be amended at any time within twenty (20) business days after the making of the certificate of insufficiency by the City Secretary by filing a supplementary petition upon additional papers issued, signed and filed as provided herein for an original petition. The City Secretary shall within five (5) business days after such amendment is filed, make examination of the amended petition and, if the City Secretary certificate shall show the petition still to be insufficient, the City Secretary shall file the petition in the office of the City Secretary and notify the committee of petitioners of such findings. The finding of insufficiency of a recall petition shall not prejudice the filing of a new petition for the same purpose.
- (7) If a recall petition, or amended petition shall be certified by the City Secretary to be sufficient, the City Secretary shall within three (3) business days submit it to the City Council with the City Secretary certificate to that effect and shall notify the member whose removal is sought on such action. The officer whose removal is sought may, within five (5) days after such recall petition has been presented to the City Council, request that a public hearing be held to permit the officer whose removal is sought to present facts pertinent to the charges specified in the recall petition. In this event, the City Council shall order such public hearing to be held, not less than five (5) nor more than fifteen (15) business days after receiving such request for public hearing. If the officer whose removal is sought does not resign within five (5) business days after such public hearing, or if no public hearing is requested, within five (5) business days after the deadline for requesting such public hearing, the City Council shall thereupon order and fix the date for holding a recall election which shall be held at the next date authorized for City elections by State law, but not less than forty (40) days after the date

of said public hearing, if requested, or if a public hearing has not been requested, not less than forty (40) days after the deadline for requesting such public hearing.

- (8) The question of recalling any number of members of the City Council may be submitted at the same election, but as to each member whose removal is sought a separate affidavit and a separate petition shall be filed and there shall be an entirely separate ballot. Candidates to succeed any members of the City Council whose removal is sought shall be placed in nomination in compliance with this Charter.
- (9) The ballot to be used in a recall election shall submit the proposition in substantial compliance with the form in Appendix B. Except as provided in this section, ballots used in recall elections shall comply with the provisions of this Charter regarding ballots for regular municipal elections.
- (10) If a majority of the votes cast on the question of recalling the Mayor or a Councilmember be against recall, such Mayor or Councilmember shall continue in office for the remainder of the unexpired term, but subject to recall as before. If a majority of such votes be for recall of the officer on the ballot, such officer shall, regardless of any technical defect in the recall petition, be deemed removed from office. When the Mayor or a Councilmember is removed from office by recall, the candidate to succeed such officer who receives the highest vote shall be declared elected to fill the unexpired term.
- (11) If a Mayor or Councilmember in regard to whom sufficient recall petition is submitted shall resign, the seat shall be declared vacant by the City Council and shall be filled by the qualified voters at an election called for the next available uniform election date prescribed by State law, as amended. If the term of office or offices is or are unexpired, the member or members elected at such election shall serve in such office or offices for the remainder of the unexpired term of such office or offices following the date of the election.
- (12) No recall shall be filed against the Mayor or a Councilmember within three (3) months after such Mayor or Councilmember takes office. In the case of a Mayor or Councilmember subjected to a recall petition and not removed thereby no recall shall be filed against the Mayor or Councilmember until at least six (6) months after the recall election. In the case of a Mayor or Councilmember subjected to an ineffective recall petition that is not returned to the City Secretary within thirty (30) days after its issuance no recall shall be filed against the Mayor or Councilmember until at least six (6) months after the expiration of the thirty (30) days.

## **ARTICLE IX**

### **Legislation by Initiative and Referendum**

#### **SECTION 9.01 Initiative**

- (1) Qualified voters of the City shall, on at least two (2) separate regular meetings of the City Council within a sixty (60) day period, request adoption of an ordinance (except one appropriating money, levying a tax, issuing bonds, ~~zoning, or salaries of City officers or employees~~). In the event the City Council fails to enact such an ordinance, such voters may submit a petition to the City Council which, after approval as to legal form by the City Attorney, requests that the ordinance be passed by the City Council, or, if not passed, it be submitted to a vote of the qualified voters of the City. Said petition must be signed by qualified voters of the City equal in number to twenty percent (20%) of the number of votes cast at the last regular municipal election, or 250, whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed ordinance.
  - (A) The petition must state the residence of each signer and bear the oath of one of the Petitioners that each signature thereon is the genuine signature of each person whose name it purports to be subscribed thereon.
  - (B) The petition shall be filed with the City Secretary and within twenty (20) business days after such filing the City Secretary shall check the signatures on the petition against the county voter registration lists and attach thereto the City Secretary certificate showing the results of such examination.
- (2) Any person who has filed an insufficient petition shall be notified within three (3) business days upon discovery of such insufficiency and may present additional signatures within ten (10) business days after such notice or may file a new petition at any time.
- (3) Within twenty (20) business days after the City Secretary finds such a petition to be sufficient, the City Council shall either pass the ordinance as submitted or order an election to submit the proposed ordinance to a vote of the qualified voters of the City who shall vote on the question: "For the Ordinance" or "Against the Ordinance." If a majority of the qualified voters at such election vote for the ordinance, it shall thereupon be an ordinance of the City.

