AGENDA
ELGIN CITY COUNCIL
REGULAR MEETING
TUESDAY, MARCH 7, 2017
CITY ANNEX COUNCIL CHAMBERS, 310 NORTH MAIN STREET
7:00 PM

I. **CALL TO ORDER**

II. **ROLL CALL**

III. **INVOCATION**

IV. **PLEDGE OF ALLEGIANCE**

Recess REGULAR MEETING and call to order PUBLIC HEARING

V. **PUBLIC HEARING**

None

Close PUBLIC HEARING and Reconvene REGULAR MEETING

VI. **PUBLIC COMMENT**

Individuals may request to speak on items on the agenda, and items not on the agenda, by requesting to speak during the meeting and under "PUBLIC COMMENT" and will be required to fill out a "PUBLIC COMMENT FORM" and present it, along with any material, handouts or information for Council, to the City Secretary prior to commencement of the Council meeting. Speaker comments are limited to three (3) minutes.

No formal action can be taken by the City Council on items not posted on the agenda. Items requiring a Public Hearing will allow a member of the public an opportunity to speak during the Public Hearing and does not require submission of a "PUBLIC COMMENT FORM". Speakers must address their comments to the Mayor or Presiding Officer rather than to an individual Council Member or member of Staff. All speakers must limit their comments to the specific subject matter noted on the "PUBLIC COMMENT FORM" and refrain from personal attacks or derogatory comments directed at any Council Member, member of Staff, other individual or group.

VII. **PRESENTATIONS**

1. Introduction of new Administrative Assistant for Police Department

VIII. **CITY MANAGER'S REPORT**

1. Presentation of 2016 Racial Profiling Report to City Council
2. Update on Traffic Control and Safety Committee
3. Monthly Departmental Activity Reports - January

IX. **CONSENT AGENDA**

All of the items on the consent agenda are considered to be self-explanatory by the Council and will be enacted with one motion, one second, and one vote. There will be no separate discussion of these items unless a council member removes an item from the Consent Agenda and places it on the New Business section for Discussion and action.

1. AN ORDINANCE ACKNOWLEDGING RECEIPT OF "CERTIFICATE OF UNOPPOSED STATUS" PURSUANT TO SECTION 2.052 TEXAS ELECTION CODE; DECLARING UNOPPOSED CANDIDATES TO BE ELECTED TO THEIR RESPECTIVE OFFICES AND CANCELLING THE MAY 6, 2017 GENERAL ELECTION; PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES
2. A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION FOR THE NATIONAL INCIDENT BASED REPORTING SYSTEM (NIBRS) PROJECT TO THE OFFICE OF THE GOVERNOR BY THE ELGIN POLICE DEPARTMRENT
3. (*Second Reading*) RESOLUTION NO. 2017-02-07-07 BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS APPROVING THE EXPENDITURE OF $12,000 BY THE ELGIN ECONOMIC DEVELOPMENT CORPORATION FOR STANSBURY PUBLIC RELATIONS AND MAKING CERTAIN FINDINGS RELATED THERETO
4. Discussion and Possible Action regarding request from Friends of Elgin Parks to waive the Open Container Ordinance in Veterans' Memorial Park for Music in the Park series on April 7, April 14, April 21 and April 28, 2017 from 4:00pm until 10:00pm.
5. City Council Meeting Minutes - February 7, 2017

X. **UNFINISHED BUSINESS**

None

XI. **NEW BUSINESS**

1. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE AN EMERGENCY WATER INTERCONNECT AGREEMENT BETWEEN THE CITY AND AQUA WATER SUPPLY CORPORATION FOR THE PROVISION OF POTABLE WATER IN THE EVENT OF AN EMERGENCY AND MAKING CERTAIN FINDINGS RELATED THERETO
2. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE A WHOLESALE WATER SERVICE AGREEMENT BETWEEN THE CITY AND AQUA WATER SUPPLY CORPORATION WITH TERMS AND CONDITIONS FOR THE PROVISION OF WHOLESALE WATER SERVICE TO AQUA WATER SUPPLY CORPORATION AND MAKING CERTAIN FINDINGS RELATED THERETO
3. CONSIDERATION OF AN ENCROACHMENT AGREEMENT BETWEEN ERNEST GENE FRANZ AND DOROTHY ANN FRANZ, THE OWNERS OF FRANZ ADDITION LOCATED AT 701 N AVENUE H AND 504 E 7th STREET IN THE CITY OF ELGIN.
4. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE A COOPERATIVE AGREEMENT WITH SF DEVELOPMENT, INC. FOR THE SHARING OF COSTS RELATED TO THE CONSTRUCTION OF A WASTEWATER LINE AND A LIFT STATION IN THE SARATOGA FARMS SUBDIVISION AND MAKING CERTAIN FINDINGS RELATED THERETO

XII. **EXECUTIVE SESSION**

The City Council may announce that it will adjourn the public meeting at any time during the meeting and convene in Executive Session pursuant to Chapter 551 of the Texas Government Code to discuss any matter as specifically listed on the agenda and/or as permitted by Chapter 551 of the Texas Government Code.

Recess the Regular Council meeting and call to order Executive Session in a closed session.

None

Adjourn Executive Session and call public back in to Reconvene Regular Council meeting.

RECONVENE

XIII. The City Council will return to open session for possible discussion and action as a result of the Executive Session.

XIV. **ANNOUNCEMENTS**

XV. **ADJOURNMENT**

NOTICE

Notice of Assistance at Public Meetings, the City of Elgin is committed to compliance with the Americans with Disabilities Act. Elgin City Hall and Council Chambers are wheelchair accessible and special marked parking is available. Persons with Disabilities who plan to attend this meeting and who may need assistance are requested to contact the City Secretary's Office at (512) 281-5724. Please provide forty-eight hours notice when feasible.

I, Amelia Sanchez, City Secretary for the City of Elgin, hereby certify this notice was posted at the City Hall Annex of the City of Elgin, Texas on or before Friday, March 3, 2017 in accordance with Chapter 551 of the Texas Government Code.

Amelia Sanchez

Amelia Sanchez, City Secretary

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
Introduction of new Administrative Assistant for Police Department

DEPARTMENT: Police

PROPOSED ACTION:
Introduction of Celena Mangus who is the new Administrative Assistant assigned to the Criminal Investigations Division of the Police Department.

BACKGROUND:
Celena Mangus has been hired to fill the new Administrative Assistant position at the Police Department.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ◉ included ○ not included in the current-year budget ○ N/A

RECOMMENDATION:
Welcome new employee Celena Mangus.

ATTACHMENTS:
○ Staff will be making a detailed presentation on this agenda item at the meeting.
◉ Staff will provide brief comments and answer questions on this item at the meeting.
○ This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
Presentation of 2016 Racial Profiling Report to City Council

DEPARTMENT: Police

PROPOSED ACTION:
Accept the report by Del Carmen Consulting, LLC

BACKGROUND:
This report is submitted pursuit to State Law and covers the required aspects of reporting under the Racial Profiling Act.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ◉ included ○ not included in the current-year budget ○ N/A

RECOMMENDATION:

ATTACHMENTS:
Annual Contact Report 2016

○ Staff will be making a detailed presentation on this agenda item at the meeting.
○ Staff will provide brief comments and answer questions on this item at the meeting.
◉ This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their

earliest convenience.

DEL CARMEN
CONSULTING, LLC

Annual Contact Report
2016
The Elgin Police Department

(I) Introduction

Opening Statement

January 20, 2017

Elgin City Council
310 N. Main Street
Elgin, Texas 78621

Dear Distinguished Members of the City Council,

The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted in 2001 the Texas Racial Profiling Law. Since then, the Elgin Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements are now in place. These most recent requirements have been incorporated by the Elgin Police Department and are also being addressed in this report.

This particular report contains three sections with information on traffic and motor vehicle- related contact data. In addition, when appropriate, documentation is also a component of this report, aiming at demonstrating the manner in which the Elgin Police Department has complied with the Texas Racial Profiling Law. In section 1, you will find the table of contents in addition to the Texas Senate Bill (SB1074); which later became the Texas Racial Profiling Law. In addition, you will find the Texas HB 3389, which, in 2009, introduced new requirements relevant to racial profiling. Also, in this section, a list of requirements relevant to the Racial Profiling Law as established by TCOLE (Texas Commission on Law Enforcement) is included. In addition, you will find, in sections 2 and 3 documentation which demonstrates compliance by the Elgin Police Department relevant to the requirements as established in the Texas Racial Profiling Law. That is, you will find documents relevant to the implementation of an institutional policy banning racial profiling, the incorporation of a racial profiling complaint process and the training administered to all law enforcement personnel.

The last section of this report provides statistical data relevant to contacts, made during the course of motor vehicle stops, between 1/1/16 and 12/31/16. In addition, this section contains the TCOLE Tier 1 form, which is required to be submitted to this particular organization by March 1st of each year. The data in this report has been analyzed and compared to data derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report. The findings in this report serve as evidence of the Elgin Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.
Del Carmen Consulting, LLC

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TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of ***what*** must be accomplished by an agency but allows wide latitude in determining ***how*** the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an " agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties."

The article further defines race or ethnicity as being of "a particular descent, including Caucasian, African, Hispanic, Asian, or Native American." The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person's race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer's best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;

- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, "the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose."

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide and analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for "tier one" data for traffic stops in which a citation results are:

1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of "a particular descent, including Caucasian, African, Hispanic, Asian, or Native American");
2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
3) whether there was a custody arrest.

The minimum requirements for reporting on "tier two" reports include traffic and pedestrian stops. Tier two data include:

1) the detained person's gender and race or ethnicity;
2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
3) whether a search was conducted, and if so whether it was based on consent or probable cause;
4) facts supporting probable cause;
5) the type, if any, of contraband that was collected;
6) disposition of the stop, e.g., arrest, ticket, warning, or release;
7) location of stop; and
8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned

based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074

AN ACT

relating to the prevention of racial profiling by certain peace officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling; and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~(7)~~] the date of conviction; and

(9) [~~(8)~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 200

_____ _____

President of the Senate Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

_____

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

_____
Chief Clerk of the House

Approved:

_____
Date

_____
Governor

Most Recent Legal Requirements (H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION ____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the

state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle [~~traffic~~] stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, [~~or~~] Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle [~~traffic~~] stops in which a citation is issued and to arrests made as a result of [~~resulting from~~] those [~~traffic~~] stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual [~~person~~] detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit [~~to the governing body of each county or municipality served by the agency~~] an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle [~~traffic~~] stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle [~~traffic~~] stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for

reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle [~~traffic~~] stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION ____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE [~~TRAFFIC AND PEDESTRIAN~~] STOPS. (a) In this article, "race[~~:~~

[~~(1) "Race~~] or ethnicity" has the meaning assigned by Article 2.132(a).

[~~(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.~~]

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance [~~regulating traffic or who stops a pedestrian for any suspected offense~~] shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any [~~each~~] person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop [~~traffic law or ordinance alleged to have been violated or the suspected offense~~];

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description [~~the type~~] of the contraband or evidence [~~discovered~~];

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle [~~existed and the facts supporting the existence of that probable cause~~];

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop[~~, including a description of the warning or a statement of the violation charged~~].

SECTION ____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[~~, "pedestrian~~] stop" has the meaning assigned by Article 2.132(a) [~~means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest~~].

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each [~~local~~] law enforcement agency shall submit a report containing the incident-based data [~~information~~] compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency [~~in a manner approved by the agency~~].

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities [~~determine the prevalence of racial profiling by peace officers employed by the agency~~]; and

(B) examine the disposition of motor vehicle [~~traffic and pedestrian~~] stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [~~the~~] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle [~~traffic or pedestrian~~] stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement

Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION ____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION ____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of $1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of $1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION ____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION ____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session,

2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . $40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . $25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . $50 [~~$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION ____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $20;

(2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . $40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . $25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . $50 [~~$5~~]; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues

in effect as further amended by this section.

SECTION ____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . $3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of $3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $4;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . $4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5;

(7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed $30; [~~and~~]

(8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed $7; and

(9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.

SECTION ____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . $3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . $3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of $3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . $3;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed $4; [~~and~~]

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed $5; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . $0.10.

SECTION ____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure,

including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION ____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

(1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or

(3) a commission rule.

SECTION ____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(II) Responding to the Law

Institutional Policy on Racial Profiling

4/2.07.04 Bias-based Profiling

DEFINITIONS

Bias-based Profiling

The selection of an individual(s) based solely on a trait common to a group for enforcement action. This includes but is not limited to race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group or any other identifiable group.

Racial Profiling
Law enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior, or on information identifying the individual as having engaged in criminal activity, CCP Art. 3.05.

Race Or Ethnicity

A person of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent, CCP Art. 2.132 a (2).

Pedestrian Stop

An interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

LAW

Articles 2.131 through 2.138 and Article 3.05 of the Texas Code of Criminal Procedures defines racial profiling and provides the bulk of applicable law regarding racial profiling regulations and monitoring requirements. Other applicable law regarding racial profiling may be found in Section 96.641 of the Education Code, Sections 1701.253 and 1701.402 of the Occupations Code, and Section 543.202 of the Transportation Code.

POLICY

Bias-based profiling in traffic contacts, field contacts, and asset seizure and forfeiture is prohibited. The race, ethnicity, gender, sexual orientation, religion, economic status, age or cultural group of an individual shall not be the sole factor in:

1. Determining the existence of probable cause to take into custody or arrest an individual, or

2. In constituting a reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a motor vehicle.

This policy is established to comply with the requirements of Texas CCP Articles 2.131 – 2.138 (effective 9/1/01). The Department will strive to maintain capabilities of video/audio recording that meet the standards for an exemption to the reporting requirements in accordance with CCP Art. 2.135.

COMPLAINTS

Citizens who wish to file a complaint alleging an act of bias-based profiling will utilize the current complaint process as defined in Section 4/1.02.05 of the Department Manual. Officers who are the subject of a complaint will be provided a copy of any audio and/or videotape records pertaining to the occurrence on which the complaint is based, if a video and/or audio record was made. Other materials related to the complaint will be provided in accordance with Department policy.

PUBLIC EDUCATION

The Office of the Chief of Police, will establish a program to provide citizens with information regarding the process for filing complaints against officers that they suspect of engaging in profiling practices. This program should include written materials explaining the process in English and Spanish.

CORRECTIVE ACTIONS

Officers who are found to be engaging in practices that may indicate bias-based profiling practices will be investigated in accordance within the Department Policy Manual, 4/1.02.05.

DATA COLLECTION

The Department will capture and report all data required under CCP Art. 2.132 pertaining to all traffic and pedestrian stops. The most efficient point for data collection of traffic and pedestrian stops is during officers' radio transmissions to the Communications Unit. These data include: The person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability; Whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

OFFICER RESPONSIBILITIES

Officers will engage in traffic or pedestrian stops in a manner consistent with state law and Departmental policy. It ultimately is the officer's responsibility to insure the collection and internal reporting of all required data. Communications system overload or failure does not preclude the responsibility of data collection under the law.

Traffic Stops

1. Officers will continue to conduct traffic stops in accordance with Department procedures and will maximize officer safety over data-collection concerns. All information will be transmitted in a manner that minimizes radio congestion.

2. Officers will initially provide Communications with the location of the stop, license plate number, or if not available, vehicle description. (The order of this information is not mandated by this policy.)

3. If the officer conducts a vehicular or individual search, the officer will advise Communications that such a search is being made, whether the search is by consent or involuntary.

4. Officers will advise if an arrest is made as a result of the search and will make a written report in accordance with Department procedures, stating the offense charged, the probable cause for the search, (i.e. odor, plain view, furtive movements), and whether contraband was seized.
5. Officers will advise Communications of the final disposition of the stop, the violators' information, to include race or ethnicity (as stated by the individual or, if not stated, in the officer's best judgment) and gender. Although gender (sex) is not required under CCP Article 2.132, the Communication of race and sex is a common practice and may be continued. The omission of gender (sex) in the final disposition does not constitute a violation of this policy. The Communications Unit may provide officers with alternative descriptors for race or ethnicity that may be used for data collection as long as the requirements of CCP Article 2.132 (a) (2) are met. Final disposition should be communicated concisely; (i.e., "warning - black male" or "citation issued - white female").

Pedestrian Stops

Officers will make pedestrian stops as required to ensure public safety and investigate criminal activities. They will provide communications with the same information as required in traffic stops with special consideration to a brief description of the reason for the detention, (i.e., matches the physical description of a suspect, articulable suspicion of a crime in progress).

COMMUNICATIONS RESPONSIBILITIES

The Communications Unit will maintain a system of procedures to collect all data as described in *Officer Responsibilities* section above, and it will provide the necessary equipment and training to its personnel to effectively complete this process. The Communications Supervisor will coordinate with the Patrol Division Commander to establish or amend any procedures necessary to simplify data-collection methods without compromising officer safety and data-collection integrity.

The Department will ensure all Department personnel receive the TCLOESE training concerning bias-based profiling mandated by Section 1701.253, Occupation Code, as well as the Department's policy regarding racial profiling in general, as well as its information collection and reporting requirements.

PATROL DIVISION RESPONSIBILITIES

The Patrol Division Commander will insure all sworn personnel comply with the provisions of this policy and state law. These responsibilities include developing and incorporating procedures for training and conducting traffic and pedestrian stops that support the data-collection requirements of this policy, as well as procedures that support an in-car video/audio tape recording system that complies with CCP Art. 2.135. Patrol Division supervisors will be responsible for monitoring officers assigned to them to identify potential profiling practices and provide interdictory guidance, or disciplinary referral as required. Each patrol officer's immediate supervisor will randomly review the videotape for at least one of his/her traffic stops on a monthly basis to confirm videotape usage and compliance with profiling law.

OFFICE OF THE CHIEF RESPONSIBILITIES

The Office of the Chief will be responsible for oversight of the reporting process. This office will conduct an annual administrative review of data collected, to include community and personnel input, in order to amend Department policies and procedures as necessary to insure compliance with bias-based profiling legislation and policy. The Department may identify other training needs based on administrative reviews of data. The office of the chief will coordinate to offer additional training related to bias-based profiling as required. This office will publish not later than March 1 of each year an annual report that contains information compiled during the previous year; this report will be submitted to the City Council in accordance with CCP Art. 2.134 (c).

Complaint Process: Informing the Public and Addressing Allegations of Racial Profiling Practices

Informing the Public on the Process of Filing a Racial Profiling Complaint with the Elgin Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a racial profiling complaint. In an effort to comply with this particular component, the Elgin Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a complaint on a racial profiling violation by a Elgin Police officer. It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

Racial Profiling Training

Racial Profiling Training

Since 2002, all Elgin Police officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Elgin Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Elgin has been included in this report.