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#### **SECTION 9.02 Referendum**

Qualified voters of the City may require that any ordinance, with the exception of ordinances appropriating money or levying taxes, passed by the Council be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within thirty (30) days after final passage of said ordinance, or within thirty (30) days after its publication. The petition shall be signed in the same manner as recall petitions are signed, as provided in this article, and shall be verified by oath in the manner and form provided for recall petitions in this article and shall be submitted to the City Secretary. Immediately upon the filing of such petition, the City Secretary shall present to the Council. Thereupon the Council shall immediately reconsider such ordinance and, if the Council does not entirely repeal the same, shall submit it to the popular vote as provided in this charter. Pending the holding of such election, each ordinance shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

#### **SECTION 9.03 Voluntary Submission of Legislation by the City Council**

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The City Council, upon its own motion and by the affirmative vote of a majority of the full membership of the City Council, may submit to popular vote at any election for adoption or rejection any proposed ordinance, or may submit for repeal any existing ordinance, in the same manner and with the same force and effect as provided in this Article for submission of petition, and may at its discretion call a special election for this purpose.

**SECTION 9.04 Form of Ballots**

The ballots used when voting upon such proposed and referred ordinance, resolution or measures, shall set forth their nature sufficiently to identify them and shall also set forth upon separate lines the words:

“For the Ordinance” or  
“Against the Ordinance”

**SECTION 9.05 Publication of Proposed or Referred Ordinances**

Prior to the date early voting shall begin in any election on an initiative or referendum, the City Secretary shall cause the caption of the particular ordinance to be published in at least one issue of the official newspaper of the City or a printed copy thereof mailed to each qualified voter of the City as appears on the tax roll of the City on the 1st day of January of the year the petition was presented and the City Secretary shall do such other things relative to such election as are required in general municipal elections or by the order calling said election.

**SECTION 9.06 Adoption of Ordinances**

If a majority of the qualified voters voting on any proposed ordinance shall vote in favor thereof, it shall thereupon or at any time fixed therein, become effective as a law or as a mandatory order of the Council.

**SECTION 9.07 Inconsistent Ordinances**

If the provisions of two (2) or more proposed ordinances approved at the same election are inconsistent, the ordinance receiving the highest number of votes shall prevail.

**SECTION 9.08 Ordinances Passed by Popular Vote, Repeal or Amendment**

No ordinance which may have been passed by the Council upon a petition or adopted by popular vote under the provisions of this article shall be repealed or amended except by the Council in response to a referendum petition or by submission as provided by this charter.

**SECTION 9.09 Further Regulations by the City Council**

The City Council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this Article consistent herewith.

**SECTION 9.10 Franchise Ordinances**

Nothing contained in this Article shall be construed to be in conflict with any provisions of this charter pertaining to ordinances granting franchises when valuable rights shall have accrued thereunder.

**ARTICLE X**

**Franchises**

**SECTION 10.01 Ordinance Granting Franchise**

Except for franchises issued under state or federal law, the City Council shall have the power by ordinance to grant, amend, renew and extend, all franchises, both public and private, operating within the City of Lucas.

No grant to use the public right-of-way or property under ownership of the City shall be granted for a term of more than twenty (20) years from the date of the grant, renewal or extension of such franchise unless approved by citizens in accordance with this article. The City Council may, by a majority vote, seek approval from the voters by submitting all applications exceeding twenty (20) years to an election in accordance with State law. The prospective franchisee, not the City, shall fund the cost of said election.

**SECTION 10.02 Right of Regulation**

In granting, amending, renewing and extending public service and utility franchises, the City reserves unto itself all the usual and customary rights, including, but not limited to, the following rights:

- (1) To repeal the franchise by ordinance for failure to begin construction or operation within the time prescribed, or for failure to comply with terms of the franchise;
- (2) To require all extensions of service within the City limits to become part of the aggregate property of the service and operate subject to all obligations and reserved rights contained in this Charter. Any such extension is considered part of the original grant and terminable at the same time and under the same conditions as the original grant;
- (3) To require expansion and extension of facilities and services and to require maintenance of existing facilities to provide adequate service at the highest level of efficiency and effectiveness;

- (4) To require reasonable standards of service and quality of product and prevent rate discrimination;
- (5) To impose reasonable regulations and restrictions to insure the safety and welfare of the public;
- (6) To examine and audit accounts and records and to require annual reports on local operations of the public service or utility;
- (7) To require the franchisee to restore, at franchisee's expense, all public or private property to a condition as good as or better than before disturbed by the franchisee for construction, repair or removal;
- (8) To require the franchisee to furnish to the City, from time to time within a reasonable time following request of the City, at franchisee's expense a general map outlining current location, character, size, length, depth, height and terminal of all facilities over and under property within the City and its extraterritorial jurisdiction; and
- (9) To require compensation, rent or franchise fees to be paid to the City as may be permitted by the laws of the State.

**SECTION 10.03 Regulation of Rates**

- (1) The City Council has the power to fix and regulate the rates and charges of all utilities and public services, consistent with State law.
- (2) Upon receiving written request from a utility or public service requesting a change in rates, or upon a recommendation from the City that rates for services provided by or owned by the City be changed, the City Council shall call a public hearing for consideration of the change.
- (3) The City, public service or utility must show the necessity for the change by any evidence required by the City Council, including but not limited to, the following:
  - (A) Cost of its investment for service to the City;
  - (B) Amount and character of expenses and revenues connected with rendering the service;
  - (C) Copies of any reports or returns filed with any state or federal regulatory agency within the last three (3) years; or
  - (D) Demonstration that the return on investment, if any, is within the state and federal limitations.
- (4) If not satisfied with the sufficiency of evidence, the City Council may hire rate consultants, auditors and attorneys to investigate and, if necessary, litigate requests for rate changes, the expense of which shall be reimbursed to the City by the franchisee.



**SECTION 10.04 Transfer of Franchise**

No public service or utility franchise is transferable, except with the approval of the City Council. However, the franchisee real or personal property may pledge franchise assets as security for a valid debt or mortgage.

**SECTION 10.05 Franchise Value Not to be Allowed**

Franchises granted by the City are of no value in fixing rates and charges for public services or utilities within the City and in determining just compensation to be paid by the City for property which the City may acquire by condemnation or otherwise.

**ARTICLE XI  
Legal Provisions**

**SECTION 11.01 Notice of Claim**

The City shall not be held liable on account of any claim for the death of any person or injuries to any person or damage to any property unless the person making such complaint or claiming such damages shall, within ninety (90) days after the time at which it is claimed such damages were inflicted upon such person or property, file with the City a written statement, under oath, stating the nature and character of such damages or injuries, the extent of the same, the place where same happened, the circumstances under which the same happened and the condition causing same, with a detailed statement of each item of damages and the amount thereof, giving a list of any witnesses known by affiant to have seen the accident.

**SECTION 11.02 Service of Process Against the City**

All legal process against the City shall be served upon the City Secretary.

**SECTION 11.03 Nepotism**

No person within the second degree by affinity or within the third degree by consanguinity to a Councilmembers or the City Manager shall be employed by or contracted with the City. This shall not apply to the following:

- (1) Any person employed by the City prior to the person related in the above degree filing to run for elective office or being nominated for an appointment; or
- (2) Any person who is a seasonal employee or intern of the City.

**SECTION 11.04 Construction of Terms**

The construction of the provisions of this Charter shall comply with State law as amended.

**SECTION 11.05 Charter Deemed Public Act**

This Charter must be deemed a public act and judicial notice shall be taken thereof in all courts.

**SECTION 11.06 Severability of Portions of Charter**

If any provision of this Charter violates the Constitution of the United States, the Texas Constitution or any statutes of the State, or if any court holds such provisions for naught for any reason, the remaining provisions shall not be affected thereby and shall continue in effect.

**ARTICLE XII**

**Amendment and Review of Charter**

**SECTION 12.01 Amendment of Charter**

Amendments to this Charter may be framed and submitted to the qualified voters of the City as provided by the Texas Constitution and the laws of the State as presently enacted or hereafter amended; but no more often than once every two (2) years, as provided by the laws of the State.

**SECTION 12.02 Council Review of Charter**

The City Council shall review the Charter at least once every five (5) years to determine whether any amendments are necessary.

Deleted: Adoption of

Deleted: SECTION 12.01 - Procedure¶

¶ This Charter shall be submitted to the qualified voters of the City for adoption or rejection on May 10, 2008, at which election, if a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, it shall then immediately become the governing law of the City until amended or repealed.¶

¶ It being impractical to submit this Charter by sections, it is hereby prescribed that the form of ballot to be used in such election shall be as follows, to-wit:¶

¶ FOR THE ADOPTION OF THE CHARTER¶  
¶ AGAINST THE ADOPTION OF THE CHARTER¶

¶ The present City Council of the City shall call an election in accordance with the provisions of the general laws of the State governing such elections, and the same shall be conducted and the returns made and results declared as provided by the laws of the State governing municipal elections, and in case a majority of the votes cast at such election shall be in favor of the adoption of such Charter, then an official order shall be entered upon the records of said City by the City Council of Lucas declaring the same adopted, and the City Secretary shall record at length upon the records of the City, in a separate book to be kept in the City Secretary office for such purpose, such Charter as adopted, and such City Secretary shall furnish to the Mayor a copy of the Charter which copy of the Charter shall be forwarded by the Mayor as soon as practicable, to the Secretary of State under the seal of the City together with a certificate showing the approval of the qualified voters of such Charter.¶

Deleted: 02

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**Appendix "A" RECALL PETITION**

We, the undersigned qualified voters of the City of Lucas, Texas, hereby demand that the question of removing \_\_\_\_\_ from the City Council be submitted to a vote of the qualified voters of the City of Lucas based upon the following grounds:

SIGNATURE	NAME PRINTED	* VOTER REGISTRATION ADDRESS	DATE	NUMBER
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

\* Voter Registration Number is not required, may be placed on or added to the petition by the signer or person circulating the petition and neither its omission nor any error in regard thereto shall affect the validity of its petition.

STATE OF TEXAS

COUNTY OF

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_ who, after being duly sworn, deposes and says that he/she is the circulator of the foregoing petition paper and that the signatures appended thereto were made in his/her presence and are genuine signatures of the persons whose names they purport to be.

SUBSCRIBED AND SWORN TO BEFORE ME, this the \_\_\_\_ day of \_\_\_\_\_, 2008.

Notary Public in and for  
\_\_\_\_\_ County, Texas

## Appendix "B" BALLOT

Ballots used at recall election shall conform to the following requirements:

1. With respect to each person whose removal is sought, the question shall be submitted:

“Shall \_\_\_\_\_ be removed from the Office of  
\_\_\_\_\_ by recall?”