It is important to recognize that the Chief of the Elgin Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Elgin Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling
Course Number 3256
Texas Commission on Law Enforcement
September 2001

Racial Profiling 3256

Instructor's Note:
You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by
legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures
An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials
Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at http://www.tcleose.state.tx.us.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:
Racial profiling CCP 3.05
Racial profiling prohibited CCP 2.131
Law enforcement policy on racial profiling CCP 2.132
Reports required for traffic and pedestrian stops CCP 2.133
Liability CCP 2.136
Racial profiling education for police chiefs Education Code 96.641
Training program Occupations Code 1701.253
Training required for intermediate certificate Occupations Code 1701.402
Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies
1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report
1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling
1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)
1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)
1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases
1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)

2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism

B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole

C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers

D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop

E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling
1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
2. The driver and passengers are questioned about things that do not relate to the traffic violation

3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.
A. Drug courier profile (adapted from a profile developed by the DEA)
1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
3. Vehicle is rented
4. Driver is a young male, 20-35
5. No visible luggage, even though driver is traveling
6. Driver was over-reckless or over-cautious in driving and responding to signals
7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.
A. Thinking about the totality of circumstances in a vehicle stop

B. Vehicle exterior
1. Non-standard repainting (esp. on a new vehicle)
2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)

C. Pre-stop indicators
1. Not consistent with traffic flow
2. Driver is overly cautious, or driver/passengers repeatedly look at police car
3. Driver begins using a car- or cell-phone when signaled to stop
4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)
Web address for legislation 77R-SB1074: http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm

Report on Complaints

Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/16---12/31/16, based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

X

A check above indicates that the Elgin Police Department has not received any complaints, on any members of its police force, for having violated the Texas Racial Profiling Law during the time period of 1/1/16 ---- 12/31/16.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint No.	Alleged Violation			Disposition of the Case

Additional Comments:

_____
_____
_____
_____
_____
_____
_____
_____

Tables Illustrating Traffic and Motor Vehicle-Related Contacts

Tier 1 Data

(I) Tier 1 Data

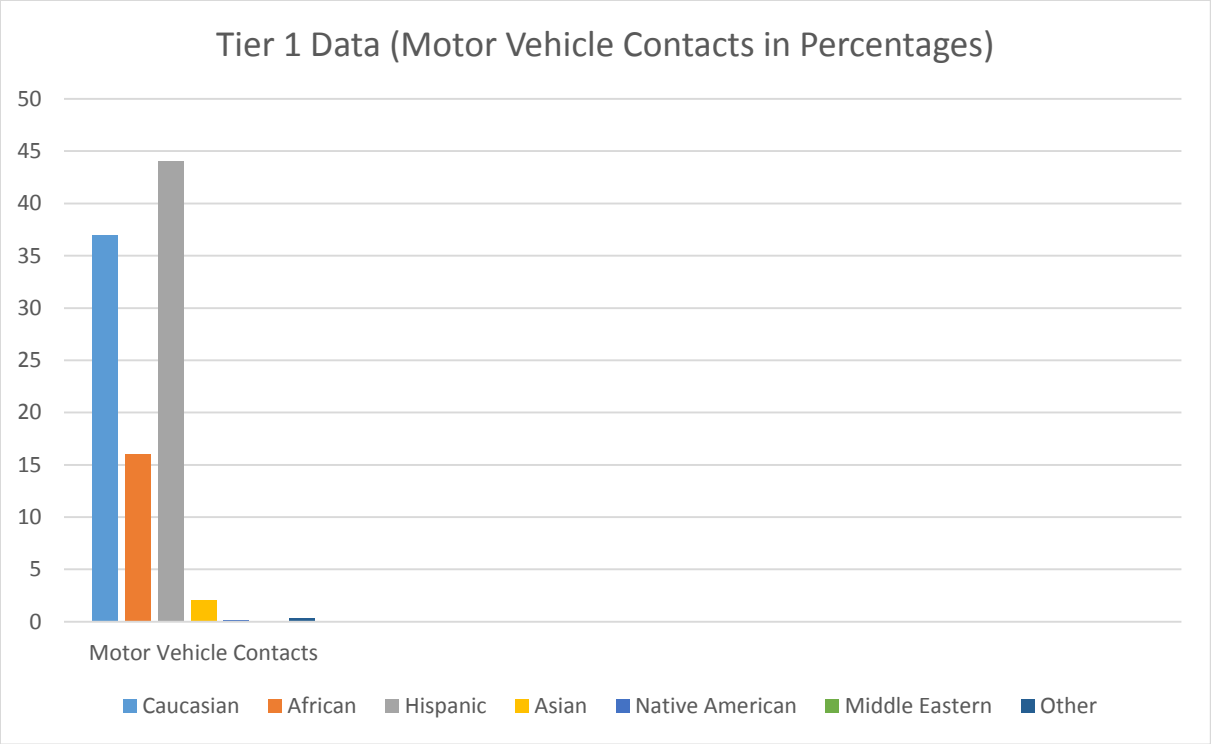
Motor Vehicle-Related Contact Information (1/1/16—12/31/16)

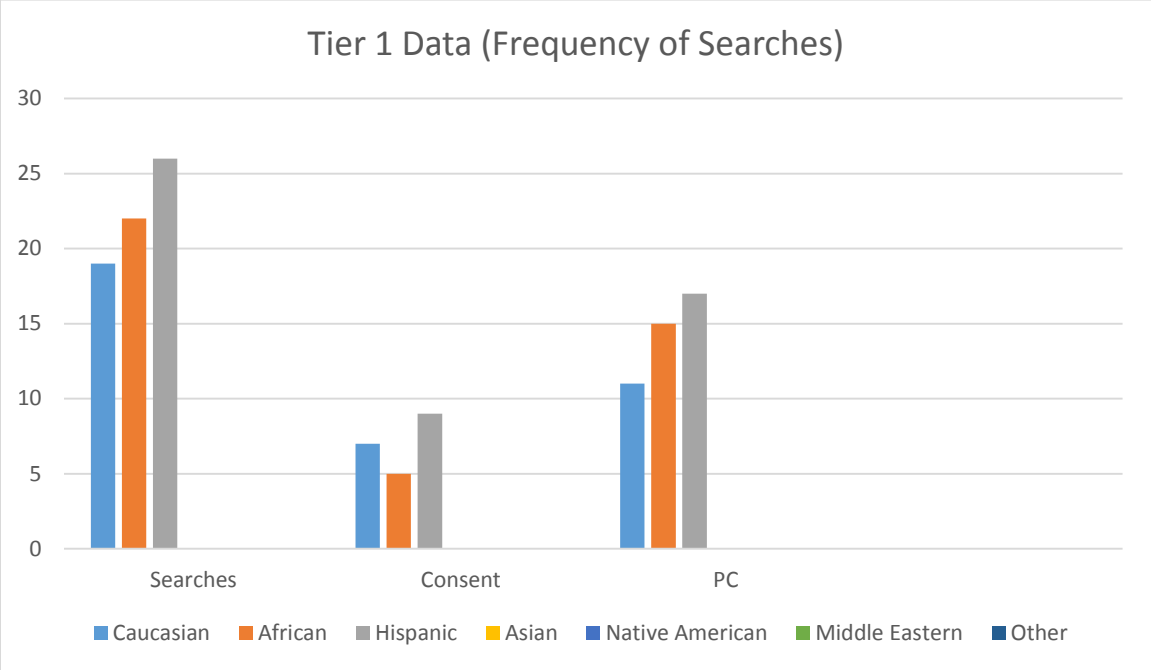
Race/Ethnicity*	Contacts		Searches		Consensual Searches		PC Searches		Custody Arrests	
	N	%	N	%	N	%	N	%	N	%
Caucasian	669	37	18	28	7	33	11	26	1	33
African	295	16	20	33	5	24	15	35	2	67
Hispanic	802	44	26	38	9	43	17	39	0	0
Asian	32	2	0	0	0	0	0	0	0	0
Native American	2	.1	0	0	0	0	0	0	0	0
Middle Eastern	1	.05	0	0	0	0	0	0	0	0
Other	5	.3	0	0	0	0	0	0	0	0
Total	1,806	100	64	100	21	100	43	100	3	100

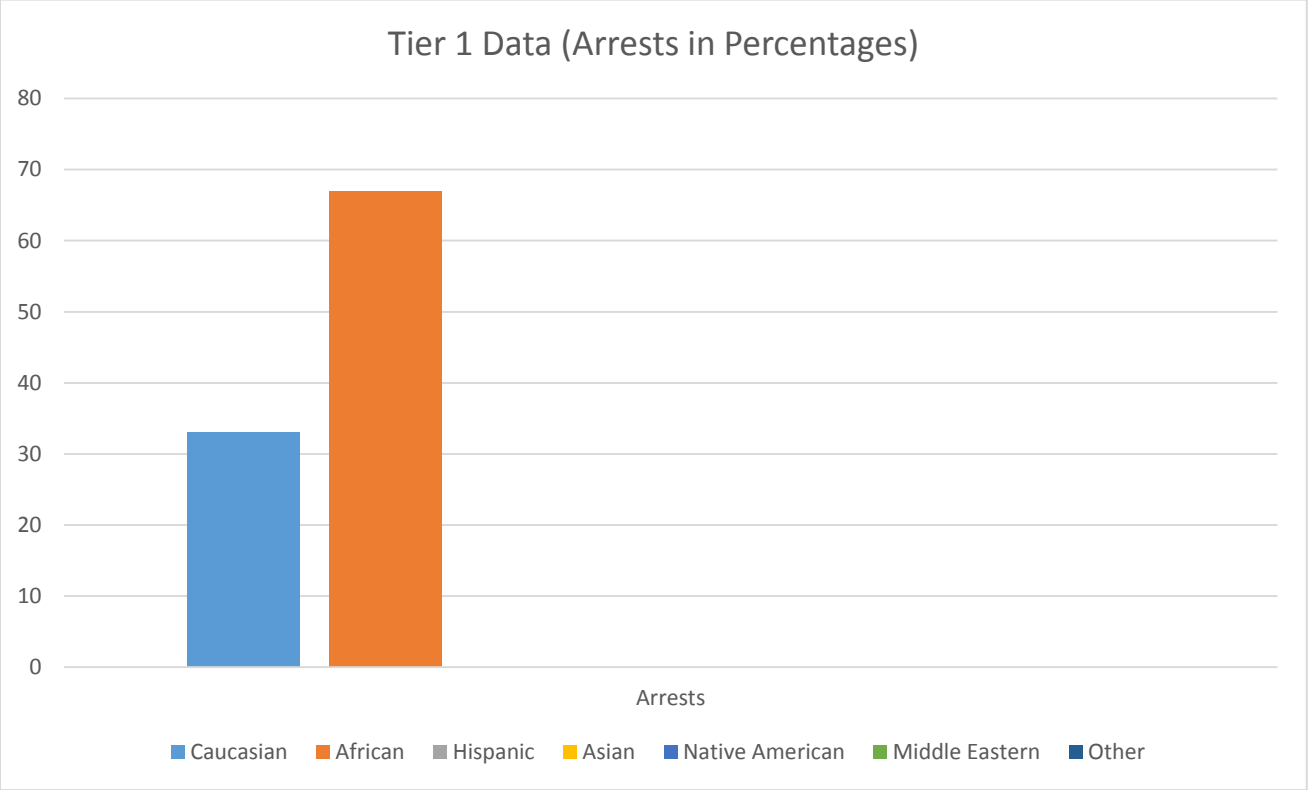
"N" represents "number" of traffic-related contacts

***** Race/Ethnicity is defined by Senate Bill 1074 as being of a "particular descent, including Caucasian, African, Hispanic, Asian, Native American or Middle Eastern".

**Figure has been rounded

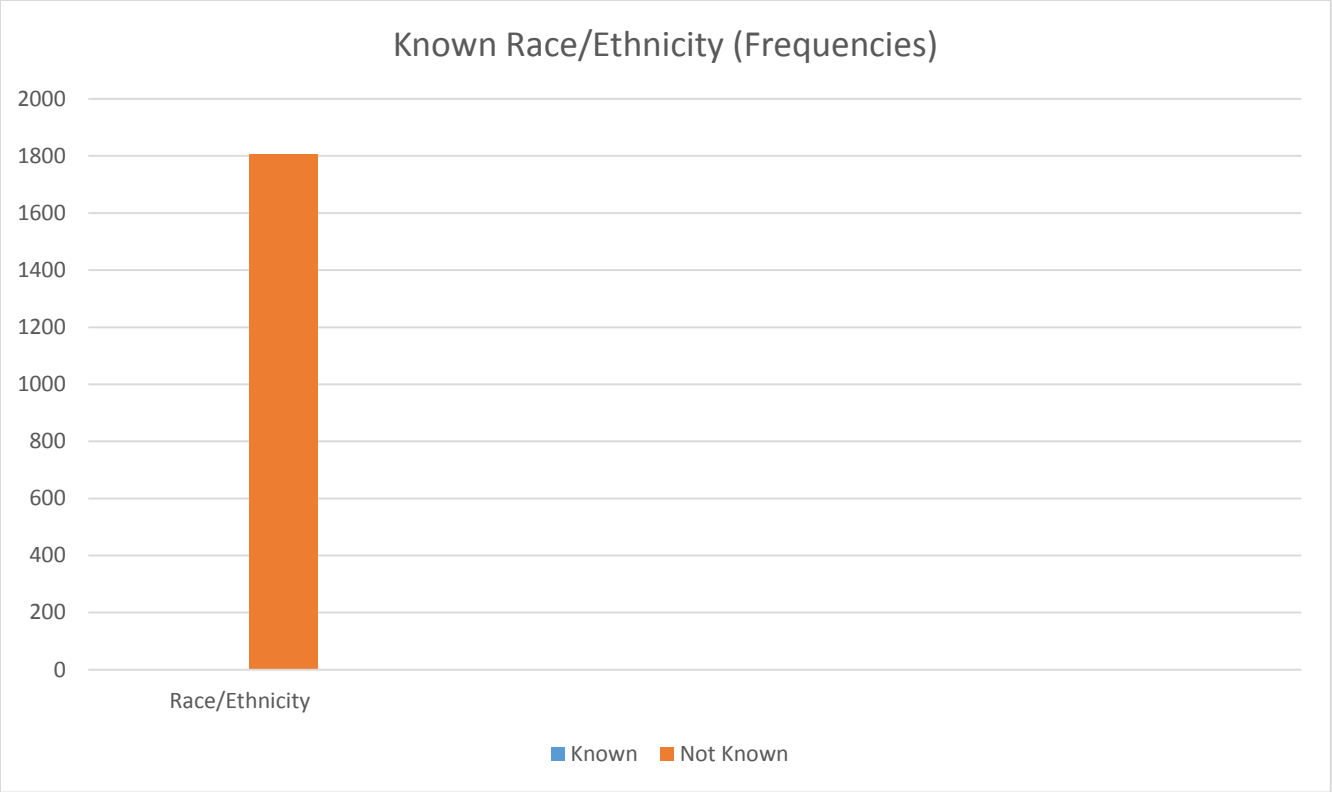

Tier 1 Data (Motor Vehicle Contacts in Percentages)
50
45
40
35
30
25
20
15
10
5
0
Motor Vehicle Contacts
Caucasian
African
Hispanic
Asian
Native American
Middle Eastern
Other


Tier 1 Data (Frequency of Searches)
30
25
20
15
10
5
0
Searches
Consent
PC
Caucasian
African
Hispanic
Asian
Native American
Middle Eastern
Other


Tier 1 Data (Arrests in Percentages)
80
70
60
50
40
30
20
10
0
Arrests
Caucasian
African
Hispanic
Asian
Native American
Middle Eastern
Other

Total Number of Instances where Officers Knew/did not Know Race/Ethnicity of Individuals Before Being Detained (1/1/16--12/31/16)

Total Number of Instances where Officers <u>Knew</u> Race and Ethnicity of Individuals Before Being Detained	**Total Number of Instances where Officers <u>Did Not Know</u> the Race and Ethnicity of Individuals Before Being Detained**
0	1,806


Known Race/Ethnicity (Frequencies)
2000
1800
1600
1400
1200
1000
800
600
400
200
0
Race/Ethnicity
Known
Not Known

Tier 1 (Partial Exemption TCLEOSE Form)

Partial Exemption Racial Profiling Reporting (Tier 1)

Department Name __Elgin Police Department__

Agency Number _____021202_____

Chief Administrator Name _Chris Bratton_____

Reporting Name ___Chris Bratton _____

Contact Number _512-285-5757_____

E-mail Address__cbratton@pd.ci.elgin.tx.us____

Certification to Report 2.132 (Tier 1) – Partial Exemption

Policy Requirements (2.132(b) CCP): Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a

citation is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

These polices are in effect

Chris Bratton 2/1/2017

_____

Chief Administrator Date

Partial Exemption Racial Profiling Reporting

(Tier 1)

Video and Audio Equipment Exemption

Partial Exemption Claimed by (2.135(a) CCP):

X☐ all cars regularly used for motor vehicle stops are equipped with video camera and transmitter-activated equipment and each motor stop is recorded and the recording of the stop is retained for at least 90 days after the stop.

OR

☐ In accordance with 2.135(a)(2) the agency has requested and not received funds to install the recording equipment

I claim this exemption

Chris Bratton 2/1/2017

_____

Chief Administrator Date

Partial Exemption Racial Profiling Reporting (Tier 1)

(This is the TCLEOSE recommended form. The form is not mandatory. The information contained in this form, however, is mandatory. You may use your

form, but all information must be provided.)

If you claim a partial exemption you must submit a report that contains the following data or use this format to report the data.

Instructions: Please fill out all boxes. If zero, use 0.

1. Total on lines 4, 11, 14, and 17 Must be equal

2. Total on line 20 Must equal line 15

Number of Motor Vehicle Stops:

1.___1803___citation only

2.___3___arrest only

3._1806_____both

4._1806____Total

Race or Ethnicity:

5._295_____African

6.__32____Asian

7.___669___Caucasian

8.__802____Hispanic

9.___1___Middle Eastern

10.__2___Native American

11.1806__Total

Race or Ethnicity Known Prior to Stop?

12.___0___Yes

13.__1806____No

14._1806_____Total

Search Conducted:

15._64____Yes

16._1742____No

17. __1806____Total

Was Search Consented?