2. Immediately below each such question there shall be printed the following words, one above the other, in order indicated:

“Yes”

“No”





City of Lucas  
City Council Meeting  
February 7, 2019  
7:00 P.M.

City Hall - 665 Country Club Road – Lucas Texas

## MINUTES

### Call to Order

---

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

**City Councilmembers Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Wayne Millsap  
Councilmember Tim Baney (*arrived at 8:54pm*)  
Councilmember Steve Duke  
Councilmember Philip Lawrence  
Councilmember Debbie Fisher

**Staff Present:**

City Manager Joni Clarke  
City Secretary Stacy Henderson  
City Attorney Joe Gorfida  
City Engineer Stanton Foerster  
Development Services Director Joe Hilbourn  
Fire Chief Ted Stephens

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

### Citizen Input

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**1. Citizen Input.**

There was no citizen input at this meeting.

### Community Interest

---

**2. Community Interest.**

- A. Presentation of Proclamation celebrating the City of Lucas' 60<sup>th</sup> Anniversary.

Mayor Olk read into the record the Proclamation celebrating the City of Lucas' 60<sup>th</sup> Anniversary.

- B. Discuss pending legislation that is being considered by the 86th Legislature and provide guidance to City Staff and City Attorney.

Councilmember Fisher encouraged citizens to go online to view the legislative meetings that are being livestreamed.

Mayor Olk discussed other items of community interest stating that the City would be hosting an open house on February 19, 2019 celebrating the City's 60<sup>th</sup> anniversary from 5-7 pm. Mayor Olk

**9. Consider nominations for the 2019 Service Tree Award Program.**

Councilmember Fisher stated that the Service Tree Subcommittee met and nominated Mrs. Lee Ford and Peggy Rusterholtz as Service Tree recipients for their many contributions to the City and community.

**MOTION:** A motion was made by Councilmember Fisher, seconded by Councilmember Duke to approve Mrs. Lee Ford and Peggy Rusterholtz as Service Tree recipients for 2019. The motion passed unanimously by a 7 to 0 vote.

**10. Review Articles I and II of the City Charter and provide direction to the City Attorney regarding any proposed amendments to be considered as part of a Charter update.**

City Attorney Joe Gorfida stated that from a legal standpoint, there were no items that needed to be amended in Articles I and II of the Home Rule Charter. There were some provisions that needed to be updated relating to when the original charter was adopted, but nothing that conflicted with State law.

The City Council had no suggested changes for Articles I and II of the Home Rule Charter.

**11. Consider appointing a Grand Marshal for the 2019 Founders Day Parade.**

Councilmember Fisher noted that Representative Candy Noble had been attentive to the community and nominated Representative Noble as the Grand Marshal for Founders Day.

Mayor Olk asked City staff to extend an invitation to Representative Noble.

**12. Consider approving Resolution R 2019-02-00479 accepting the voluntary annexation petition submitted by Cary L. and Sharon C. Cobb for a tract of land located in the Montgomery Birch Survey, Abstract A0115, Tract 19, being all of 10.696 acres of land, otherwise known as 2020 East Lucas Road.**

Development Services Director Joe Hilbourn stated that the property owner had submitted for voluntary annexation as part of the development agreement. Mr. Hilbourn noted that a new State law requires the Council to formally accept the voluntary annexation application.

**MOTION:** A motion was made by Councilmember Fisher, seconded by Mayor Pro Tem Peele, to approve Resolution R 2019-02-00479 accepting the voluntary annexation petition submitted by Cary L. and Sharon C. Cobb for a tract of land located in the Montgomery Birch Survey, Abstract A0115, Tract 19, being all of 10.696 acres of land, otherwise known as 2020 East Lucas Road. The motion passed unanimously by a 7 to 0 vote.

**13. Discuss future transportation projects, the 2018 Collin County Bond Program and Park and Open Space funding with Collin County Commissioner Darrell Hale.**

Mayor Pro Tem Peele stated that the meeting should focus on larger items, such as the intersection near Southview and East Lucas Road, where land was purchased between the City and County to make improvements to the area, as well as the future project of Stinson Road.



**City of Lucas  
City Council Meeting  
March 7, 2019  
7:00 P.M.**

**City Hall - 665 Country Club Road – Lucas Texas**

**MINUTES**

**Call to Order**

---

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

**City Councilmembers Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Wayne Millsap  
Councilmember Tim Baney  
Councilmember Steve Duke  
Councilmember Philip Lawrence  
Councilmember Debbie Fisher

**Staff Present:**

City Manager Joni Clarke  
Special Projects Coordinator Kent Souriyasak  
City Attorney Joe Gorfida  
City Engineer Stanton Foerster  
Development Services Director Joe Hilbourn  
Finance Director Liz Exum

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

**Citizen Input**

---

**1. Citizen Input.**

John Ballis, 1820 Winningkoff Road, shared that two accidents have occurred recently. Both accidents occurred on Winningkoff Road and one hit the mailbox located at 1818 Winningkoff Road. Mr. Ballis indicated that he hears traffic noise from his office and that last year there was an accident at the intersection of Blondy Jhune Road and Winningkoff Road and is requesting a stop sign for the intersection. Mr. Ballis also indicated that vehicles are traveling at a high rate of speed from Orr Road and from the Winningkoff Bridge.