18.__21____Yes

19.__43____No

20.___64___Total Must Equal # 15

Option to submit required data by utilizing agency report

You must submit your report in PDF format

Electronic Submission of data required by 2.132(b)(6) CCP

(6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

This report meets the above requirements

Chris Bratton 2/24/2017

_____

Chief Administrator Date

Send entire documents electronically to this website

www.tcleose.state.tx.us

Tier 1 Baseline Comparison
(Fair Roads Standard)

(II) Motor Vehicle-Contacts and Fair Roads Standard Comparison

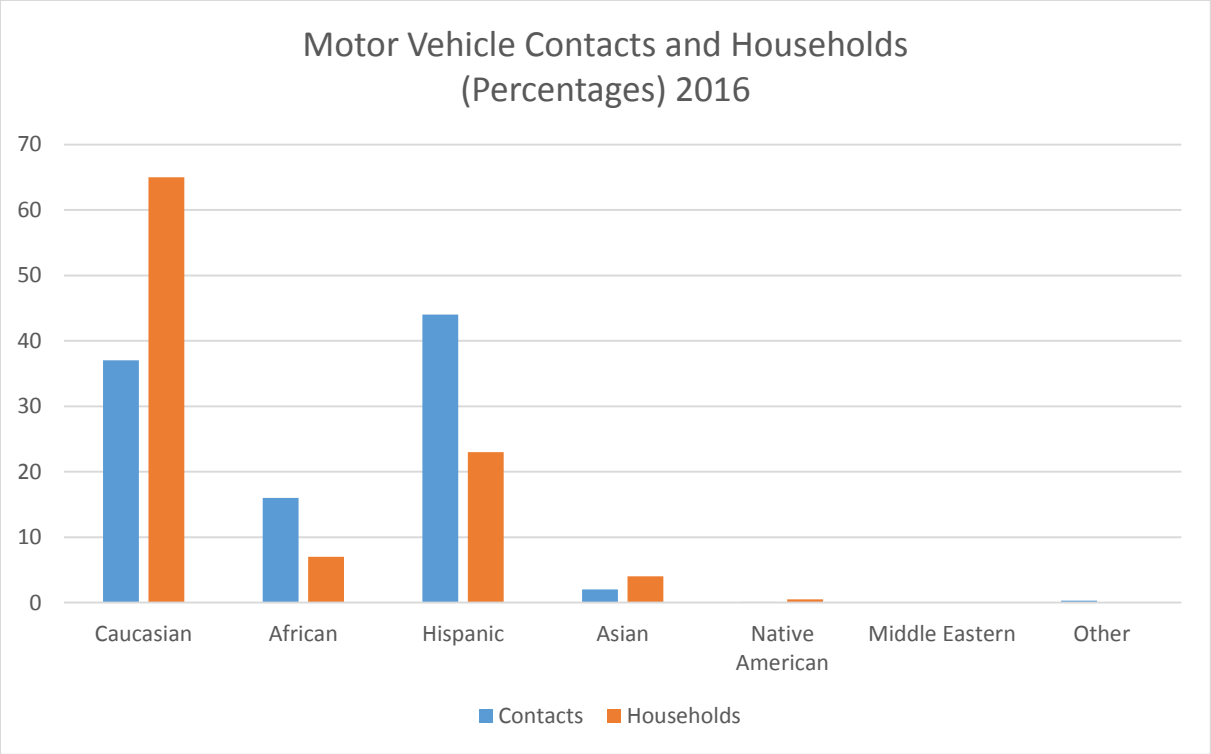
Comparison of motor vehicle-related contacts with households in Austin-Marble Falls CSA that have vehicle access (in percentages). (1/1/16—12/31/16)

Race/Ethnicity*	Contacts (in percentages)	Households with vehicle access (in percentages)
Caucasian	37	65
African	16	7

Hispanic	44	23
Asian	2	4
Native American	.1	.5
Middle Eastern	.05	N/A
Other	.3	N/A
Total	100	99**

* Race/Ethnicity are defined by Senate Bill 1074 as being of a "particular descent, including Caucasian, African, Hispanic, Asian, Native American and Middle Eastern".

**Represents rounded figure


Motor Vehicle Contacts and Households
(Percentages) 2016
70
60
50
40
30
20
10
0
Caucasian
African
Hispanic
Asian
Native American
Middle Eastern
Other
Contacts
Households

Analysis and Interpretation of Data

Analysis

In 2001, the Texas legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. That is, the law came into effect on January 1, 2002 and required all police departments in Texas, to collect traffic-related data and report this information to their local governing authority by March 1st of each year. In 2009, the racial profiling law was modified to include the collection and reporting of all motor vehicle related contacts where a citation was issued or arrest made. In addition, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individual before detaining them. Further, it is required that agencies report motor vehicle related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1st of each year. The purpose in collecting and presenting this information is to determine if police officers in a particular municipality are engaging in the practice of racially profiling minority motorists.

The Texas Racial Profiling Law also requires police departments to interpret motor vehicle-related data. Even though most researchers would probably agree with the fact that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is very difficult to determine if individual police officers are engaging in racial profiling, from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As stated previously, in 2009, the Texas Legislature passed House Bill 3389, which modified the existing Racial Profiling Law by adding new requirements; this took effect on January 1st, 2010. These most recent changes include, but are not exclusive of, the re-definition of a contact to include motor vehicles where a citation was issued or an arrest made. In addition, it requires police officers to indicate if they knew the race or ethnicity of the individual before detaining them. Also, the more recent law requires adding "middle eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1st of each year. I am pleased to inform you that these additional requirements have been addressed, since 2009, by the Elgin Police Department as it is demonstrated throughout this report.

In an effort to comply with The Texas Racial Profiling Law, the Elgin Police Department commissioned the analysis of its 2016 motor vehicle contact data. Thus, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2016 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Caucasians, African Americans, Hispanics, Asians, Native Americans, Middle Easterners and individuals belonging to the "other" category, that came in contact with the police in the course of a motor vehicle related contact, and were either issued a citation or arrested. Further, the analysis included information relevant to the number and percentage of searches (table 1) while indicating the type of search performed (i.e., consensual or probable cause). Also, the data analysis included the number and percentage of individuals who, after they came in contact with the police for a motor vehicle-related reason, were arrested.

The additional data analysis performed was based on a comparison of the 2016 motor vehicle contact data with a specific baseline. When reviewing this particular analysis, it should be noted that there is disagreement, in the literature, regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Elgin Police Department opted to adopt, as

a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2010) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It is clear that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Elgin Police Department in 2016 but live outside city limits. In some cases, the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

Since 2002, several civil rights groups in Texas expressed their desire and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of "households" that have access to vehicles. Thus, proposing to compare "households" (which may have multiple residents and only a few vehicles) with "contacts" (an individual-based count). This, in essence, constitutes a comparison that may result in ecological fallacy. Despite this, the Elgin Police Department made a decision that it would use this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its "good will" and "transparency" before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to Austin-Marble Falls CSA.

Tier 1 (2016) Motor Vehicle-Related Contact Analysis

When analyzing the Tier 1 data collected in 2016, it was evident that most motor vehicle-related contacts were made with Hispanic drivers. This was followed by Caucasian and African American drivers. With respect to searches, most of them were performed on Hispanic drivers. This was followed by African Americans and Caucasians. It is important to note that the arrest data revealed that African American drivers were arrested the most in motor vehicle-related contacts; this was followed by Caucasians.

Fair Roads Standard Analysis

The data analysis of motor vehicle contacts to the census data relevant to the number of "households" in Austin-Marble Falls CSA who indicated, in the 2010 census, that they had access to vehicles, produced interesting findings. Specifically, the percentage of individuals of African American and Hispanic descent that came in contact with the police was higher than the percentage of African American and Hispanic households in Austin-Marble Falls CSA that claimed, in the 2010 census, to have access to vehicles. With respect to Caucasians, Asians and Native Americans, a lower percentage of contacts were detected. That is, the percentage of Caucasian, Asian and Native American drivers that came in contact with the police in 2016 was

lower than the percentage of Caucasian, Asian and Native American households in Austin-Marble Falls CSA with access to vehicles.

Summary of Findings

The comparison of motor vehicle contacts showed that the Elgin Police Department came in contact (in motor vehicle-related incidents) with a smaller percentage of Caucasian, Asian and Native American drivers than the percentage that resided in Austin-Marble Falls CSA and had access to vehicles. Further, the data suggested that the percentage of African American and Hispanic drivers that came in contact with the police in 2016 was higher than the percentage of African American and Hispanic households in Austin-Marble Falls CSA with access to vehicles. In addition, the data showed that in a large number of instances, officers did not know the race or ethnicity of individuals before detaining them, when compared to instances where officers knew the race/ethnicity of individuals before they were detained.

While considering the findings made in this analysis, it is recommended that the Elgin Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected) which may prove to be useful when determining the nature of the contacts police officers are making with all individuals; particularly with African Americans and Hispanics. Although this additional data may not be required by state law, it is likely to provide insights regarding the nature and outcome of all motor vehicle contacts made with the public.

As part of this effort, the Elgin Police Department is also encouraged to:

1) Perform an independent search analysis on the search data collected in the first quarter of 2017.

2) Commission data audits in 2017 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The Elgin Police Department has, once again, complied with the Texas Racial Profiling Law.

(III) Summary

Checklist

Checklist

The following requirements **were** met by the Elgin Police Department in accordance with The Texas Racial Profiling Law:

☒ Clearly defined act or actions that constitute racial profiling

☒ Statement indicating prohibition of any peace officer employed by the
Elgin Police Department from engaging in racial profiling

☒ Implement a process by which an individual may file a complaint regarding racial profiling violations

☒ Provide public education related to the complaint process

☒ Implement disciplinary guidelines for officer found in violation of the Texas Racial Profiling Law

☒ Collect data (Tier 1) that includes information on
a) Race and ethnicity of individual detained
b) Whether a search was conducted
c) If there was a search, whether it was a consent search or a probable cause search
d) Whether a custody arrest took place

☒ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.

☒ Produce an annual report on police contacts (Tier 1) and present this to local governing body and TCOLE by March 1, 2017.

☒ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation

Contact Information

Contact Information

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting, LLC
817.681.7840
www.texasracialprofiling.com
www.delcarmenconsulting.com

Disclaimer: The author of this report, Alejandro del Carmen/del Carmen Consulting, LLC, is not liable for any omissions or errors committed in the acquisition, analysis, or creation of this report. Further, Dr. del Carmen/del Carmen Consulting is not responsible for the inappropriate use and distribution of information contained in this

report. Further, no liability shall be incurred as a result of any harm that may be caused to individuals and/or organizations as a result of the information contained in this report.

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
Update on Traffic Control and Safety Committee

DEPARTMENT:
Administration

PROPOSED ACTION:
This item is for general review and discussion of the Traffic Control and Safety Committee and related matters

BACKGROUND:
The Traffic Control and Safety Committee has been utilized primarily to guide the recent Traffic Calming Project that facilitated the installation of speed humps in various locations throughout the City. While all of the planned speed humps have been installed and are operational, the Committee also made a commitment to review and assess the effectiveness of said traffic calming efforts. This item will be for general discussion on that process moving forward; and the timing for same.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ○ not included in the current-year budget ◉ N/A

RECOMMENDATION:
Council review and discussion as stated; and direction to staff, if any, as appropriate

ATTACHMENTS:
○ Staff will be making a detailed presentation on this agenda item at the meeting.
◉ Staff will provide brief comments and answer questions on this item at the meeting.

○ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
Monthly Departmental Activity Reports - January

DEPARTMENT:
Administration

PROPOSED ACTION:
Department reports are informational only for City Council and no action is required.

BACKGROUND:
Routine Monthly Reports.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ○ not included in the current-year budget ◉ N/A

RECOMMENDATION:
No action is required.

ATTACHMENTS:
Community Development Report
Mainstreet
Utility Billing
Municipal Court Report
PD Report
Police Dept. Memo
Parks Report
Public Works
Building Department
Library

Water Treatment

○ **Staff will be making a detailed presentation on this agenda item at the meeting.**
○ **Staff will provide brief comments and answer questions on this item at the meeting.**
◉ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

MEMORANDUM

To: Tom Mattis, City Manager
From: Amy Miller, Community Development Director
Date: February 10, 2017
RE: Community Development Department Report January 2017

The Martin Luther King Jr. Walk was very well attended with people from all over the county enjoying the African American Heritage tour and program in Elgin. Organized training for departments to learn how to update the City website. Completed updates on the site and completed the February E-Newsletter. Started closing out the TCF downtown Sidewalk project. The FM 1100 design schematic was submitted to Diana Schulze, TXDOT Bastrop District engineer for review. Worked with the Main Street board to plan a strategic planning retreat for February.

Projects

- Planning for Annual events and marketing for 2017
- Coordination of Elgin Pop Up Art weekend February 9-11
- Coordinating Elgin Art Studio Tour with Barry Perez and Molly Alexander.
- TCF sidewalk project, close out paperwork.
- Planning Community Blood Drive for February 15 at Fleming Community Center.
- FM 1100 design project – follow up with TXDOT Bastrop office.
- TAP Sidewalk project, under design with TRC.
- Prepared an internal working policy for Social media for the City
- Met with potential buyers and realtors for properties downtown.
- Met with property owners about renovation plans and possible tenants.
- Completed Quarterly Reinvestments report for Texas Historic Commission.
- Met with business owners seeking lease space.
- Marketing coordination and support for Sip Shop and Stroll, 2nd Thursdays from 5-8 downtown and for events in first quarter of 2017.
- Working with CAMPO on citizen participation in the CAMPO Active Transportation plan.
- Working with EDC and Chamber on a community marketing plan.
- Developing business training classes for the spring with EDC and Chamber.

- Organized a downtown San Marcos tour with the Main Street manager Samantha Armbruster for February.
- City of Elgin E-News
- Facebook Pages: City of Elgin, Visit Elgin, Envision Elgin
- Instagram – visitelgintx
- City website – updates and training.

Boards & Committees, Seminars

CAMPO, Transportation Advisory Committee
Envision Elgin quarterly meeting
Historic Review Board
Promotion Tourism Committee
Organization Committee
Design Committee
Clean Air Coalition Advisory Committee, CAPCOG

Upcoming Events

Every Saturday Elgin Farmers' Market 9am – 1pm Downtown
Sip Shop and Stroll February 9 from 5-8 with Pop Up Art Show by the Elgin Arts Association that continues through February 14 at ATX Jerky and The Brique.
Meet your Neighbor Downtown Connection February 21
Super Hero Fun Run to Benefit JDRF March 4
Sip Shop and Stroll March 9
Local Lore April 1
Sip Shop and Stroll April 13
Art Studio Tour May 20-21

MONTHLY ACTIVITY REPORT

For the local program, monthly reports are a way to track and document progress of both the program and the downtown revitalization effort. It is also an effective tool to use for updating the board on the program's overall activities and for communicating your progress to stakeholders, such as City Council and other funding entities. For the state office, monthly reports help us provide more direct and effective services by giving us a way to spot trends, challenges, issues etc. The report should reflect BOTH the work of staff and volunteers. While not all programs use the traditional four-committee structure any longer, the work of all programs should still be able to be reflected in the four-point categories below.

The Monthly Report is **due by the 10th of each month.** Please use electronic version, type or print legibly. Please use this electronic version and email to mainstreet-reports@thc.state.tx.us.

CITY: ____ELGIN_____
MONTH/YEAR: _January 2017 _____
DATE SUBMITTED: __2-10-2017_____

1. Updates on Projects, Activities for the month.

MAIN STREET BOARD: *(After typing, TAB to the next cell)*

Meeting Dates:	Update on projects or activities
January 19, 2017	Determined to hold a strategic planning retreat, discussed annual events and marketing and volunteer opportunities for the year, Hogeye festival – 30th anniversary.

ORGANIZATION: *(After typing, TAB to the next cell)*

Meeting Dates:	Update on projects or activities
January 17, 2017	Planned a retreat for February 23, to be facilitated by Alysia cook with Opportunity Strategies. Planned field trip to San Marcos for Friday February 24, meeting Samantha Armbruster, Main Street manager. Planned editorial for spring Coordinating the next meet your neighbor be connected event for February.

PROMOTION:

Meeting Dates:	
January 19, 2017	Planning an art studio tour for May 20-21, Continuing sip shop and stroll every 2nd Thursday, Planning local lore for April, Set promotion and event calendar for the year. MLK Walk downtown to BTW elementary school was very well attended. Planning Annual Marketing and events for 2017 Working with Elgin Arts Association to host a Pop up art show with Sip Shop and stroll in February. Theme for Sip Shop and stroll in March to be live music.

DESIGN:

January 12, 2017	Recommended bike racks to the Main Street board. MSB recommended those bike racks to HRB for their January meeting. Planning to get at least three and place throughout downtown. New residents and employees are using bikes and need bike parking. Hope that it supports tourist bike use too.

ECONOMIC RESTRUCTURING:

Meeting Dates:	Update on projects or activities
January 19, 2017	Completed Quarterly reinvestment report. Working with Chamber and EDC on a cooperative marketing & Public relations campaign for the community. Planning Business training events for the spring. Contracts on 14 North Main and 111 Central Avenue fell through. These properties are available for sale, lease space available at 116 Depot Street, 23 N Main and 30 North Main. Working with owners on renovation plans, reviews, and lease recruitment.

2. Program Commentary *(list critical issues, problems, and successes/completed projects of the past month):*
   Renovation underway on 30 North Main, 109 South Avenue C, 103 North Main Street. Renovation plans [pending submission to the city for 111 South Avenue C.

3. Outlook. *Goals and challenges; plans for upcoming major projects such as public improvements etc.:*
   Through retreat and work with consultant develop a strategic plan for Main Street for the next three years.

4. Suggestions for Texas Main Street Center *(list suggestions on services or training topics; new resources; questions):*

5. Main Street in the News. *If your programs or its activities have been spotlighted in press coverage during the month, please provide a link here. If there is a newsworthy event or announcement that would be appropriate for the Main Street Matters e-newsletter, please email* **mainstreet-reports@thc.state.tx.us** *with the information. Please provide event information as many months in advance as possible.*

Every Saturday Elgin Farmers' Market 9am – 1pm Downtown
Sip Shop and Stroll February 9 from 5-8
Elgin Pop Up Art Weekend – February 9-11 Enjoy pop up art shows at participating businesses downtown
Meet your Neighbor Downtown Connection February 21
Super Hero Fun Run to Benefit JDRF March 4
Sip Shop and Stroll March 9
Local Lore April 1
Sip Shop and Stroll April 13
Art Studio Tour May 20-21

UTILITY BILLING REPORT	January 2017	
Billed out	$380,609.55	
Past due notices	587	$68,258.00
Work orders-Cut offs	102	
Disconnected for non pmt	96	
Extension to pay 1st	85	
Extension due for disconnect	12	
Meter tamper fee	0	
After Hour turn on	6	
Accounts set to final	4	for non pmt

METER REPORT		
WORK ORDERS	**COMPLETED**	**INCOMPLETE**
START READ	35	
FINAL READ	38	0
TRANSFERS / IN AND OUT	5	0
CTO'S / DISCONNECT NON-PMT	102	0
SET METER	7	2
ERT REPLACEMENTS	4	16
METER REPLACEMENTS	43	22
VISUAL READS	21	0
FAILURE TO READ (MOBILE MISS)	70	0
RE READS	20	0
WL / CHECK FOR WATER LEAK	12	0
METERS DATA LOGGED	1	0
MISCELLANEOUS	26	0
TOTAL NUMBER OF WORK ORDERS	**384**	**40**
CURB STOPS		
BROKEN CURB STOPS	0	30
TOTAL NUMBER OF WORK ORDER	**0**	**30**
BULK WATER		
PURCHASES	**16**	
TRIPS/GALLONS	**22/27,440**	
TOTAL COLLECTED	**$138.55**	

Dodie Navejas, Utility Billing Supervisor *310 N. Main Street*
Customer Service/A/R Supervisor *512-229-3220 office*

OFFICE OF COURT ADMINISTRATION

TEXAS JUDICIAL COUNCIL

OFFICIAL MUNICIPAL COURT MONTHLY REPORT

Month January Year 2017

Municipal Court for the City CITY OF ELGIN

Presiding Judge Amanda Carter

If new, date assumed office

Court Mailing Address P.O. BOX 591

City ELGIN , TX Zip 7-8621

Phone Number (512) 281-0318

Fax Number

Courts Public Email

Court's Website

THE ATTACHED IS A TRUE AND ACCURATE REFLECTION OF THE RECORDS OF THIS COURT

Prepared by Yadira Duque

Date Feb 16, 2017 Phone Number (512) 281-0318

PLEASE RETURN THIS FORM NO LATER THAN 20 DAYS FOLLOWING THE END OF THE MONTH REPORTED TO:

OFFICE OF COURT ADMINISTRATION
P O BOX 12066
AUSTIN, TX
78711-2066

PHONE: (512) 463-1625
FAX: (512) 936-2423

CRIMINAL SECTION

City of CITY OF ELGIN
Month January Year 2017

	Traffic Misdemeanors			Non-Traffic Misdemeanors		
	Non-Parking	Parking	City Ordinance	Penal Code	Other State Law	City Ordinance
1. Total Cases Pending First of Month:	13,061	13	0	0	2,539	21
a. Active Cases	9,035	11	0	0	1,251	4
b. Inactive Cases	4,026	2	0	0	1,288	17
2. New Cases Filed	255	0	0	0	85	1
3. Cases Reactivated	35	0	0	0	13	0
4. All Other Cases Added	0	0	0	0	0	0
5. Total Cases on Docket	9,325	11	0	0	1,349	5
6. Dispositions Prior to Court Appearance or Trial						
a. Uncontested Dispositions	153	0	0	0	35	0
b. Dismissed by Prosecution	12	0	0	0	2	0
7. Dispositions at Trial:						
a: Convictions						
1) Guilty Plea or Nolo Contendere	17	0	0	0	17	1
2) By the Court	1	0	0	0	0	0
3) By the Jury	0	0	0	0	0	0
b: Acquittals:						
1) By the Court	0	0	0	0	0	0
2) By the Jury	0	0	0	0	0	0
c. Dismissed by Prosecution	0	0	0	0	0	0
8. Compliance Dismissals:						
a: After Driver Safety Course	17					
b: After Deferred Disposition	1	0	0	0	1	0
c: After Teen Court	0	0	0	0	0	0
d: After Tobacco Awareness Course					0	
e: After Treatment for Chemical Dependency				0	0	
f: After Proof of Financial Responsibility	3					
g: All Other Transportation Code Dismissals	0	0	0	0	0	0
9. All Other Dispositions	19	0	0	0	0	0
10. Total Cases Disposed	223	0	0	0	55	1
11. Cases Placed On Inactive Status	100	0	0	0	44	0
12. Total Cases Pending End of Month:	13,093	13	0	0	2,569	21
a: Active Cases	9,002	11	0	0	1,250	4
b: Inactive Cases	4,091	2	0	0	1,319	17
13. Show Cause Hearings Held	1	0	0	0	2	0
14. Cases Appealed:						
a: After Trial	0	0	0	0	0	0
b: Without Trial	0	0	0	0	0	0

JUVENILE / MINOR ACTIVITY

Court CITY OF ELGIN Month January Year 2017	TOTAL
1. Transportation Code Cases Filed	5
2. Non-Driving Alcoholic Beverage Code Cases Filed	2
3. Driving Under the Influence of Alcohol Cases Filed	0
4. Drug Paraphernalia Cases Filed	3
5. Tobacco Cases Filed	2
6. Failure to Attend School Cases Filed	0
7. Education Code (Except Failure to Attend) Cases Filed	0
8. Violation of Local Daytime Curfew Ordinance Cases Filed	2
9. All Other Non-Traffic Fine-Only Filed	1
10. Transfer to Juvenile Court: a. Mandatory Transfer	0
b. Discretionary Transfer	0
11. Accused of Contempt and Referred to Juvenile Court (Delinquent Conduct)	0
12. Held in Contempt by Criminal Court (Fined and/or Denied Driving Privileges)	0
13. Juvenile Statement Magistrate Warning: a. Warnings Administered	0
b. Statements Certified	0
14. Detention Hearings Held	0
15. Orders for Non-Secure Custody Issued	0
16. Parent Contributing to Nonattendance Cases Filed	0

ADDITIONAL ACTIVITY

Court CITY OF ELGIN Month January Year 2017	Number Given	Number Requests For Counsel
1. Magistrate Warnings: a. Class C Misdemeanors	37	
b. Class A and B Misdemeanors	20	14
c. Felonies	16	5
		TOTAL
2. Arrest Warrants Issued: a. Class C Misdemeanors		144
b. Class A and B Misdemeanors		3
c. Felonies		3
3. Capiases Pro Fine Issued		73
4. Search Warrants Issued		0
5. Warrants for Fire, Health and Code Inspections Filed		0
6. Examining Trials Conducted		0
7. Emergency Mental Health Hearings Held		0
8. Magistrate's Orders for Emergency Protection Issued		2
9. Magistrate's Orders for Ignition Interlock Device Issued		1
10. All Other Magistrate's Orders Issued Requiring Conditions for Release on Bond		0
11. Driver's License Denial, Revocation or Suspension Hearings Held		0
12. Disposition of Stolen Property Hearings Held		0
13. Peace Bond Hearings Held		0
14. Cases in Which Fine and Court Costs Satisfied by Community Service: a. Partial Satisfaction		0
b. Full Satisfaction		2
15. Cases in Which Fine and Court Costs Satisfied by Jail Credit		22
16. Cases in Which Fine and Court Costs Waived for Indigency		5
17. Amount of Fines and Court Costs Waived for Indigency		$1,701.70
18. Fines, Court Costs and Other Amounts Collected: a. Kept by City		$25,887.67
b. Remitted to State		$16,786.91
c. Total		$42,674.58

Monthly Report January 2017
Elgin Police Department

CATEGORY	2017 January	2016 January	2015 January	2014 January	2013 January
Calls for Service					
Total Calls for Service	1405	852	717	753	615
Police calls	1135	654	523	534	462
Fire calls	51	53	51	44	37
Animal calls	76	73	66	93	51
Activity logs	81	64	64	67	61
City calls	62	8	13	15	4
Offense Reports					
Total Offense Reports	80	71	64	64	66
Active (Open) cases	16	32	17	13	16
Cases Inactivated	12	10	14	25	17
Cases Closed	4	1	5	2	3
Documentation (no crime)	0	1	0	0	3
Other	1	2	0	2	1
Unfounded	0	1	0	0	1
Referred to other agency	1	1	2	3	2
Citations					
Total Citations	442	356	184	482	129
Citations for violations	265	227	118	195	57
Warnings	177	129	66	287	72
Collisions					
Total Accidents	20	20	26	30	20
Major accidents (with injury)	2	1	2	3	2
Minor accidents (no injury)	9	13	23	18	13
Leaving the scene accidents	9	6	1	8	5
Alarms					
Business alarms	19	9	14	13	10
Residential alarms	9	9	17	3	5
Fire alarms	8	0	0	8	3
Arrests					
Felony arrests	10	4	4	3	8
Misdemeanor arrests	30	17	21	9	15
Other arrests	7	3	2	5	1
Animal Control					
Total Animal Control calls	76	73	57	80	51
Animal Cruelty calls	0	0	0	0	0
Canine Impounds	9	12	15	14	14
Feline Impounds	2	12	7	5	2
Citations issued	6	3	4	6	6
Bite Cases	2	2	1	1	1
Dead animal calls	8	2	3	7	5
Wildlife calls	5	2	1	3	0
Rabies cases	1	0	0	0	0
Rabies cases positive	0	0	0	0	0

Elgin Police Department
Office of the Chief
202 Depot Street • Elgin, Texas 78621 • 512 / 281-3330

Elgin Police Department

Monthly Summary January 2017

January started the year off with a lot of activity. With just over 1400 calls for service in January we are off toward setting another record this year for number of calls. At the current pace we will top 15,000 calls for the year and see no slowdown coming.

We were able to fill one of our new positions in January and welcomed Stephen Dudley to the department. His training is going well and he should be out on his own later this spring. Officer Chelsea Deal had her baby and both she and young Price Deal are doing well. She expects to return to duty in March and we are all looking forward to seeing her again on a regular basis.

We expect to be testing again in March and hopefully will fill our remaining open position as well as the open position left by the departure of Chris Walker the first part of the month. Officer Cristian Bretfelean has been promoted to Detective to fill Walker's vacancy and will be a great addition to the Investigations Division.

Michael Gonzalez
Parks and Recreation Director
mgonzalez@ci.elgin.tx.us 512-285-6190

January 2017 Parks Report.
Our maintenance crew continues to work in the parks and get things dressed up for spring. The Parks are getting their routine mowing as well as some minor maintenance issues being resolved. I am very proud of the progress that we see in each area of the department and I think we are set up well to move into another busy spring and summer.

Recreation Programs
The Department is continuing to refine the recreation programs that we offer throughout the spring and summer. We are working together now to find programs that will grain some traction and serve the diverse population we have in our community. We have some park volunteer days scheduled as well as some activities to get our local population into and enjoying the parks on their own. Our objective is to have regularly attended programs that can be easily transferred into the recreation center once that is completed. Having a good population attending regularly scheduled events should help us attain that goal.

City Buildings and Maintenance
Along with Parks our department is taking care of some City building issues. In this next month we will be working with the municipal court to install a bullet resistant window and new counter top at the court offices. This bullet resistant window and new serving area will help the municipal court in their day to day activities. We are also working with the Elgin Police Department to get old and outdated AC units replaced with newer, more efficient machines. This installation should happen very soon.

Goals for <u>February 2017</u>

- Oversee Tennis Court Repairs
- Hire Program Manager
- Publish Spring/Summer Program Guide

Park Activity Summary	2017
Facility	Number of uses
Park/ Pavilion Rental	0
Ball Field Rental	24
Fleming Community Center	31
Deposits	$1,660.00

Public Works – January - 2017

Right of Way and Easement mowing and maintenance:

Right of way shredding, mowing, weed eating and maintenance is ongoing

Sign replacement:

Replaced twelve (12) Railroad crossing signs at the below listed locations:

- 2 - East Alamo Street
- 2 - East Brenham Street
- 2 - Church Street
- 2 - Lexington Road
- 2 - VFW Road
- 2 - South Avenue A

Installed four (4) new 30 mph signs on Central Avenue
Replaced No parking sign on Saratoga Farms Boulevard
Repaired red light camera sign on U. S. Highway 290
Installed no outlet sign on Bill street

Permanent Street, utility cut repairs, pot hole repairs:

Added base to drive way on South Avenue C
Saw cut utility cuts around town

Crack Seal

Louise Street
Lloyd Lane
Ila Street
Ellis Place
Bill Street
Arthur Street
Carolina Street
East 5th Street
East 3rd Street
North Ave J (only a portion)

Curb, Gutters, Drains, and Ditch Cleaning

Church Street
Martin Luther King Boulevard from Brown Street to East Brenham Street
Jackson Street
Van Buren Street
Main street from City Hall to East Austin street
Cleaned ditch East 7th Street
East Brenham Street from Madison Street to Railroad tracks
Cleaned ribbon curb on Bill Street, Arthur Street and Carolina Street

Dumped Debris Removal:

U. S. Highway 290 East and West
West Cleveland Street
Central Avenue
Lexington Road

Texas State Highway 95 North
Taylor Road

Trees and Brush:

Removed fallen limb 100 block of West Cleveland Street
Trimmed brush on Madison Street from Hall Street to Ward Street
Trimmed brush on Bill Street

Miscellaneous:

Installed roof on new Tractor
Installed construction fence at East Austin and South Avenue C
Pot hole patches around town
Repaired lights on Maintainer (bulb)
Repaired light on water truck (bulb)
Removed flags from stop ahead signs - East Brenham Street
Cleaned drains downtown
Remove mud and debris from County Line Road due to flooding
Watered planter's downtown
Replaced battery on roller
Bladed spoils at Raymond Johnson

Equipment

Water truck in shop
Backhoe in shop
Crack seal machine in shop

Call-In

1/17/2017 Flooding - West Brenham Street, North Avenue C, and County Line Road
1/22/2017 Line down North Avenue H and tree down Morris Park

Events:

Removed Holiday banners and installed down town banners

Personnel:

James Johnson, Equipment Operator II retired from the City of Elgin in January. Public Works and Human Resources are in the process of filling the vacant position.
Public Works currently has one employee out on F.M.L.A

New Equipment:

Public works received the new 2017 F 250 pickup allocated in the new fiscal year 2016-2017 budget year line item.

Major Highway Maintenance:

Shredder tractor, shredder, required incidentals, supplies and materials have been purchased and received. Public Works is prepared and committed to this new fiscal year 2016-2017 budget year line item.

2016-2017 Drainage Project - Proposal 1: West Brenham Street and Avenue B

Excavation for two (2) each 8-foot by 4-foot box culverts, precast sections for two (2) each 8-foot by 4-foot box culverts set complete in place.
Work continues with forming, steel placement, and concrete pouring.
Avenue B portion of project:
All valley gutters have been placed. This portion is substantially complete.
West Brenham Street driveways:
This portion is substantially complete.

TxDoT S.H.-95 North Project:

Work continues.

TxDoT U.S. 290 Illumination Project:

Project continues with conduit and pedestal installation.

Joe Parten
Director, Public Works
City of Elgin

Monthly Report to Administrative Manager
Building Department
For the Month of January 2017

Type of Inspections	Jan-16	Jan-17	Fiscal Yr. To Date	Calendar Yr. To Date
Building	35	18	167	18
Electrical	42	29	101	29
Plumbing	36	24	115	24
Gas	23	14	62	14
Mechanical	14	8	64	8
TOTAL	150	93	509	93
Building				
Permits	18	16	66	16
Value	$ 1,732,135.00	$ 367,101.15	$ 1,506,753.14	$ 367,101.15
Fees	$ 12,302.40	$ 3,853.90	$ 14,589.95	$ 3,853.90
Electrical				
Permits	30	13	29	13
Fees	$ 5,342.50	$ 1,780.00	$ 4,757.50	$ 1,780.00
Plumbing				
Permits	19	8	25	8
Fees	$ 3,575.00	$ 1,000.00	$ 4,017.50	$ 1,000.00
Gas				
Permits	18	4	16	4
Fees	$ 1,935.00	$ 470.00	$ 1,970.00	$ 470.00
Mechanical				
Permits	21	7	32	7
Fees	$ 3,417.50	$ 1,070.00	$ 5,225.00	$ 1,070.00
Total All Fees	$ 26,572.40	$ 8,173.90	$ 30,559.95	$ 8,173.90

January 2017
Building Permits

Number of Permits Jan-16	Number of Permits Jan-17	Type/Classification	Permit Fees Jan-16	Permit Fees Jan-17	Valuation Jan-16	Valuation Jan-17
7	3	New Single Family	$ 4,633.60	$ 2,324.06	$ 592,064.00	$ 272,000.00
		New Duplex				
		New Manufactured				
		New Multi-Family				
		New Commercial				
		New Industrial				
		New Swimming Pools				
		Moving Permit				
1	2	New Signs	$ -	$ -	$ 145.00	$ 238.15
10	7	Residential	$ 2,988.50	$ 1,479.84	$ 405,749.42	$ 94,863.00
2		Non-Residential	$ 45.00		$ 700.00	
	4	Demolitions		$ 50.00		$ -
20	16		$ 7,667.10	$ 3,853.90	$ 998,658.42	$ 367,101.15

ZBOA Request	None
P & Z Request	None

Code Enforcement	Active Jan 2016	Active Jan 2017	Closed Jan 2016	Closed Jan 2017	Calendar YTD
Abandoned/Junked	3	1	3	9	10
Animal Control			1		0
Beer Permits					0
Environmental	2		4	2	2
Fire Code			2		0
Health and Sanitation					0
Illegal Signs			54	18	18
Property Maintenance			1	5	5
Unsafe Structures	1				0
Water/Sewer			5		0
Zoning			6	1	1
Total	6	1	76	35	36

*Zoning Board of Adjustments

Submitted By: Carlos Navejas
Date: February 16, 2017

Monthly Report to Administrative Manager
Building Department
For the Month of January 2017

The City of Elgin Planning and Development department issued a total of sixteen (16) building permits in the month of January. Three (3) were for New Single Family Dwellings; two (2) for Austin Habitat for Humanity in the County Line Subdivision, and One (1) in the Shenandoah Subdivision at 307 Gettysburg Loop. Two (2) were for signs at 110 Depot (Lucy's Kitchen) and 1205 W US 290 (Vision Source). Seven (7) were for various improvements (storage sheds, window replacement, remodeling) to existing Single Family Dwellings. Four (4) demolition permits were issued; one (1) for the complete removal of the structure at 501 W Brenham, one (1) for the removal of a garage apartment at 419 S Ave C, one (1), one (1) for a remodel at 710 Lexington, and one (1) for partial removal of shelving at 102 N Main Street. Site plans for Maple Lane Duplexes (5 duplex units on Maple Lane), Sierra Apartment Homes (68 units on Maple Lane), and ACC Phase II (2 single story buildings added to the existing campus) are still pending completion of the plan review.

The Planning and Zoning Commission did not meet in January.

A new column has been added to track the year to date number of both open and closed complaints received by the Code Enforcement Department. The total number between January 1, 2017 and January 31, 2017 is 36. Bulky waste and junk vehicles continue to be the top issues demanding our officer's attention. Michael Hinds attended the week long Code Enforcement training required for licensing on January 9th through January 16th.

Library Report - City of Elgin - January 2017

Building: The Civic Center calendar was reserved to have the floors stripped and mopped February 17-19. The new wax wore down quickly after the previous waxing in the Civic Center although it held up in other areas of the library.

Circulation was down in January 20% from January 2016.

Collection size is slightly up from the previous January.

Grants: The library, spearheaded by Sara Kaczynski, turned in a Collection Enhancement (Book) Grant request to the Texas Book Festival. The focus of the grant will be the hot topic of immigration which will include a Book Club in the three summer months for young adults and adults.