Michele Streiff, 1730 Winningkoff Road, lives next to the Winningkoff Bridge and expressed it is dangerous to pull in and out of the driveway. Ms. Streiff explained cars are pulling too far into the intersection of Blondy Jhune Road and Winningkoff Road and the traveling public is not stopping at the stop sign at the intersection of East Winningkoff Road and Orr Road.

Bob Streiff, 1730 Winningkoff Road, requested the City's assistance with a neighbor's German Shepherd that is barking nonstop.



**MOTION:** A motion was made by Councilmember Baney, seconded by Councilmember Duke to approve the request by O'Reilly Auto Parts for landscape plan, site plan and architectural plan for a tract of land being 1.140 acres located in the William Snyder Survey, ABS #821, otherwise known as Lot 1, Block A of the O'Reilly addition.

The motion passed unanimously by a 7 to 0 vote.

**7. Review Article III of the City Charter and provide direction to the City Attorney regarding any proposed amendments to be considered as part of a Charter update.**

The City Attorney review proposed amendments to Article III of the City's Home Rule Charter. The proposed revisions discussed included:

- Deleting transitional provisions
- Clarify the qualification language
- Remove the referral of taxes in the arrears as it is no longer allowed
- Remove language about filing and city hall not remaining open as it is not necessary
- Filling a vacancy by four affirmative votes of the City Council so the City would not be required to call a special election (some councilmembers are not in favor of this change)
- Change residency requirement to one year for the minimum time as a resident

Mayor Olk will wait to review the whole charter and then decide if an election is warranted.

Councilmember Fisher asked about the Denton County issue and a Mayor holding the position of County Appraiser.

**MOTION:** No action was taken.

**Executive Session Agenda**

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**8. Executive Session.**

An Executive Session was not held at this meeting.

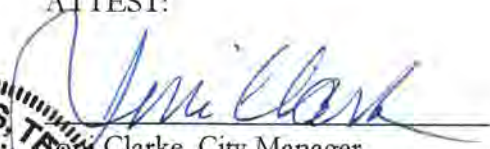
**9. Adjournment.**

**MOTION:** A motion was made by Councilmember Millsap, seconded by Councilmember Lawrence to adjourn the meeting at 8:57 pm. The motion passed unanimously by a 7 to 0 vote.

APPROVED:

  
\_\_\_\_\_  
Mayor Jim Olk

ATTEST:

  
\_\_\_\_\_  
Jim Clarke, City Manager





City of Lucas  
City Council Meeting  
April 4, 2019  
7:00 P.M.

City Hall - 665 Country Club Road – Lucas Texas

**MINUTES**

**Call to Order**

---

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

**City Councilmembers Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Wayne Millsap  
Councilmember Steve Duke  
Councilmember Debbie Fisher

**Staff Present:**

City Manager Joni Clarke  
City Secretary Stacy Henderson  
City Attorney Joe Gorfida  
Fire Chief Ted Stephens  
City Engineer Stanton Foerster  
Development Services Director Joe Hilbourn

**City Councilmembers Absent:**

Councilmember Tim Baney  
Councilmember Philip Lawrence

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

**Citizen Input**

---

**1. Citizen Input.**

There was no citizen input at this meeting.

**Community Interest**

---

**2. Community Interest.**

- A. Discuss pending legislation that is being considered by the 86th Legislature and provide guidance to City Staff and City Attorney.

City Attorney Joe Gorfida noted that there was no further information regarding pending legislation at this time. Councilmember Fisher explained that HB 2 regarding property tax relief may provide no relief for taxpayers and suggested citizens reach out to their legislatures and monitor the bill as it may change.

Mayor Olk discussed other items of community interest that included:

- Cancellation of the Texas Trash Off Cleanup and electronic recycling event scheduled for April 6, 2019 due to inclement weather. This event has been rescheduled to June 15.

**8. Consider appointing a Grand Marshal for the 2019 Founders Day Parade.**

City Manager Joni Clarke informed the Council that Representative Candy Noble would be unable to attend the Founders Day festivities as Grand Marshal due to her schedule.

The City Council nominated Mrs. Lee Ford as Grand Marshal for the Founders Day parade and asked staff to reach out to Mrs. Ford to check her availability.

**9. Review Articles IV and V of the City Charter and provide direction to the City Attorney regarding any proposed amendments to be considered as part of a Charter update.**

City Attorney Joe Gorfida reviewed with the City Council proposed amendments to Articles IV and V of the City's Charter. Mr. Gorfida identified several items for removal related to date specific items that were no longer valid, a typographical error in Section 5.01, and removal of item 9, Section 4.03 under City Manager duties.

City Manager Joni Clarke stated that Section 6.01 Financial, referring to changing auditing firms every five years was challenging for the City to find available firms and suggested this could be amended to reflect that different field auditors could be used within the same firm.

Mayor Pro Tem Peele stated that changing the language and maintaining the same auditors may not give confidence in the audits performed.

The City Council discussed various ways in which this section could be amended such as changing partners within the firm and changing the auditors that perform the work.

The Council asked Mr. Gorfida to compile a complete listing of proposed amendments, once the Charter had been completely reviewed, and to add the auditor amendment to the list for further discussion.