Programs: To celebrate National Soup Month we had two nicely attended soup luncheons in January. Melinda Torres, children's librarian has started a Book and crafts program to replace the LEGO building program. The TBA Book Club Voting and luncheon ended this year's book club with 10 readers voting on their favorite Texas Bluebonnet book with a three-way tie. We learn who the statewide winner is at the Texas Library Conference April 19-22 in San Antonio. Several of the participants read the 20 books on the reading list.

Staff: The library is short staffed with the need to hire a Circulation Clerk. The position closes on February 28th. We look forward to having a new person at the circulation desk.

Technology: Staff is learning to use the new Office 365 and Outlook email.

Volunteers continue to keep the circulation desk covered, teach ESL and Citizenship classes, pop popcorn, and keep the Travel Club moving along.

Categories	Units	Jan. '16	Jan. '17	Fiscal YTD'16	Fiscal YTD '17
Total Circulation		7,280	5,867	28,260	24,578

+ or - Same month previous year	Percent	5%-	20%-		
Additions					
Interlibrary Loans	Each	0	29	5	85
New Patrons	Each	90	60	298	287
Collection					
Items Added	Each	258	319	2,514	1,011
Items Withdrawn	Each	310	261	746	930
Total Collection	Each	39,388	39,654	39,388	39,654
General Statistics					
Gate Count		3,749	3,613	15,766	16,009
Hours Open	Each	178	162	647	631
Library Tours	Each	0	0	0	1
Program Visitors	Each	408	303	2,042	1,949
Public Computer Use	Hours	557	421	2,232	1,690
Patrons using computers	Each	821	661	3,499	2,549
Wifi Patron Use		NA	1,468	NA	5,746
Volunteer Hours	Each	96	131	495	700
Receipts					
		$1,159	$990	$5,067	$3,542
Civic Center Use					
City	Each	3	5	10	14
Library	Each	14	21	49	79
Public Rental	Each	3	1	16	4
Other - not for profit	Each	10	6	36	25
Total Civic Center Use		30	33	111	122

Monthly Reports January 2017

Department 023 Water Treatment

Well # 10	0 Gallons
Well # 11	14,015,000 Gallons
Well # 14	0 Gallons
Well # 15	17,541,000 Gallons
Water loss due to leaks or flushing	400,000 Gallons
Total Water Pumped	**31,156,000 Gallons**

Chemicals Used

Chlorine	884 Pounds
Seaquest	55 Gallons

Distribution Samples

Bacteriological Samples Taken	13
Average Chlorine Residual	1.76 mg/l
Violations	0

Department 024 Distribution

Line Repairs/New installations

Main Line Breaks	4
Service Line Breaks	12
Miscellaneous Repairs/Complaint Calls	30
New Connections/Taps	0
Installation of New Water Main	0

Department 026 Wastewater

Collections

Backups

Main Lines	2
Service Lines	6
After Hours Call-Outs	6

Line Repairs/New Installations

Curb Side Cleanout Caps Replaced	4
Curb Side Cleanouts Installed	0
Main Line Repairs	0
New Main Line Installed	0
New Taps Installed	0
Lines TV'd	2
Manholes Installed/Repaired	0

Lift Station Maintenance/Repairs

Hour Meter Reads/Daily Site Checks	9 Daily
Pumps Pulled	0
Pumps Installed	0
Pumps De-raged	3
Motors Pulled	0
Motors Installed	0
Electrical Issues (Repair/Replace Parts)	0
Floats Cleaned/Replaced	0
Grass/Weed Maintenance	0
After Hours Call Outs	4

Wastewater Treatment Plant

Maintenance/Repairs

Pumps Pulled	1
Pumps Installed	0
Motors Pulled	1
Motors Installed	0
Control System/Electrical Repairs	4
Cleaned Wet Well Floats	1
Miscellaneous Repairs	8
After Hours Call-Outs	2

Chemicals Used

Alum/Gallons	4,000
Bleach 10%/ Gallons	2,000
Polymer/ 55 gallon drums	2

Monthly Plant Flows and Test Results

Minimum Daily Flow	444,300 Gallons
Maximum Daily Flow	1,597,600 Gallons
Average Daily Flow	682,200 Gallons
Total Monthly Flow	21,147,500 Gallons

Effluent DO (Dissolved Oxygen) Average	8.02
Effluent Chlorine Residual Average	1.69 mg/l
Effluent pH Average	7.27
Total Phosphorus Average	0.106
CBOD (Carbonaceous Biochemical Oxygen Demand) Average	2.48
TSS (Total Suspended Solids) Average	2.6
Ammonia/Nitrates Average	0.091

Remarks :

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
AN ORDINANCE ACKNOWLEDGING RECEIPT OF "CERTIFICATE OF UNOPPOSED STATUS" PURSUANT TO SECTION 2.052 TEXAS ELECTION CODE; DECLARING UNOPPOSED CANDIDATES TO BE ELECTED TO THEIR RESPECTIVE OFFICES AND CANCELLING THE MAY 6, 2017 GENERAL ELECTION; PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES

DEPARTMENT: Administration

PROPOSED ACTION:

BACKGROUND:

BUDGET/FINANCIAL IMPACT:
Funding for this item was ◉ included ○ not included in the current-year budget ○ N/A

RECOMMENDATION:

ATTACHMENTS:
Ordinance Cancelling the May 6, 2017 General Election
Certificate of Unopposed Status Exhibit A

◉ Staff will be making a detailed presentation on this agenda item at the meeting.
○ Staff will provide brief comments and answer questions on this item at the meeting.
○ This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

ORDINANCE NO.

AN ORDINANCE ACKNOWLEDGING RECEIPT OF "CERTIFICATE OF UNOPPOSED STATUS" PURSUANT TO SECTION 2.052 TEXAS ELECTION CODE; DECLARING UNOPPOSED CANDIDATES TO BE ELECTED TO THEIR RESPECTIVE OFFICES AND CANCELLING THE MAY 6, 2017 GENERAL ELECTION; PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES

WHEREAS, pursuant to Section 2.052 Texas Election Code, the City Secretary, who is also the authority responsible for having the official ballot for City Council elections prepared, has certified in writing that certain candidates are unopposed in the May 6, 2017 general election, and

WHEREAS, Section 2.053 Texas Election Code provides that upon receipt of such a certificate that the Council may declare each unopposed candidate elected to the office and cancel the election, Now Therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELGIN, TEXAS:

The Elgin City Council hereby acknowledges receipt of a Certificate of Unopposed Status from the City Secretary that certain candidates whose names were to appear on the ballot for the May 6, 2017 City General Election are each unopposed. A copy of such Certificate is ordered to be attached to this ordinance as Exhibit "A".

II.

Pursuant to Section 2.053 Texas Election Code, the City Council hereby declares that the following unopposed candidates are elected to their respective offices, and shall be issued certificates of election following the time the election would have been canvassed:

a) Mary Alice Penson	Council Member Ward 1
b) Juan Jesse Gonzalez	Council Member Ward 2
c) Bruce Phillip Thomas	Council Member Ward 3
d) Neil Todd Beyer	Council Member Ward 4

III.

The May 6, 2017 general city election is cancelled, and the City Secretary is directed to cause a copy of this ordinance to be posted on Election Day at each polling location used or that would have been used in the election.

IV.

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

READ, PASSED AND ADOPTED on this the 7th day of March, 2017.

_____

Chris Cannon, Mayor of City of Elgin, Texas

ATTEST:

_____

Amelia Sanchez, City Secretary, City of Elgin, Texas

Exhibit "A"

CERTIFICATE OF UNOPPOSED STATUS

I, Amelia Sanchez, City Secretary for the City of Elgin, Texas, and being also the authority responsible for having the official ballot prepared for the City Council elections, do hereby certify, pursuant to Section 2.052 Texas Election Code, that certain candidates whose names are to appear on the ballot for the May 6, 2017 City General Election are unopposed. The unopposed candidates and their respective offices are as follows:

a) Mary Alice Penson	Council Member Ward 1
b) Juan Jesse Gonzalez	Council Member Ward 2
c) Bruce Phillip Thomas	Council Member Ward 3
d) Neil Todd Beyer	Council Member Ward 4

Signed and Certified this the 23rd day of February, 2017.

Amelia Sanchez, City Secretary

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION FOR THE NATIONAL INCIDENT BASED REPORTING SYSTEM (NIBRS) PROJECT TO THE OFFICE OF THE GOVERNOR BY THE ELGIN POLICE DEPARTMRENT

DEPARTMENT: Police

PROPOSED ACTION:
Approval of Resolution

BACKGROUND:
Approval of the Resolution is necessary for completion of grant application

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ○ not included in the current-year budget ◉ N/A

RECOMMENDATION:
Approve Resolution

ATTACHMENTS:
Resolution

○ Staff will be making a detailed presentation on this agenda item at the meeting.
○ Staff will provide brief comments and answer questions on this item at the meeting.
◉ This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO.

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION FOR THE NATIONAL INCIDENT BASED REPORTING SYSTEM (NIBRS) PROJECT TO THE OFFICE OF THE GOVERNOR BY THE ELGIN POLICE DEPARTMENT

WHEREAS, the City of Elgin, Texas (the "City") finds it in the best interest of the citizens of Elgin, Texas, that the NIBRS Project be operated for the year 2017, and

WHEREAS, the City of Elgin agrees to provide no matching funds for the said project as required by the grant application; and

WHEREAS, the City of Elgin agrees that in the event of loss or misuse of the Office of the Governor funds, the City of Elgin assures that the funds will be returned to the Office of the Governor in full.

WHEREAS, the City of Elgin designates Phillip Taylor, Assistant of Police as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elgin, Texas:

That the above recitals are true and correct; and that the Assistant Police Chief is authorized to submit the grant application for the NIBRS Project to the Office of the Governor.

Passed and Approved this _____day of _____, 2017.

CITY OF ELGIN, TEXAS

By: _____
Chris Cannon, Mayor

ATTEST:

By: _____
Amelia Sanchez, City Secretary

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
(*Second Reading*) RESOLUTION NO. 2017-02-07-07 BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS APPROVING THE EXPENDITURE OF $12,000 BY THE ELGIN ECONOMIC DEVELOPMENT CORPORATION FOR STANSBURY PUBLIC RELATIONS AND MAKING CERTAIN FINDINGS RELATED THERETO

DEPARTMENT: Administration

PROPOSED ACTION:
Approve a $12,000 expenditure by the Elgin Economic Development Corporation (EDC) to hire a public relations firm to market the City. According to Texas Local Government Code the City Council has to approve any expenditure over $10,000 by the Elgin EDC.

BACKGROUND:
The EDC Director worked with the Community Development Director and the Elgin Chamber to hire a marketing/PR firms to assist with attracting new businesses, tourists and events to the City of Elgin. The PR firm will also assist with media training, key messages, talking points, and press releases. The EDC will also receive a list of media outlets where we can send news on events going on in Elgin along with any updated news.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ○ not included in the current-year budget ◉ N/A

RECOMMENDATION:

ATTACHMENTS:
(Second Reading) Resolution

○ **Staff will be making a detailed presentation on this agenda item at the meeting.**
◉ **Staff will provide brief comments and answer questions on this item at the meeting.**
○ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. **2017-02-07-07**

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS APPROVING THE EXPENDITURE OF $12,000 BY THE ELGIN ECONOMIC DEVELOPMENT CORPORATION FOR STANSBURY PUBLIC RELATIONS AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, the City of Elgin, Texas (the "City") has caused to be created the Elgin Economic Development Corporation (the "Corporation") pursuant to the provisions of Chapter 505 of the Texas Local Government Code, being the ("Act"); and

WHEREAS, the Corporation desires to expend $12,000 to pay for Stansbury Public Relations to assist with marking and public relations for the City of Elgin; and

WHEREAS, solely for satisfying the requirements of the Act, and for no other purposes whatsoever, the City is willing to approve said expenditures;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elgin, Texas:

1. That the above recitals are true and correct.

2. That the City hereby approves the expenditure of up to $12,000 for Stansbury Public Relations.

That it is officially found and determined that this approval is given solely to satisfy the requirements of the Act and for no other purpose whatsoever. In particular, the City shall have no liability whatsoever in regard to the expenditures, which will be solely the liability of the Corporation.

Adopted on this 7th day of February, 2017.

CITY OF ELGIN, TEXAS

By: _____
Chris Cannon, Mayor

ATTEST:

By: _____
Amelia Sanchez, City Secretary

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
Discussion and Possible Action regarding request from Friends of Elgin Parks to waive the Open Container Ordinance in Veterans' Memorial Park for Music in the Park series on April 7, April 14, April 21 and April 28, 2017 from 4:00pm until 10:00pm.

DEPARTMENT:
Parks & Recreation

PROPOSED ACTION:
Approve request from Friends of Elgin Parks to waive the open container ordinance in Veterans' Memorial Park for Music in the Park series on April 7 , April 14, April 21 and April 28, 2017 from 4:00pm until 10:00pm.

BACKGROUND:
The Friends of Elgin Parks are sponsoring a free concert in Veterans' Memorial Park as part of their Music in the Park series. The concert series is free and open to the public. These concerts draws locals and visitors to our vibrant downtown area. The Friends of Elgin parks organization is requesting the council to waive the open container ordinance for the spring music series.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ◉ included ○ not included in the current-year budget ○ N/A

RECOMMENDATION:
Approve request from Friends of Elgin Parks to waive the open container ordinance in Veterans' Memorial Park for Music in the Park series on April 7 , April 14, April 21 and April 28, 2017 from 4:00pm until 10:00pm.

ATTACHMENTS:

○ **Staff will be making a detailed presentation on this agenda item at the meeting.**
○ **Staff will provide brief comments and answer questions on this item at the meeting.**
◉ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
City Council Meeting Minutes - February 7, 2017

DEPARTMENT:
Administration

PROPOSED ACTION:
Approval of Minutes

BACKGROUND:
Minutes from the February 7, 2017 Regular City Council Meeting

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ○ not included in the current-year budget ◉ N/A

RECOMMENDATION:
Approval of Minutes

ATTACHMENTS:
February 7, 2017 Meeting Minutes

○ Staff will be making a detailed presentation on this agenda item at the meeting.
○ Staff will provide brief comments and answer questions on this item at the meeting.
◉ This is a routine procedural item and no presentation is planned for the meeting.

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

MINUTES
ELGIN CITY COUNCIL
REGULAR MEETING
TUESDAY, FEBRUARY 7, 2017
CITY ANNEX COUNCIL CHAMBERS, 310 NORTH MAIN STREET

CALL TO ORDER

Mayor Chris Cannon called the meeting to order at 6:59 p.m.

ROLL CALL

Present: Chris Cannon, Mayor
Mary Penson, Council Member
Susie Arreaga, Council Member
Craig Fromme, Council Member
Phillip Thomas, Council Member
Sue Brashar, Council Member
Jessica Bega, Council Member
Neil Beyer, Council Member

Staff: Thomas L. Mattis, City Manager
Chris Bratton, Police Chief
Buck LaQuey, Finance Director
Owen Rock, ED Director
Michael Gonzalez, Parks Director
Doug Prinz, Utilities Director
Yadira Duque, Supervisory Court Clerk

Mayor Cannon stated that Mayor Pro Tem Juan Gonzalez would not be attending as he was still recovering from surgery. Council Member Bega moved to excuse Mayor Pro Tem Gonzalez's absence. Council Member Penson seconds the motion. Motion carried unanimously 8-0.

INVOCATION

Reverend Lindsey R. Wilson Sr. gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Chris Cannon led the Pledge of Allegiance to the United States and Texas flags.

PRESENTATIONS

1. A Recognition of former City Council Member Keith Joesel
2. Employee of the First Quarter
3. Introduction of New City Employees:
   Swearing in of Elgin Police Officer Stephen Dudley
   Utility Department – Meter Readers Gary Olivas and Robert Ramirez
   Water Department – Tommy Wright

Mayor Cannon asked Mr. Joesel to come forward and presented him with a plaque. He thanked him for his many years of service. Mr. Joesel thanked everyone and stated he was privileged to have served the community, and is looking forward to the work the Council will continue for the city.

Sandy Ott, Library Director, stated that the committee had chosen Laura Schwartz as the 2017 employee of the first quarter. Ms. Ott stated that her fellow employee's comments were about her dedication and helpfulness. Laura is always friendly and willing to work on weekends to stay caught up with her many tasks.

Thomas Mattis, City Manager, stated that the introduction of new employees was something new and that it would be done as new employees are hired to make sure the Council knows who they are and vice versa.

Chief Bratton introduced Stephen Dudley, a newly hired Police Officer, and asked Judge Carter to administer the Oath of Office.

Buck LaQuey, Finance Director, introduced two new meter readers, Gary Olivas and Robert Ramirez.

Doug Prinz, Utility Department Director, introduced Tommy Wright who holds a Master Electrician license.

PUBLIC COMMENT

None

CITY MANAGER'S REPORT

1. Review and confirmation of 2017 Street Paving (Chip Seal) Program
2. General Activity Report and Project Update: Bulk Trash Collection Service
3. Monthly Departmental Activity Reports - January

City Manager, Thomas Mattis, stated that the first item was to give the Council a chance to review the list and provide feedback on the schedule for chip seal that was budgeted for this year. He stated that the staff was ready to start preparations for this year's program that required a lot of prep work by the staff before the contractor comes in. Mr. Mattis said he thought there should probably be a Council discussion on a long term comprehensive plan for street grading by the City in the future.

Mr. Mattis stated the item for General Activity Report would be included in the agenda to give the opportunity for Council to ask questions on any of the projects or activities going on and not a part of the City Manager's report. He also wanted to mention that this week full implementation of the bulk trash collection would begin. Enforcement and issuing citations would also begin and give people an opportunity to address the issue.

Mayor Cannon took this time to welcome Neil Beyer to the Council. He thanked him for serving and fulfilling the vacancy in Ward 4.

CONSENT AGENDA

All the items on the consent agenda are considered self-explanatory by the Council and will be enacted with one motion, one second, and one vote. There will be no separate discussion of these items unless a council member removes an item from the Consent Agenda and places it on the New Business section for Discussion and action.

1. City Council Meeting Minutes – February 7, 2017

2. AN ORDINANCE OF THE CITY OF ELGIN, TEXAS, CALLING AN ELECTION ON MAY 6, 2017 FOR THE PURPOSE OF ELECTING CERTAIN CITY OFFICIALS; DESIGNATING ELECTION PRECINCTS AND POLLING PLACES; PROVIDING FOR EARLY VOTING AND ELECTION DAY VOTING; PROVIDING FOR PERFORMANCE OF REQUIRED ADMINISTRATIVE DUTIES; MAKING PROVISIONS FOR THE CONDUCT OF SUCH ELECTION; CERTIFYING PROVISION OF REQUIRED ACCESSIBLE VOTING SYSTEMS AT EACH POLLING PLACE; AND PROVIDING FOR OTHER MATTERS RELATING TO SUCH CITY ELECTION

3. Fiscal Year 2017 First Quarter Investment Report

4. Review and approve street closures in support of the Superhero 5K Fun Run; South Ave. C from Central Ave. to West 11th, West 2nd from Ave. C to West 11th, West 11th from West 2nd to Ave. C and Depot Street from Ave. C to Main Street on March 4th from 8:00 a.m. to 12:00 p.m.