**10. Consider the City's Compensation System.**

City Manager Joni Clarke gave a presentation regarding the City's compensation system noting that the City provides for cost of living adjustments as well as merit compensation. Ms. Clarke discussed identifying benchmark cities, defining the City's labor market, the need for future assistance in a market study. Ms. Clarke discussed the current benchmark cities used that did not provide the best comparison to Lucas, those included:

- Celina
- Fairview
- Fate
- Melissa
- Parker
- Prosper
- Sunnyvale
- Trophy Club



**City of Lucas  
City Council Meeting  
May 2, 2019  
7:00 P.M.**

**City Hall - 665 Country Club Road – Lucas Texas**

**MINUTES**

**Call to Order**

---

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

**City Councilmembers Present:**

Mayor Pro Tem Kathleen Peele  
Councilmember Tim Baney  
Councilmember Steve Duke  
Councilmember Debbie Fisher

**Staff Present:**

City Manager Joni Clarke  
City Secretary Stacy Henderson  
City Attorney Joe Gorfida  
Development Services Director Joe Hilbourn

**City Councilmembers Absent:**

Mayor Jim Olk  
Councilmember Wayne Millsap  
Councilmember Philip Lawrence

Mayor Pro Tem Peele determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

**Citizen Input**

---

**1. Citizen Input.**

There was no citizen input at this meeting.

**Community Interest**

---

**2. Items of Community Interest.**

- A. Presentation of Service Tree Awards to the 2019 Recipients Peggy Rusterholtz and Mrs. Lee Ford.

Mayor Pro Tem Peele presented the Service Tree Award Certificates to recipients Peggy Rusterholtz and Mrs. Lee Ford.

- B. Discuss pending legislation that is being considered by the 86th Legislature and provide guidance to City Staff and City Attorney.

There was no legislation update discussed at this meeting.

Mayor Pro Tem Peele discussed the following items of community interest:

- The City's General and Special Election was scheduled for May 4 that included City Council seats 5 and 6 on the ballot as well as renewing the one-half percent sales tax allocated towards the Fire District. Mayor Pro Tem Peele clarified that the sales tax being collected was included in the existing sales tax and would not be an additional tax.
- The City's Founders Day event was scheduled for May 11 from Noon to 4 pm, and should there be inclement weather, the event would still take place with fewer amenities.
- The Blackland Prairie Raptor Center would be holding their Kids Fishing Derby on May 11 from 8 am to 11 am.

### **Consent Agenda**

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#### **3. Consent Agenda.**

A. Approval of the minutes of the April 4, 2019 City Council meeting.

**MOTION:** A motion was made by Councilmember Fisher, seconded by Councilmember Baney to approve the Consent Agenda as presented. The motion passed unanimously by a 4 to 0 vote.

### **Regular Agenda**

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#### **4. Consider rejecting the bids received on April 9, 2019, for the North Pump Station Water Tower and Pump House Bid #018-19.**

Development Services Director Joe Hilbourn stated that staff received two bids for the North Pump Station and pump house that were over the engineers estimate of approximately \$3 million. Mr. Hilbourn stated that the project was very complicated and contained more elements than most water tower projects.

Mr. Hilbourn recommended the proposals be rejected and rebid the projects breaking out each item for the water tower, pump house, main extensions, and fencing to bring the project closer in line with the original estimate.

**MOTION:** A motion was made by Councilmember Baney, seconded by Councilmember Duke to reject the bids received on April 9, 2019 for the North Pump Station Water Tower and Pump House Bid #018-19. The motion passed unanimously by a 4 to 0 vote.

#### **5. Review Articles VI and VII of the City Charter and provide direction to the City Attorney regarding any proposed amendments to be considered as part of a Charter update.**

City Attorney Joe Gorfida reviewed Articles VI and VII with the City Council noting the following chapters/sections that could be considered for updates:

- Section 6.01. Financial – the statement “the same firm or certified public account shall complete no more than five (5) consecutive annual audits.” It was discussed at a previous

meeting to consider removing this requirement; however, the City Council was in agreement to leave this requirement as written.

- Section 6.03. Taxes and Taxation – language relating to State Law could be clarified to laws of the State of Texas.
- Section 7.01. Authority to Issue – language relating to “whatever method it may deem to be in the public interest” be clarified to as allowed by State law.

There were no other recommended changes, this item was for discussion purposes only, no formal action was taken.

**6. Consider calling a special City Council meeting for the purpose of canvassing the May 4, 2019 election results.**

City Secretary Stacy Henderson stated that a special meeting was required to canvass the election results of the May 4, 2019 election. Per Section 67.004(a) of the Texas Election Code, for the purpose of canvassing a city election, only two members of the City Council are needed to constitute a quorum. Ms. Henderson proposed May 13 or 14, 2019 as dates to hold the special meeting.

Mayor Pro Tem Peele and Councilmembers Fisher and Duke stated they would be in attendance at the special called meeting.

**MOTION:** A motion was made by Councilmember Fisher, seconded by Councilmember Baney to approve calling a special meeting for May 13, 2019 at 8:15 am for the purpose of canvassing the May 4, 2019 election results. The motion passed unanimously by a 4 to 0 vote.

**Executive Session Agenda**

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**7. The City Council will convene into Executive Session as permitted under the Texas Government Code, Section 551.074, Personnel Matters, to conduct interviews of Board of Adjustment applicants and discuss Board of Adjustment appointments.**

The City Council convened into Executive Session at 7:25 pm to conduct interviews of Board of Adjustment applicants and discuss Board of Adjustment appointments.

**8. Reconvene from Executive Session and take any action necessary as part of the Executive Session.**

The City Council reconvened from Executive Session at 8:03 pm and took no action as a result of the Executive Session.



**City of Lucas  
City Council Meeting  
June 6, 2019  
7:00 P.M.**

**City Hall - 665 Country Club Road – Lucas Texas**

**MINUTES**

**Call to Order**

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

**City Councilmembers Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Wayne Millsap  
Councilmember Tim Baney  
Councilmember Steve Duke  
Councilmember Debbie Fisher  
Councilmember Philip Lawrence

**Staff Present:**

City Manager Joni Clarke  
City Secretary Stacy Henderson  
City Attorney Joe Gorfida  
Development Services Director Joe Hilbourn  
City Engineer Stanton Foerster  
Fire Chief Ted Stephens  
Assistant Fire Chief Lance Gant

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

**Citizen Input**

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**1. Citizen Input.**

Bob Streiff, 1730 Winningkoff spoke regarding the removal of the stop sign at Winningkoff and Blondy Jhune Road noting that speeding vehicles had increased since the stop sign was removed creating a dangerous intersection. Mr. Streiff stated that the yield sign put in its place was not doing enough to slow down vehicles and requested that the stop sign be reinstated.

John Ballis, 1820 Winningkoff stated that he would like an item placed on a future agenda so that the stop sign at the Winningkoff/Blondy Jhune intersection could be discussed further and stated that the intersection was dangerous. Mr. Ballis also discussed the construction traffic currently on Blondy Jhune and noted that a concrete truck had used his driveway to turn around and damaged his driveway.

Mayor Olk stated that the contractor was responsible for any damages caused and if he would discuss the issue further with the City Engineer, the City could determine which contractor was responsible and make the necessary repairs.

Michele Sullivan, 1730 Winningkoff stated that she was concerned about the increased speed in the neighborhood since the stop sign at Winningkoff and Blondy Jhune had been removed and the safety in the neighborhood. Ms. Sullivan also noted that construction vehicles had broken off tree branches while using her driveway.

Councilmember Fisher stated that a majority of the residents within the neighborhood are opposed to having the speed humps removed, and removing the humps is a safety concern for the neighborhood. Councilmember Fisher stated that another type of traffic calming device was needed before the speed humps were removed.

City Engineer Stanton Foerster discussed how speed humps were rated and discussed how traffic volumes and cut through traffic increases when school was in session.

**MOTION:** A motion was made by Mayor Olk, seconded by Councilmember Fisher to conduct a traffic study that determines traffic volumes and speed conducted twice during the year, once while school was in session. The motion passed by a 6 to 1 vote with Mayor Pro Tem Peele voting in opposition.

**6. Review Articles VIII and IX of the City Charter and provide direction to the City Attorney regarding any proposed amendments to be considered as part of a Charter update.**

City Attorney Joe Gorfida had no recommended changes to Article VIII and recommend Article IX, Section 9.01 be amended to include salaries of city officers to the following statement:

*request adoption of an ordinance (except one appropriating money, levying a tax, issuing bonds, zoning, or related to salaries of city officers).*

There was no formal action taken on this item.

**7. Provide update regarding fireworks patrol conducted over the July 4<sup>th</sup> holidays in 2017 and 2018 and give direction to staff regarding continued efforts of the fireworks patrol and citing illegal use of fireworks.**

Assistant Fire Chief Lance Gant gave a presentation regarding fireworks patrols over the July 4<sup>th</sup> holiday during 2017 and 2018 noting that staff had averaged 175 overtime hours in 2017 and 55 hours in 2018. Fourteen warning letters were issued in 2017 and 10 in 2018. Assistant Chief Gant stated that they were able to purchase radios that enhanced the efficiency of communicating with staff members and discussed upcoming planning efforts for 2019 patrols. Assistant Chief Gant noted that staff would be patrolling on July 4, 5 and 6<sup>th</sup>. He also discussed the difficulty associated with issuing tickets due to the violation of discharging fireworks had to be observed by the staff member.

Development Services Director Joe Hilbourn discussed with the Council how a citizen could file a complaint in court, but they would have had to observe the violation. Mr. Hilbourn also noted that staff could not take a picture from a resident and submit that to court on their behalf.

Mayor Olk noted that staff would do their best to protect the citizens of Lucas with the resources available.

**8. Consider a temporary solution to the under-road structure damage at the intersection of Cedar Bend and East Lucas Road and provide direction to City Staff.**





**City of Lucas  
City Council Meeting  
June 20, 2019  
7:05 P.M.**

*(or immediately following the Lucas Fire Control, Prevention & EMS District Meeting)*

**City Hall - 665 Country Club Road – Lucas Texas**

**MINUTES**

**Call to Order**

---

Mayor Olk called the meeting to order at 7:03 p.m.

**City Councilmembers Present:**

Mayor Jim Olk  
Mayor Pro Tem Kathleen Peele  
Councilmember Wayne Millsap  
Councilmember Tim Baney  
Councilmember Steve Duke  
Councilmember Debbie Fisher  
Councilmember Philip Lawrence

**Staff Present:**

City Manager Joni Clarke  
City Secretary Stacy Henderson  
City Attorney Joe Gorfida  
Development Services Director Joe Hilbourn  
Finance Director Liz Exum  
City Engineer Stanton Foerster  
Fire Chief Ted Stephens

Mayor Olk determined that a quorum was present. Everyone was reminded to silence their cell phones and the Pledge of Allegiance was recited.