5. Review and consider approving waving the Open Container Ordinance and Park Curfew Ordinance in Elgin Memorial Park for the 29th Annual Elgin Volunteer Fire Department Cookout and Fundraiser from 12:00 p.m. Thursday, April 6, 2017 to 12:00 a.m. Sunday, April 9, 2017.

6. Review and consider approval of a request to waive the Open Container Ordinance for the Taste the Town Fundraiser on Thursday, April 20th from 5:30 to 8:00 p.m.

Council Member Brashar moved to approve the Consent Agenda items with the minor corrections provided to the City Secretary. Council Member Penson seconds the motion. Motion carried by unanimous vote, 8 for 0 against.

UNFINISHED BUSINESS

None

NEW BUSINESS

1. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE CITY MANAGER TO PROCEED WITH THE ELGIN MEMORIAL PARK COURTS REVITALIZATION PROJECT IN PARTNERSHIP WITH FRONTIER BANK, TO UTILIZE FUNDS AS DESCRIBED, AND MAKING CERTAIN FINDINGS RELATED THERETO

Council Member Penson moved to approve a Resolution authorizing the City Manager to proceed with the Elgin Memorial Park Courts Revitalization project. Council Member Fromme seconds the motion. Motion carried by unanimous vote, 8 for 0 against.

2. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE A COOPERATIVE AGREEMENT WITH ELGIN 384, L.P. FOR THE SHARING OF COSTS RELATED TO THE CONSTRUCTION OF SARATOGA FARMS BOULEVARD AND A SECTION OF LEE DILDY BOULEVARD AND MAKING CERTAIN FINDINGS RELATED THERETO

Council Member Brashar moved to approve a Resolution authorizing the Mayor to execute a cooperative agreement with SF Development, Inc. Council Member Thomas seconds the motion. Motion carried by unanimous vote, 8 for 0 against.

Mr. Mattis corrected the name on the Resolution from Elgin 384 L.P. to SF Development Inc.

3. RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS APPROVING THE EXPENDITURE OF $12,000 BY THE ELGIN ECONOMIC DEVELOPMENT CORPORATION FOR STANSBURY PUBLIC RELATIONS AND MAKING CERTAIN FINDINGS RELATED THERETO

Council Member Penson moved to approve A Resolution approving the expenditure of $12,000.00 by the EDC for Stansbury Public Relations. Council Member Thomas seconds the motion. Motion carried by unanimous vote, 8 for 0 against.

4. Consideration of appointments of Renee Girling, Stacey Gruetzner, Jamie Hausladen, and Theresa McShan to the Main Street Board for terms to expire on December 31, 2018.

Council Member Brashar moved to approve the appointments to the Main Street Board. Council Member Beyer seconds the motion. Motion carried by unanimous vote, 8 for 0 against.

5. Consideration of appointment of Kay Silkenson to the Library Advisory Board.

Council Member Penson moved to approve the appointment. Council Member Arreaga seconds the motion. Motion carried by unanimous vote, 8 for 0 against.

ANNOUNCEMENTS

Mayor Cannon asked the City Manager and Staff if there were any announcements. Amy Miller announced that there would be a blood drive the following week on Wednesday at the Fleming Community Center, an Art Show this weekend downtown, and a Sip, Shop and Stroll on Thursday night. Chief Bratton announced that the Police Department had received a $2000.00 grant for the Law Enforcement Explorers program to send students to competitions.

EXECUTIVE SESSION

Recess the Regular Council meeting and call to order Executive Session in a closed session.

Mayor Cannon recessed the meeting at 7:53 p.m. and called to order the Executive Session at 7:58 p.m.

1. Adjourn into Executive Session pursuant to Section 551.074 to deliberate the appointment, employment, evaluation, reassignment, or duties of a public office or employee, to wit: City Manager and Department Heads.

RECONVENE

Mayor Cannon adjourned the Executive Session at 8:49 p.m. and reconvened the Regular Meeting at 8:49 p.m.

XIII. **ADJOURNMENT**

Mayor Cannon adjourned the City Council meeting at 8:49 p.m.

APPROVED:

_____
CHRIS CANNON
Mayor, Elgin, Texas

ATTEST:

_____
AMELIA SANCHEZ
City Secretary

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE AN EMERGENCY WATER INTERCONNECT AGREEMENT BETWEEN THE CITY AND AQUA WATER SUPPLY CORPORATION FOR THE PROVISION OF POTABLE WATER IN THE EVENT OF AN EMERGENCY AND MAKING CERTAIN FINDINGS RELATED THERETO

DEPARTMENT: Administration

PROPOSED ACTION:
Consideration of proposed Emergency Water Interconnect Agreement between the City and Aqua Water Supply Corporation (WSC)

BACKGROUND:
Aqua WSC is a neighboring potable water service provider whose service area (CCN) is adjacent to - and includes parts of - the City of Elgin. As with all water providers, the City and Aqua both recognize the mutual benefit develop of developing alternative sources of potable water in the event of an emergency disrupting the provision of water service to its customers. Both have also recognized for some time the mutual benefit of interconnecting the respective water systems so that in the event of an emergency or water shortage by one party, the other party can provide any water surplus. To that end, staff and legal counsel of both the City and Aqua have developed and agreed upon the attached Agreement that will establish terms and conditions for such an interconnection to occur.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ◉ not included in the current-year budget ○ N/A

RECOMMENDATION:
Adoption of the Resolution and authorization to execute the proposed Emergency

Water Interconnect Agreement between the City and Aqua Water Supply Corporation as presented; and as we or may not be amended by City Council.

ATTACHMENTS:

Resolution
Agreement

○ **Staff will be making a detailed presentation on this agenda item at the meeting.**
◉ **Staff will provide brief comments and answer questions on this item at the meeting.**
○ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE AN EMERGENCY WATER INTERCONNECT AGREEMENT BETWEEN THE CITY AND AQUA WATER SUPPLY CORPORATION FOR THE PROVISION OF POTABLE WATER IN THE EVENT OF AN EMERGENCY AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, the City of Elgin, Texas (the "City") and Aqua Water Supply Corporation ("Aqua"), a nonprofit water supply corporation, are the owners and operators of public water supply systems as authorized by the Texas Commission on Environmental Quality; and,

WHEREAS, the City and Aqua desire to develop an alternative source of potable water in the event of an emergency disrupting the provision of water service to its customers; and,

WHEREAS, the City and Aqua operate adjacent water systems and it would be to their mutual benefit to interconnect their water systems so that in the event of an emergency or water shortage by one party, the other party can provide any water surplus, subject certain terms and conditions; and,

WHEREAS, the governing bodies of Aqua and Elgin have determined it to be in the public interest to provide such alternate water service to the other in the event of an emergency; and,

WHEREAS, Aqua and Elgin now wish to memorialize the terms and conditions for providing water service in the event of an emergency.

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

Section 1. That the above recitals are true and correct; and the Mayor is authorized to execute the Emergency Water Interconnect Agreement between the City and Aqua Water Supply Corporation to define terms and conditions regarding the provision of potable water in the event of an emergency, a copy of said Agreement being attached hereto and made part of this Resolution as if copied verbatim therein.

Section 2. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 7th day of March, 2017.

_____
CHRIS CANNON, Mayor
City of Egin, Texas

ATTEST:

_____
AMELIA SANCHEZ, City Secretary

EMERGENCY WATER INTERCONNECT AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS AND AQUA WATER SUPPLY CORPORATION

THE STATE OF TEXAS §

COUNTY OF BASTROP §

This Emergency Water Interconnect Agreement is entered into as of March 31, 2017 (the "Effective Date"), by and between Aqua Water Supply Corporation ("Aqua"), a nonprofit water supply corporation acting pursuant to Chapter 67 of the Texas Water Code, and the City of Elgin, Texas ("Elgin") a home rule city and body politic of the State of Texas for the purpose of providing an emergency interconnection between the water systems of both Parties ("Parties").

R E C I T A L S

WHEREAS, Aqua is the holder of retail water Certificate of Convenience and Necessity No. 10294 issued by the Texas Commission on Environmental Quality and the owner and operator of a public water supply system; and

WHEREAS, Elgin is the holder of retail water Certificate of Convenience and Necessity No. 10311 issued by the Texas Commission on Environmental Quality and the owner and operator of a public water supply system; and

WHEREAS, Aqua and Elgin each have and intend to continue operating their respective public water supply systems; and

WHEREAS, the Parties desire to develop an alternative source of potable water in the event of an emergency disrupting one's capability to provide potable water to is customers; and

WHEREAS, the Parties operate adjacent water systems and it would be to the advantage and benefit of the Parties to construct the required facilities to interconnect their water systems so that in the event of an emergency or water shortage by one Party, the other Party can sell any water surplus under and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the governing bodies of Aqua and Elgin have determined it would serve the public interest for the Parties to provide such alternate water service to the other in the event of an emergency and in accordance with the terms and conditions set forth in the Agreement; and

WHEREAS, Aqua and Elgin are desirous of setting forth in an agreement the terms and conditions for providing water service in the event of an emergency as more particularly defined below.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual agreements, covenants, and conditions hereinafter set forth, Aqua and Elgin agree as follows:

A R T I C L E I.
Definitions

As utilized herein, the following terms shall have these meanings:

A. Water: means potable water meeting applicable requirements of the Texas Commission on Environmental Quality or any successor agency of competent jurisdiction delivered at the normal operating pressure of the Providing Utility.

B. Emergency: means an act of God or similar unforeseen and unpreventable catastrophic circumstance or disaster, or any other event that renders Aqua or Elgin substantially unable to provide water to its customers to the degree that would threaten the health, safety and welfare of its customers.

C. Points of Delivery: means the points of interconnection between the Parties' respective water systems as shown on Exhibit "A" at which the Providing Utility can deliver water to the Receiving Utility.

D. Providing Utility: means Aqua when Aqua is providing emergency water service to Elgin under this Agreement and shall mean Elgin when Elgin is providing emergency water service to Aqua.

E. Receiving Utility: means Aqua when Aqua is receiving emergency water service from Elgin under this Agreement and shall mean Elgin when Elgin is receiving emergency water service from Aqua.

F. Appropriate Representative: means the General Manager for Aqua and the City Manager for Elgin.

A R T I C L E II.
General Conditions for Provision of Emergency Water Service

A. Provision of Service During an Emergency. Subject to the terms and conditions stated herein, the Providing Utility Agrees to provide water service required for operation of the water system of the Receiving Utility in the event of an Emergency.

B. Volume and Demand Limitations. The amount of water delivered to the Receiving Utility and the rate of flow thereof shall not exceed the rated capacity of the water facilities installed for delivery of emergency water service.

C. Subject to Availability. Subject to the remaining conditions set forth herein, the Providing Utility will provide emergency water service to the Receiving Utility depending on availability of water in excess of that required to service the Providing Utility's customers as determined by the Appropriate Representative of the Providing Utility.

D. Duration of Service. The Providing Utility agrees to provide emergency water service to the Receiving Utility in accordance with this Agreement for the shortest of the following periods:

(1) the reasonable duration of the Emergency giving rise to the request for emergency service; or

(2) the reasonable duration needed to repair damage to the Receiving Utility's water system occasioned by the Emergency; or

(3) the duration of the Providing Utility's ability to provide water service to the Receiving Utility after meeting the requirements of its own customers; or

(4) thirty-six months.

In the event the Emergency exceeds the shorter of the foregoing periods, the Receiving Utility may make written request to the Appropriate Representative of the Providing Utility to continue or resume emergency water service beyond said period. The Appropriate Representative of the Providing Utility may continue or resume such service for an additional two-week period or such other and further period as the Appropriate Representative of the Providing Utility shall determine appropriate if:

(a) the disability caused by the Emergency has not abated and the Receiving Utility has exercised diligence in attempting to remove such disability; and

(b) the Providing Utility continues to have water available to service the Receiving Utility in excess of that required to service the Providing Utility's own customers.

E. Procedure for Commencement of Service. If, upon the occurrence of an Emergency, the Receiving Utility needs emergency water service from the Providing Utility, the following protocol shall be utilized to confirm the existence of an emergency and to commence Emergency water service to the Receiving Utility:

(1) The following person(s) are authorized to make requests for emergency water service or to confirm the existence of an Emergency and authorize commencement of emergency water service;

Aqua Water Supply Corporation: The General Manager or designee

The City of Elgin: The City Manager or designee

(2) the designated contact person of the Receiving Utility shall notify the Providing Utility's dispatcher or designated contact person of the fact and nature of the Emergency and the reason why the Receiving Utility is unable to provide water service to its customers. Such notification, if given verbally, shall be confirmed in writing and addressed to the

Providing Utility's dispatcher or designated contact person within 24 hours of the verbal notification;

(3) the Providing Utility's dispatcher or contact person shall report the foregoing information to the Appropriate Representative of the Providing Utility and obtain confirmation from the general manager that an Emergency exists and for authorization to commence service to the Receiving Utility;

(4) following such confirmation and authorization, the Providing Utility and Receiving Utility will dispatch their crews to open the interconnection between the Providing Utility and the Receiving Utility to commence emergency water service.

(5) the Receiving Utility shall cooperate at all times with the Providing Utility to ensure the safe and efficient delivery of emergency water service.

F. Ingress and Egress. The Parties agree to ensure the ingress and egress of each Party to the Points of Delivery and interconnection for all reasonable purposes incident to this Agreement including, without limitation, inspection, installation, operation, maintenance, repair or removal of the interconnection and all valves, meters and other equipment utilized therewith.

G. Discontinuance of Emergency Service. The Receiving Utility shall promptly notify the Appropriate Representative of the Providing Utility or its designated contact person of the completion of repairs to its system or the abatement of the Emergency giving rise to the request for emergency service hereunder and the Providing Utility will then remove the interconnection within a reasonable time of such notice not to exceed twenty-four (24) hours.

H. Rates. The Receiving Utility agrees to pay the Providing Utility for emergency water service delivered under this Agreement at the initial rate of $3.50 per 1,000 gallons, with a charge of $60.00 for each separate time that the interconnection is opened after hours. The initial charge of $3.50 per 1,000 gallons for water delivered to the Receiving Utility remains in effect until December 31, 2022, after which either Party may adjust the price at any time. Notice of any price change shall be given at least sixty (60) days prior to the same going into effect. In executing this Agreement, the Receiving Utility acknowledges that the Providing Utility's rates are just, reasonable, and nondiscriminatory.

I. Billing Protocol. The Providing Utility shall bill the Receiving Utility in a monthly itemized bill for water service based on the readings from the master meter at the interconnect point. Should the Receiving Utility request that the metering equipment be calibrated to determine any error in accuracy, the Providing Utility shall pay calibration cost if the inaccuracy is found to be in excess of plus or minus 3%. If inaccuracy is less than 3%, the Receiving Utility shall pay cost of calibration. If either Party is due a refund or entitled to additional payment, the same shall be invoiced by the Party claiming same as above, and failure to pay or refund same shall be subject to the same provisions as are applicable to the usual sale of water as provided above.

J. Payment. Payment shall be made by the Receiving Utility no later than thirty (30) days following the date of the bill for water consumed by the Receiving Utility in the previous billing cycle. Payments not made within the period provided shall be subject to a service charge of 10%, and if the payment plus service charge is not made to the Providing Utility within the thirty (30) day period immediately following the month water is taken, the interconnection may be disconnected by the Providing Utility at the expense of the Receiving Utility and this Agreement shall be null and void. If suit is required to collect the amount due for the water taken, service charge and/or disconnection expenses, the Receiving Utility shall be liable for the reasonable attorney's fees of the Providing Utility and all court costs incurred.

K. Receiving Utility Rates. The Receiving Utility may charge its individual water customers such uniform rate(s) as the Receiving Utility shall determine.

L. Conservation Restrictions. The Receiving Utility agrees to impose on its customers all voluntary and mandatory conservation and use restrictions imposed by the Providing Utility on its customers in such instances provided, however, that the Receiving Utility shall not be required to impose more stringent controls than the Providing Utility imposes on its own customers in such instances.

M. Water Quality. Each Party shall provide potable water through the interconnection of the same quality provided to its own customers. The Parties shall not be liable for delivering water of a standard less than the potable water standard of the State so long as they are providing the same quality of water provided their own customers. The Parties neither represent nor agree to furnish water at any particular pressure. Any water delivered pursuant to this Agreement shall be measured at the Points of Delivery, being at the meter installed to record the amount of water taken by the Receiving Utility and the proper conveyance and distribution of water taken shall be the sole responsibility of the Receiving Utility.

N. Water Volume. The Parties neither represent nor agree to provide any particular volume of water at any specific time, and shall not be liable for the refusal or failure to provide water through the interconnection, or for any losses or damages resulting or alleged to be the result of any refusal or failure to provide water through the interconnection. TO THE EXTENT ALLOWED BY LAW, THE RECEIVING UTILITY AGREES TO INDEMNIFY THE PROVIDING UTILITY, ITS SUCCESSORS AND ASSIGNS, AND HOLD IT FREE AND HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, DEBTS, CHARGES, DAMAGES, LOSS, PENALTIES, AND EXPENSES, LIQUIDATED OR UNLIQUIDATED, EXECUTED OR EXECUTORY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ACTUAL OR CONTINGENT, WHETHER OR NOT HEREBY EXPRESSLY LISTED OR DESCRIBED, BUT WHICH MAY BE ASSERTED NEVERTHELESS AGAINST THE PROVIDING UTILITY, ITS SUCCESSORS OR ASSIGNS, RESULTING from the delivery of water upon passing through a Point of Delivery occurring during or in connection with the provision of water to the Receiving Utility.

A R T I C L E III.
Requirements for Interconnection

A. Points of Delivery. Emergency water service provided shall be delivered from the Providing Utility to the Receiving Utility to the Points of Delivery described on Exhibit "A" attached hereto. The location of the Points of Delivery may be modified, at the sole expense of the party requesting the modification, by agreement between the Parties. A Party making request for an additional connection of its facilities to the other's water system shall accompany each such request with an engineering report and plans prepared by a registered professional engineer which detail the area to be served and include the quantity of water and characteristics of service to be provided to the additional point of delivery.

B. Nature of Interconnection. A master meter shall be installed at each Point of Delivery between Aqua and Elgin's System for measuring the flow of water from one system to the other.

A R T I C L E IV.
Construction Responsibilities

A. Construction Responsibilities. Aqua shall construct, at its sole expense, all approach and delivery facilities required for receipt of emergency water service from Elgin hereunder, as well as a meter vault of suitable installation. Elgin shall construct, at its sole expense, all approach and delivery facilities required for receipt of emergency water service from Aqua hereunder as well as a meter vault of suitable installation. Both Parties shall be responsible for obtaining all easements and rights of way necessary for construction of their respective approach and delivery facilities and the meter vault (interconnect area).

B. Approval of Plans. Prior to commencement of construction of the water facilities, all plans and specifications must be approved in writing by both Aqua and Elgin before actual construction begins.

B. Inspection. In order to ensure compliance with the standards and specifications set forth herein, each Party shall have the right to inspect, at its expense, all phases of the construction of water facilities required to be constructed by the other Party in order to receive emergency water service hereunder.

A R T I C L E V.
Operation and Maintenance Responsibilities

A. System Operation and Maintenance. The Parties shall be solely responsible for the operation and maintenance of its own water distribution system in its entirety including:

(1) those facilities of a party located within its corporate limits or service area used to transport water to or from the Points of Delivery;

(2) those facilities constructed by a party for the purpose of transporting water to or across the corporate limits or service area of the other; and

(3) the interconnection facilities constructed by the party.

B. Maintenance Standard. The Parties agree that operation and maintenance of the facilities used to transport water shall be in accordance with the standards and procedures used by Aqua and Elgin in the operation and maintenance of their other distribution facilities.

C. Operation and Maintenance of Interconnection. Aqua shall be responsible for the installation, operation, maintenance and security of the interconnection to and the water meter used to serve Elgin. Elgin shall be responsible for the installation, operation, maintenance and security of the interconnection to and the water meter used to serve Aqua.

D. Protective Measures. Except as specifically provided herein, the Receiving Utility shall be solely responsible for undertaking all measures to protect its system from damage or harm caused by the connection of its system to the other or otherwise from the receipt of emergency water service hereunder.

E. Routine Maintenance. Both Parties agree that water lines should be flushed frequently to prevent the water from becoming stagnant, and the mechanical/electrical equipment should be exercised. To this end the appropriate water lines will be flushed as needed, as determined by mutual agreement of the Parties, but no less that twice per calendar year and without charge. At the time of these flushings, appropriate testing will be done on the mechanical/electrical equipment. These activities will be scheduled at a time agreeable to both Parties, and personnel from both will conduct the testing on their own equipment.

A R T I C L E VI.
Remedies

A. If any Party fails to comply with its obligations in accordance with the notice and opportunity to cure provisions set forth hereunder, the other Party shall have the right to request any court, agency, or other governmental authority of appropriate jurisdiction to grant any and all remedies which are appropriate to assure conformance to the provisions of this Agreement. The defaulting Party shall be liable to the other for all costs actually incurred in pursuing such remedies, including reasonable attorneys' fees, and for any penalties or fines as a result of the failure to comply with the terms.

B. If either Party at any time disputes the amount to be paid by it to the other Party, the Party shall nevertheless promptly make the disputed payment or payments, but the disputing Party shall thereafter have the right to seek a determination whether the amount charged by the other Party is in accordance with the terms of this Agreement.

C. Notwithstanding any provision in this Agreement to the contrary, if either party (referred to herein as the "Defaulting Party") fails to comply with its obligations under this

Agreement or is otherwise in breach or default under this Agreement (collectively, a "Default") then the other party (referred to herein as the "Non-Defaulting Party") shall not have any right to invoke any rights or remedies with respect to any Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the "Default Notice") which specifies all of the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within thirty (30) days after the Defaulting Party's receipt of the Default Notice, any matters specified in the Default Notice which may be cured solely by the payment of money or the Defaulting Party fails to commence, within a reasonable period of time after receipt of the Default Notice (to be determined according to the nature of the breach or default), the cure of any matters specified in the Default Notice which cannot be cured solely by the payment of money, or fails to thereafter pursue curative action with reasonable diligence to completion.

A R T I C L E VII.
General Provisions

A. Term. This Agreement shall continue in effect until December 31, 2022, with subsequent automatic renewals for a period of one year unless terminated by either party in accordance with Paragraph B below.

B. Termination. Either party may terminate this Agreement upon ninety (90) days written notice to the other.

C. No Effect on Customer Contracts. This Agreement shall not affect contracts between a party and its customers.

D. Cooperation. The parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

E. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.

F. Amendments. Any amendment hereof must be in writing and signed by the authorized representative of each party hereto.

G. No Amendment of Other Agreements. Unless otherwise expressly stipulated herein, this Agreement is separate from and shall not constitute an amendment or modification of any other agreement between the parties.

H. No Third Party Beneficiaries. This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments and the Providing Utility shall not be construed to be responsible for same by virtue of this Agreement or any provision contained herein.

I. Applicable Law. This Agreement shall be construed under and in accordance with Texas law.

J. Venue. Venue for any action arising hereunder shall be in Bastrop County, Texas.

K. Effective Date. This Agreement shall be effective from and after the date of due execution hereof by all parties.

CITY OF ELGIN

By: _____

Name: _____

Title: _____

Date: _____

AQUA WATER SUPPLY CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A" – POINTS OF DELIVERY

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE A WHOLESALE WATER SERVICE AGREEMENT BETWEEN THE CITY AND AQUA WATER SUPPLY CORPORATION WITH TERMS AND CONDITIONS FOR THE PROVISION OF WHOLESALE WATER SERVICE TO AQUA WATER SUPPLY CORPORATION AND MAKING CERTAIN FINDINGS RELATED THERETO

DEPARTMENT: Administration

PROPOSED ACTION:
Consideration of proposed Wholesale Agreement between the City and Aqua Water Supply Corporation (WSC)

BACKGROUND:
Aqua WSC is a neighboring potable water service provider whose service area (CCN) is adjacent to the City of Elgin. As with all water providers, the City and Aqua both recognize the mutual benefit develop of developing alternative sources to serve their respective customers. Currently, there is a significant portion of (mostly undeveloped) real property within the city limits that is alos located with Aqua's designated service area. At the present time, limited infrastructure in that area adversely affects Aqua's ability to provide the desired water service at an affordable costs. The City, however, already has certain water infrastructure located in this area that could provide the desired water service to land owners. As such, it is in the mutual interest of both parties to establish a working arrangement whereby Aqua, at its discretion, could access the City's water system/supply to serve these customers. To that end, staff and legal counsel of both the City and Aqua have negotiated and agreed upon the attached Agreement including terms and conditions whereby the City would provide wholesale water service to Aqua WSC to help serve current and future City of Elgin homes and businesses.

BUDGET/FINANCIAL IMPACT:

Funding for this item was ○ included ◉ not included in the current-year budget ○ N/A

RECOMMENDATION:

Adoption of the Resolution and authorization to execute the proposed Wholesale Agreement between the City and Aqua WSC

ATTACHMENTS:

Resolution
Agreement

○ **Staff will be making a detailed presentation on this agenda item at the meeting.**
◉ **Staff will provide brief comments and answer questions on this item at the meeting.**
○ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE A WHOLESALE WATER SERVICE AGREEMENT BETWEEN THE CITY AND AQUA WATER SUPPLY CORPORATION WITH TERMS AND CONDITIONS FOR THE PROVISION OF WHOLESALE WATER SERVICE TO AQUA WATER SUPPLY CORPORATION AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, the City of Elgin, Texas (the "City") and Aqua Water Supply Corporation ("Aqua"), a nonprofit water supply corporation, are the owners and operators of public water supply systems as authorized by the Texas Commission on Environmental Quality; and,

WHEREAS, Aqua desires to contract with the City for the purchase of Wholesale Service to be provided by Elgin at a mutually agreed upon location; and

WHEREAS, Aqua has other water supplies available and will not be a full-requirements wholesale customer of the City; and

WHEREAS, the City has determined that it has sufficient water supplies available to provide Aqua with Wholesale Service; and

WHEREAS, the City and Aqua wish to enter into an agreement whereby the City will provide Wholesale Service to Aqua at rates that are generally applicable and uniformly applied to similarly situated purchasers.

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

Section 1. That the above recitals are true and correct; and the Mayor is authorized to execute the Wholesale Service Agreement between the City of Elgin and Aqua Water Supply Corporation (WSC), including Terms and Conditions for Wholesale Service, as it relates to the provision of wholesale water service to Aqua WSC, a copy of said Agreement being attached hereto and made part of this Resolution as if copied verbatim therein.

Section 2. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 7th day of March, 2017.

_____
CHRIS CANNON, Mayor
City of Egin, Texas

ATTEST:

_____
AMELIA SANCHEZ, City Secretary

WHOLESALE SERVICE AGREEMENT

BETWEEN

CITY OF ELGIN, TEXAS

AND

AQUA WATER SUPPLY CORPORATION

EFFECTIVE APRIL 1,2017

WHOLESALE SERVICE AGREEMENT

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WHOLESALE SERVICE AGREEMENT

THIS WHOLESALE SERVICE AGREEMENT is made and entered into by and between Aqua Water Supply Corporation (hereinafter called "Aqua"), a non-profit water supply corporation in Bastrop, Caldwell, Williamson, Lee, Fayette, and Travis Counties, Texas, and the City of Elgin, Texas (hereinafter called "Elgin"), a home rule city, body politic of the State of Texas, and retail public utility, holding water Certificate of Convenience and Necessity No. 10311, issued by the Texas Commission on Environmental Quality, or its predecessors or successors in interest, and is effective the ___ day of _____, 20__ (the "Effective Date").

WITNESSETH:

WHEREAS, Elgin holds retail water Certificate of Convenience and Necessity ("CCN") No. 10311; and

WHEREAS, Aqua holds retail water Certificate of Convenience and Necessity ("CCN") No. 10294 which is adjacent to Elgin's retail water CCN; and

WHEREAS, Aqua desires to contract with Elgin for the purchase of Wholesale Service to be provided by Elgin at a mutually agreed upon location; and

WHEREAS, Aqua has other water supplies available and will not be a full-requirements wholesale customer of Elgin; and

WHEREAS, Elgin's Terms and Conditions attached as Exhibit A set forth the minimum conditions under which it will agree to provide Wholesale Service; and

WHEREAS, Elgin has determined that it has sufficient water supplies available to provide Aqua with Wholesale Service; and

WHEREAS, Elgin and Aqua wish to enter into an agreement whereby Elgin will provide Wholesale Service to Aqua at rates that are generally applicable and uniformly applied to similarly situated purchasers; and

WHEREAS, the provision of Wholesale Service to Aqua by Elgin will further the public purpose of regionalization of water supplies;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Elgin agrees to furnish and Aqua agrees to pay for Wholesale Service upon the terms and conditions and for the consideration set forth herein.

ARTICLE I.
DEFINITIONS AND CONSTRUCTION OF AGREEMENT

1.1 Defined Terms. Capitalized terms used in this Agreement and in any exhibit or attachment that is made a part of this Agreement, and not otherwise defined herein, shall have the meanings contained in Elgin's Terms and Conditions. The following additional terms shall have the meanings set forth herein:

(a) "Agreement" means this contract or agreement between the Parties, otherwise known as the Wholesale Service Agreement and any written amendments thereto.

(b) "Annual Daily Average" means the total amount of water taken by Aqua in the prior Water Year, divided by 365.

(c) "Business Day" means any Day other than Saturdays, Sundays, and Days on which banks in the Service Area of Elgin are required or permitted to be closed for all or part of their customary hours of operation.

(d) "CCN" means a retail water certificate of convenience and necessity granted by the Texas Commission on Environmental Quality or its predecessor or successor agency under the provisions of the Texas Water Code.

(e) "Claim" means any claim, action, cause of action, suit or proceeding before any Governmental Authority or arbitral tribunal.

(f) "Commencement Date" means the date that Elgin begins providing Wholesale Service to Aqua at the Point of Delivery.

(g) "Day" and "Days" mean and refer to calendar day(s), unless otherwise specified herein.

(h) "Effective Date" means the date set forth above on which this Agreement becomes effective.

(i) "Event of Default" means an event by which a Party is in default of this Agreement.

(j) "Fiscal Year" means Elgin's fiscal year, which extends from January 1 through December 31 of each year, or such other annual fiscal year period as Elgin may later determine.

(k) "Force Majeure" means, and shall be limited to, any event or circumstance that is beyond the reasonable control of, without the fault or negligence of, and should not, in the exercise of reasonable caution, have been foreseen and avoided or mitigated by, the Party asserting Force Majeure (the "Affected Party"), and which delays or prevents the Affected Party from timely performing any obligation hereunder, including, without limitation: (i) acts of God, earthquakes, fire, storms, severe droughts, floods, lightning, hurricanes, tornadoes, and severe snow storms; (ii) explosions, wars, civil insurrections, acts of the public enemy, acts of civil or military authority, sabotage, and terrorism; (iii) strikes, lockouts or other labor disputes with

respect to which the Affected Party has not been determined by the National Labor Relations Board to have engaged in any unfair labor practices; and (iv) any change in any Requirement of Law or the interpretation thereof by a responsible Governmental Authority that shall in any circumstances impact a Party's ability to perform its obligations of the Agreement; provided, a "Force Majeure" shall not include economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic, or the inability of a Party to make payment when due under this Agreement, unless the cause of such inability is an event that physically prevents payment and that would otherwise constitute Force Majeure as described above.

(l) "Forced Outage" means a shut-down by Elgin in the operation of all or a portion of Elgin's System, such that no water is delivered to Aqua's Point of Delivery: (i) which shut-down is, in the reasonable opinion of Elgin, necessary or required to protect persons or property (including the System) from contamination or releases that could reasonably result in harm, injury, or material damage; and (ii) with respect to which Elgin has notified Aqua in accordance with Section 3.2.

(m) "Governmental Authority" means and includes any federal, state, local or other governmental body, including but not limited to the Lost Pines Groundwater Conservation District, any governmental or quasi-governmental, regulatory or administrative agency, commission, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or other governmental tribunal.

(n) "Loss(es)" means and includes any loss, cost, expense, Claim, demand, damage, fine, liability, obligation or penalty (including court costs and reasonable attorney's fees and expenses).

(o) "Master Meter(s)" means the necessary metering equipment, including a meter house or pit, and any other required devices of standard type, for properly measuring the quantity and delivery rate of water delivered by Elgin to Aqua at the Point of Delivery.

(p) "Maximum Daily Delivery Rate" means the maximum rate at which Elgin is obligated to deliver water to Aqua in one twenty-four (24) hour period.

(q) "Maximum Instantaneous Delivery Rate" means the Maximum Daily Delivery Rate expressed in gallons per minute. For example, a Maximum Daily Delivery Rate of 1 MGD is equivalent to a Maximum Instantaneous Delivery Rate of 694.4 gallons per minute.

(r) "MGD" means millions of gallons per day.

(s) "New Rate Billing Cycle" means the second billing cycle after the New Rate Effective Date.

(t) "Party" or "Parties" means Aqua, Elgin, and their respective successors or assigns.

(u) "Permit" means any permit, order, license, declaration, consent, waiver, approval, registration, or filing with or other requirement of any Governmental Authority.

(v) "Planned Outage" means a shut-down by Elgin in the operations of Elgin's System, such that no water is delivered to the Point of Delivery: (i) which shut-down is scheduled by Elgin in order to carry out foreseeable preventive, corrective, and other maintenance activities on such System or which may be required by any Governmental Authority; (ii) for which Elgin has notified Aqua in accordance with Section 3.1; (iii) which occurs no more than two (2) times in one (1) calendar year; and (iv) in most instances lasts for no more than seven (7) Days.

(w) "Point of Delivery" means the point designated and approved under this Agreement at which Aqua may withdraw water from Elgin's System for distribution as more particularly described in Article VI.

(x) "Prevailing Pressure" means the pressure of Elgin's System at the Point of Delivery. For purposes of this Agreement, Elgin intends to provide a Prevailing Pressure of 70 psi; however, at no time shall the Prevailing Pressure be less than the minimum pressure required under TCEQ regulations.

(y) "Rate" or "Rates" means the price to be paid by Aqua to Elgin for the purchase and delivery of water to Aqua's Point of Delivery under this Agreement, which Rate shall be based on Elgin's then current Terms and Conditions.

(z) "Rate Effective Date" means the date on which Elgin adopts new Rates.

(aa) "Requirement of Law" means any statute, ordinance, code, rule or regulation, tariff or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any Permit, or any other binding determination of any Governmental Authority.

(bb) "Service Area" means the area contained within Elgin's retail water CCN or Aqua's retail water CCN, as appropriate, as may be amended from time to time.

(cc) "System" means collectively all of Elgin's production, distribution, and transmission facilities, including, without limitation, wells, ground storage reservoirs, pump stations, elevated storage tanks, water transmission and distribution lines connecting any of the aforementioned facilities, and other properties or interest therein wherever located for the production, distribution, and transmission of water, which heretofore have been acquired or constructed by Elgin, together with all future improvements, enlargements, extensions and

additions to any of the foregoing, and all the future new facilities that are required or constructed by Elgin, and all repairs to, or replacement of, the System.

(dd) "Tariff" means the Water Tariff for Elgin, as approved by Elgin's City Council, and as may be amended or revised from time to time.

(ee) "TCEQ" or "Commission" means the Texas Commission on Environmental Quality, and its successor agencies.

(ff) "Terms and Conditions" shall mean Elgin's Terms and Conditions for Wholesale Service outside CCN No. 10311, as adopted by the Elgin City Council, and as may be amended from time to time by Elgin.

(gg) "Water Year" means a calendar Year.

(hh) "Year" and "Years" mean and refer to calendar year(s).

1.2 Rules of Construction.

(a) Unless the context otherwise clearly requires:

(i) references to the plural include the singular, and references to the singular include the plural;

(ii) references to the masculine, feminine or neuter include all such forms;

(iii) the words "include," "includes," and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation";

(iv) the terms "hereof," "herein," "hereunder," "hereto," and similar terms refer to the entire agreement in which they appear and not to any particular provision of such agreement; and

(v) "or" is used in the inclusive sense of "and/or."

(b) Unless otherwise specified, any reference to any document, instrument or agreement:

(i) includes and incorporates all exhibits, schedules and other attachments thereto;

(ii) includes and incorporates all documents, instruments or agreements issued or executed in connection therewith or in replacement thereof; and

(iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time.

(c) Unless otherwise specified, all references to articles, sections, schedules and exhibits are references to the Articles, Sections, Schedules and Exhibits of this Agreement.

1.3 Recitals. All recitals of the Preamble are incorporated and made a part of this Agreement.

1.4 Captions. All titles of sections of this Agreement have been inserted for reference only and shall in no way affect the interpretation of this Agreement.

ARTICLE II.
PROVISION OF WATER

2.1 Agreement to Sell and Purchase.

(a) Subject to all the terms and conditions set forth in this Agreement, and Elgin's Terms and Conditions for Wholesale Service, Elgin agrees to sell and the Aqua agrees to buy water on a wholesale basis. The water shall be provided at the Point of Delivery for Aqua's own use and for distribution to customers served by Aqua's water distribution system within Aqua's certificated Service Area.