**Citizen Input**

---

**1. Citizen Input.**

There was no citizen input at this meeting.

**Community Interest**

---

**2. Items of Community Interest.**

**A. Discuss pending legislation that is being considered by the 86th Legislature and provide guidance to City Staff and City Attorney.**

Mayor Olk stated that there were no updates regarding pending legislation and discussed the following items of Community Interest:

- City offices would be closed on July 4<sup>th</sup> and the City Council meeting for July 4<sup>th</sup> had been cancelled.
- The City Council would be holding a budget workshop at the July 18 City Council meeting to plan for the Fiscal Year 2019/2020 budget.
- TxDOT held a meeting on June 18 to discuss the West Lucas Road and Country Club /Southview Intersection improvements. Plans were available for public viewing and any written comments that citizens would like to be included as part of the public meeting

- McKinney

**14. Review Articles X, XI and XII of the City Charter and provide direction to the City Attorney regarding any proposed amendments and consider proceeding with a Charter amendment election in May 2020.**

City Attorney Joe Gorfida stated that in Section 10.01 he would update the language as to how franchise fees can be collected. He had no suggested changes for Chapter 11 and would delete Section 12.01 related to Procedures.

Mr. Gorfida stated that he would like to bring back a redline version of the changes to the Council and provide a recommendation at that time.

The City Council was in agreement to bring this item back to the August 1, 2019 City Council agenda for consideration.

**15. Consider authorizing the City Manager to enter into a contract with TexasBit/APAC/Oldcastle in an amount not to exceed \$600,000 from General Fund 11-8209-301 Improvement Roadways for temporary repairs along West Lucas Road.**

City Engineer Stanton Foerster stated that since the widening of West Lucas Road, additional areas have failed with approximately 6,000 linear feet of wheel-path base failure on West Lucas Road between Country Club and Angel Parkway. Mr. Foerster recommended entering into an agreement with TexasBit to complete temporary repairs before school begins in August 2019.

The City Council discussed the funds that had been used towards repairs on West Lucas Road and possible projects that have been delayed due to placing additional funding towards West Lucas Road.

The City Council discussed Collin County participation in roadway repairs due to the cut through traffic that uses West Lucas Road. The Council asked Mr. Foerster to continue discussions with Collin County to determine if a partnership could be formed for possible funding.

The Council was in agreement to repair West Lucas Road from in front of Willow Springs Middle School to Austin Trail and any remaining funds would be used towards road repairs for Snider Lane and Winningkoff.

**16. Consider City Council availability to conduct a joint meeting regarding drainage with the Planning and Zoning Commission on August 8, 2019.**

A majority of the City Council was in agreement to conduct the joint meeting with the Planning and Zoning Commission regarding drainage on September 12, 2019.

## **Executive Session Agenda**

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**17. Executive Session.**

An Executive Session was not conducted at this meeting.



# City of Lucas

## City Council Agenda Request

### October 3, 2019

Requester: Development Services Director Joe Hilbourn

#### **Agenda Item Request**

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Discuss permitting the sale of beer and wine produced locally during the Lucas Farmers Market.

#### **Background Information**

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The Farmers Market Committee received a request from a local vendor Berkshire Farms about the potential for selling locally produced wine at the City's Farmers Market event. Staff reached out to the City Attorney for guidance regarding the sale of beer and wine at the farmers market. The City would have to change the park regulations to permit the sale of beer and wine and the vendor would have to comply with the requirements below:

- Berkshire Farms holds a Winery Festival Permit (GF) and a Winery Permit (G). The Winery Festival Permit is a subordinate permit issued to holders of a Winery Permit and allows wineries to sell wine at a civic or wine festival, farmers market, celebration or similar event per Texas Alcohol Beverage Code Section. 17.01.
- Any winery holding a Winery Festival Permit (GF) intending to sell wine at a civic or wine festival, farmers' market, celebration or similar event must obtain a Winery Festival Certificate from the TABC and the certificate must be posted in a conspicuous place at all times at the festival location. The Winery Festival Certificate may not be used for more than four days within any 30-day period or more than three consecutive days at the same location.

Lucas is wet for off-premise consumption of beer and wine and may allow sales of wine pursuant to a Winery Festival Permit for off-premise consumption at a farmer's market or other civic festivals or celebrations by a facilities agreement or special permit.

#### **Attachments/Supporting Documentation**

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NA

#### **Budget/Financial Impact**

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NA



# City of Lucas City Council Agenda Request October 3, 2019

## **Recommendation**

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Staff is seeking guidance from City Council regarding the proposed request before any potential changes would be made to the parks ordinance.

## **Motion**

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NA



# City of Lucas City Council Agenda Request October 3, 2019

Requester: Mayor Jim Olk

## **Agenda Item Request**

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### **Executive Session:**

An Executive Session is not scheduled for this meeting.

As authorized by Section 551.071 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. This meeting is closed to the public as provided in the Texas Government Code.

## **Background Information**

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NA

## **Attachments/Supporting Documentation**

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NA

## **Budget/Financial Impact**

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NA

## **Recommendation**

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NA

## **Motion**

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NA