(b) All sales of water from Elgin to Aqua under this Agreement are subject to the approval of any permits or any other regulatory approvals that must be obtained from the Lost Pines Groundwater Conservation District. .

(c) Aqua shall have sole ability to open the valve that controls the amount of water Aqua will purchase from Elgin. Aqua shall provide one (1) day notice to Elgin of its intention to open the valve that controls the amount of water Aqua is purchasing from Elgin.

2.2 Quantity of Water to be Delivered. The Maximum Daily Delivery Rate of water to be treated and delivered under this Agreement in any Water Year shall be 0.75 MGD.

2.3 Rate of Delivery and Pressure.

(a) Elgin shall deliver water to the Point of Delivery at the Maximum Daily Delivery Rate. Elgin may install devices to insure compliance with this section, and may restrict deliveries to Aqua to the Maximum Instantaneous Delivery Rate.

(b) Water will be furnished at the Prevailing Pressure of Elgin's System at the Point of Delivery. Emergency failure of pressure or supply shall excuse Elgin from this provision for such reasonable period of time as may be necessary to restore service.

(c) Elgin's responsibility and liability for the water being delivered to Aqua shall cease after said water passes through the Master Meter at the Point of Delivery and enters Aqua's system.

(d) Elgin is under no obligation to increase the capacity of its System to satisfy any of the provisions of the Agreement, except as otherwise expressly stated herein.

2.4 Responsibility of Aqua. Aqua is solely responsible for meeting its minimum production, storage, service pump, and pressure maintenance requirements, and any other requirements imposed on Aqua under Title 30 Texas Administrative Code, Chapters 290 and

291, and any other regulatory requirements. Elgin shall bear no such responsibility to Aqua or any of Aqua's customers.

2.5 Water Quality.

(a) The quality of Water to be supplied and delivered by Elgin at the Point of Delivery shall meet the quality criteria prescribed by federal or state law for public water supply and specifically satisfy the TCEQ Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems, 30 Tex. Admin. Code Chapter 290, Subchapter F, as currently in effect or as may be amended or superseded from time to time. The water that Elgin delivers to Aqua shall be of the same quality of water that Elgin delivers to its retail members. Aqua has satisfied itself that such water meets TCEQ standards.

(b) Elgin shall protect its system from cross-connection and contamination under the specifications required by the health standards of the State of Texas.

2.6 Separation of Systems. An approved device to prevent flow reversal shall always be maintained between Elgin's System and Aqua's system at the Point of Delivery.

ARTICLE III.
MAINTENANCE AND CURTAILMENT

3.1 Planned Outages. By December 1 of any Calendar Year during the term, Elgin shall provide notice to Aqua of the number and duration of any Planned Outages to be conducted by Elgin during the following Calendar Year that may affect delivery of water to Aqua. Provided, however, that Elgin shall not schedule more than two (2) such Planned Outages in any given Calendar Year. To the extent reasonably possible, Elgin shall coordinate the timing of any Planned Outage with Aqua and shall cooperate with Aqua to minimize the impact of any Planned Outage on the operation and maintenance of Aqua's system.

3.2 Forced Outages. When a Forced Outage occurs, curtailing the flow of water to the Point of Delivery, Elgin shall notify Aqua of the existence, nature, and expected duration of the Forced Outage as soon as practical. Elgin shall use its best efforts to ensure that any interruption in the delivery of water to the Point of Delivery due to a Forced Outage shall continue only for so long as reasonably necessary. Elgin shall immediately inform Aqua of any changes in the nature and expected duration of such Forced Outage.

3.3 Curtailment.

(a) If water supplies or services are curtailed to Elgin's retail members, or if water conservation measures are mandated by a Governmental Authority, Elgin shall impose a like curtailment on deliveries or water conservation measures on Aqua as provided in Texas Water Code § 11.039. The curtailment Elgin imposes on Aqua shall be equal in duration to the curtailment imposed on Elgin's retail members.

(b) Elgin will notify Aqua of the quantity by which Aqua will reduce its daily take from Elgin, as well as the duration of the requirement that the take be reduced. Aqua shall cooperate by imposing conservation measures upon its customers.

(c) The reduction to Aqua's daily take under this Section shall be calculated as follows: (i) determine the total volume of water taken by Aqua in the same month of the previous calendar year; (ii) divide this monthly volume by the number of days in the month to arrive at an average take per day of that month; (iii) apply the reduction percentage to the average take per day of that month. For example, if it becomes necessary for Elgin to impose a 5% reduction in Aqua's daily take starting on August 15, 2015, Elgin will determine, based on meter data, the amount of water purchased by Aqua in August 2014, and divide that number by thirty-one (31) (the number of days in August). The product of that calculation times 5% will be the amount, in gallons, that Aqua must reduce its daily take until further notice from Elgin.

3.4 Emergency Notification. Elgin shall notify Aqua as promptly as possible of all emergency and other conditions of which it becomes aware that may directly or indirectly affect the quality or quantity of the water provided by Elgin, and to provide Aqua a copy, upon receipt, of all notices received from state or federal agencies or departments having jurisdiction over the installation and operation of public water systems.

ARTICLE IV.
RATES AND COMPENSATION

4.1 Rates. The Rate for Wholesale Service under this Agreement shall be as provided in Elgin's Terms and Conditions.

4.2 Books and Records. All books and records upon which such Rate adjustment is based shall be made available to Aqua at the office of Elgin during the regular business hours of Elgin, upon request by Aqua.

4.3 Reasonableness of Rates. Aqua agrees that the Rates initially charged by Elgin and the policies defined in this Agreement are just and reasonable, and do not adversely affect the public interest. The Rates charged by Elgin are subject to modification as provided herein. Notwithstanding any provision to the contrary, Aqua does not waive the right to file and pursue an appeal of any increase in Rates proposed or adopted by Elgin that is not in conformance with the terms of this Agreement.

4.4 Rate Case. If a court, the TCEQ, or any federal or state regulatory authority finds that Elgin's Rates or policies for services provided under this Agreement are unreasonable or otherwise unenforceable, Elgin has the option to terminate this Agreement without liability to Aqua, but Elgin shall provide Aqua at least six (6) months' notice prior to such termination.

ARTICLE V.
EQUIPMENT AND OPERATION

5.1 **Master Meter.** Elgin shall furnish and install, or caused to be furnished and installed, operate, and maintain a Master Meter at the Point of Delivery in compliance with Elgin's current specifications and standards. The Master Meter shall remain the property of Elgin at all times. The amount of water delivered by Elgin through the Point of Delivery to Aqua shall be determined based upon the data collected at the Master Meter at such location. At Aqua's sole expense and insofar as it does not have any adverse effect on Elgin's Automated Meter Reading (ARM) System, Aqua may install and maintain, and be responsible for all costs of acquisition, installation, maintenance, and operation of, a Supervisory Control and Data Acquisition ("SCADA") system at the Master Meter to enable the Master Meter to communicate with Aqua's System.

5.2 **Access to Master Meter.** With the Master Meter located on property owned by Aqua, Elgin shall have access to the Master Meter at all times and Aqua shall ensure that such access occurs, including areas of restricted access. At no time shall Aqua be permitted to tamper with, alter, or otherwise adjust any meter or appurtenances at the Point of Delivery or any other component of Elgin's System without the prior written consent of Elgin.

5.3 **Reading of Meter.** On a monthly basis, Elgin shall be responsible for reading the meter at the Point of Delivery and submitting an invoice to Aqua for the quantity of water provided. Elgin shall keep accurate records of all measurements of water required under this Agreement. Upon reasonable request and notice, Aqua or its agents may have access to the records maintained by Elgin of meter readings associated with the Point of Delivery.

5.4 **Regular Testing of Master Meter.** It shall be the duty of each of the Parties to notify the other Party in the event that the Master Meter is not registering accurately or is

malfunctioning, so that the meter can be promptly repaired. Elgin shall test the Master Meter for accuracy at least once each twelve (12) month period, and more often as deemed necessary by Elgin to ensure its accuracy. Elgin shall provide Aqua with five (5) Days' notice of its intent to perform the annual test of the Master Meter, and Aqua shall have the right to be present when such testing is conducted. In the event the percentage of accuracy of the Master Meter is found to be within the tolerance of one and one-half percent (1.5%) after any test, such Master Meter shall be deemed to have correctly measured the quantity of water taken under this Agreement. If, however, upon any test of the percentage of accuracy tolerance, such tolerance is found to be in excess of one and one-half percent (1.5%), then such Master Meter shall be adjusted at once to register correctly and accurately, and the amount of water delivered to Aqua shall be corrected in accordance with the percentage of inaccuracies found by such test for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then the correction shall account for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months.

5.5 Additional Testing of Master Meter. Aqua shall have the right to request Elgin to test the Master Meter more frequently than once per Year as contemplated by Section 5.4 herein, but no more frequently than once a month. Upon any such request, Elgin agrees to perform its testing and calibration of the Master Meter in the presence of a representative of Aqua, and the Parties shall jointly observe any adjustments that are made to the Master Meter in case any adjustments shall be necessary. For such additional testing requests, Elgin shall give Aqua forty-eight (48) hours' notice of the time when any such testing shall occur. Elgin may proceed with such testing and adjustment, if necessary, in the absence of any representative of Aqua. Aqua

shall pay the cost of any additional test for a Master Meter if the test shows that such Master Meter is accurate [within one and one-half percent (1.5%) registration], but Elgin shall pay the costs of the additional test for such if the results indicate that such Master Meter is not accurate [in excess of one and one-half percent (1.5%) registration].

5.6 Maintenance of Master Meter. Except as provided in Section 5.5 above, all maintenance, testing and/or repairs or replacement of the Master Meter and related appurtenances at the Point of Delivery shall be made by Elgin. Elgin shall provide repairs to the Master Meter in a prompt and timely manner. If Elgin cannot make such repairs in a timely manner, then Aqua shall have the option of making such repairs at its own expense, subject to the prior approval and post-inspection of the repairs by Elgin.

ARTICLE VI.
POINT OF DELIVERY

6.1 Location of Point of Delivery. The Point of Delivery for water delivered and taken under this Agreement is located as described in Exhibit B hereto.

6.2 Relocation of Point of Delivery. The Parties may agree in writing to relocate the Point of Delivery or to add additional Points of Delivery as necessary.

ARTICLE VII.
OWNERSHIP OF WATER AND FACILITIES

7.1 Transfer of Ownership. As between the Parties, Elgin shall be: (1) deemed to have exclusive care, custody, and control for all water up to the Point of Delivery; and (2) responsible for all Losses required to deliver water to the Point of Delivery. Aqua shall be: (1) deemed to

take exclusive care, custody, and control of all water from and after the Point of Delivery; and (2) responsible for all Losses associated with all water from and after the Point of Delivery.

7.2 No Ownership of Facilities.

(a) Aqua obtains no ownership, leasing, or management interest in any of Elgin's System by or through this Agreement or payment of any Rate set forth herein.

(b) Elgin obtains no ownership, leasing, or management interest in any of Aqua's System by or through this Agreement or provision of water service set forth herein.

(c) Aqua shall be responsible for maintenance and repairs on all facilities located downstream of the Point of Delivery. Aqua will use all reasonable efforts to prevent waste through line leakages or breaks.

ARTICLE VIII.
BILLING AND PAYMENT

8.1 Meter Readings.

(a) Elgin shall send a bill to Aqua once per month setting forth the quantity of water delivered to Aqua as determined by Elgin's periodic readings of the Master Meter installed at the Point of Delivery. Aqua shall pay the total amount owed to Elgin by the due date on each bill. Penalties for late payment shall be imposed according to the provisions of Elgin's Terms and Conditions.

(b) Elgin shall also invoice Aqua for additional charges, if any, as provided in this Agreement. These invoices shall be due and payable by Aqua within thirty (30) Days after receipt.

8.2 Breach for Failure to Timely Pay. Should Aqua fail to tender payment to Elgin by the due date, the bill shall be considered delinquent, unless contested in good faith as provided herein. In such event, Elgin shall notify Aqua of such delinquency in writing. If Aqua fails to

make payment of the delinquent billing within thirty (30) Days from the due date, then Elgin may, at its discretion, temporarily terminate service to Aqua until payment is made. If such delinquency is not cured within thirty (30) Days after temporary termination of service, Aqua will be in breach of a material term and/or condition of this Agreement and Elgin may terminate this Agreement as provided herein.

8.3 Disputed Bills. If Aqua in good faith disputes the amount of the bill, Aqua shall submit such dispute in writing to Elgin no later than thirty (30) Days after receipt of the invoice, and shall timely make the disputed payment or payments. If it is subsequently determined by agreement or court decision that the disputed amount paid by Aqua should have been less, or more, Elgin shall promptly revise the monthly invoice amount in a manner that Aqua or Elgin will recover the amount due plus interest, with interest being calculated at an annual rate of five percent (5%).

ARTICLE IX.
FORCE MAJEURE

9.1 Procedure for Calling Force Majeure.

(a) Notice of Force Majeure. The Affected Party shall give prompt notice to the other Party of any event or circumstance of Force Majeure as soon as reasonably practicable after becoming aware of such event or circumstance. Each notice served by an Affected Party to the other Party pursuant to this Subsection 9.1(a) shall specify the event or circumstance of Force Majeure in respect of which the Affected Party is claiming relief. Noncompliance by the Affected Party with the procedure specified in this Subsection 9.1(a) shall relieve the other Party from accepting the Affected Party's claim of Force Majeure until the Affected Party so complies,

and the Affected Party shall not be excused from performance of any obligation under this Agreement until it so complies.

(b) Obligations During Pendency of Force Majeure. The Affected Party shall, by reason of any event or circumstance of Force Majeure in respect of which it has claimed relief under Subsection 9.1(a):

(i) use its best efforts to mitigate the effects of such Force Majeure and to remedy any inability to perform its obligations hereunder due to such event or circumstance as promptly as reasonably practicable;

(ii) furnish timely reports to the other Party regarding the progress in overcoming the adverse effects of such event or circumstance of Force Majeure; and

(iii) resume the performance of its obligations under this Agreement as soon as is reasonably practicable after the event or circumstance of Force Majeure is remedied or such event or circumstance, or the effect thereof on the Affected Party, ceases to exist.

(c) Resumption of Performance. When the Affected Party is able, or would have been able if it had complied with its obligations under this Article IX, to resume the performance of any or all of its obligations under this Agreement affected by the occurrence of an event or circumstance of Force Majeure, then the period of Force Majeure relating to such event or circumstance shall be deemed to have ended.

9.2 <u>Effects of Force Majeure</u>.

(a) Relief From Obligation of Performance. Provided it has complied with its obligations under Section 9.1, the Affected Party shall be relieved from any liability for the non-performance of its obligations under this Agreement where and to the extent that such non-performance is attributable directly to the event or circumstance of Force Majeure asserted.

(**b) Relief From Obligation of Counterperformance**. The non-Affected Party shall not be required to perform or resume performance of its obligations to the Affected Party corresponding to the obligations of the Affected Party excused by reason of Force Majeure.

9.3 Limitations on Force Majeure.

(a) Scope and Duration. No event or circumstance of Force Majeure shall relieve the Affected Party of any obligation that accrued prior to the commencement of such event or circumstance of Force Majeure, and the suspension of the Affected Party's performance shall be no longer in duration and no greater scope than is required by the event or circumstance of Force Majeure.

(**b) No Extension of Term**. Except as agreed by the Parties, no suspension, delay or failure of performance caused by a Force Majeure event shall extend this Agreement beyond the Term.

ARTICLE X.
DEFAULT AND TERMINATION

10.1 Event of Default. It shall be an Event of Default by either Party if such Party shall breach any material covenant, obligation, representation, or warranty of such Party under this Agreement, which breach remains uncured for a period of thirty (30) Days after written notice from the non-breaching Party of the existence of such breach; provided, that the non-breaching Party shall extend the cure period for any such breach (and thus no Event of Default shall occur) if the nature of the default is such that it cannot reasonably be remedied within such thirty (30) Day period, and the breaching Party has diligently commenced corrective action within such thirty (30) Day period and is diligently pursuing such correction thereafter.

10.2 Remedies. If an Event of Default has occurred and is continuing, the non-defaulting Party shall be entitled to the following remedies, which shall be cumulative:

(i) injunctive relief;

(ii) specific performance;

(iii) the right to cure the other Party's default;

(iv) suspension of delivery of water hereunder;

(v) termination of this Agreement;

(vi) any of the remedies afforded in this Agreement; and

(vii) any other remedies permitted at law or in equity, including damages.

Provided, that Elgin shall not be responsible in damages for any failure to supply water or for any interruption of the supply of water under this Agreement.

10.3 Elgin Right to Suspend or Terminate. Elgin shall have the right, for any reason or no reason, for its sole convenience and without cause, to terminate or suspend, in whole or in part, Elgin's performance of any of its duties or obligations under this Agreement, upon sixty (60) Days prior written notice to Aqua.

10.4 Termination for Continued or Multiple Force Majeure. Either Party shall have the right (but not the obligation) to terminate this Agreement upon seven (7) Days prior written notice to the other Party in the event the suspension of any material obligation of the Affected Party resulting from one or more events of Force Majeure continues for a period of more than three (3) consecutive months or for a period of more than three (3) months in the aggregate during a one (1) year period; provided that the Affected Party shall only be entitled to terminate this Agreement under this Section 10.4 if it has met its obligations under Section 9.1 (Procedures for Calling Force Majeure). The non-affected Party may, but shall not be obligated to, extend

either such period for such additional period as it deems appropriate, if the Affected Party is exercising due diligence in its efforts to cure the Force Majeure event.

10.5 Effective Date of Termination. Upon receipt of any notice of termination delivered pursuant to this Article X, this Agreement shall terminate, effective immediately, and will be of no further force or effect, except with respect to: (i) rights and obligations of the Parties arising during or relating to any period prior to termination, including, in the case of termination for any Event of Default, all of the damages incurred by the non-defaulting Party in connection with such Event of Default, which shall include but not be limited to, Elgin's stranded investment incurred in anticipation of providing the services to Aqua throughout the term of this Agreement; and (ii) the covenants and obligations of the Parties set forth in this Agreement intended to survive the expiration or termination of this Agreement, which shall survive the expiration or earlier termination of this Agreement as expressly provided in this Agreement, or if no express survival period is provided for, then until such obligations have been satisfied, or, if later, pursuant to any applicable statute of limitations.

ARTICLE XI.
DISPUTE RESOLUTION

11.1 Attempt to Resolve. The Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Agreement, the Parties will first attempt to resolve the dispute by taking the following steps:

(i) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied Party to the other Party, which notice shall request a written response to be delivered to the dissatisfied Party not less than 5 (five) Days after receipt of the notice of dispute.

(ii) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied Party, the dissatisfied Party shall give notice to that effect to the other Party whereupon each Party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the dispute.

(iii) If those persons cannot or do not resolve the dispute, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective Party, who shall then promptly meet, in person, in an effort to resolve the dispute.

11.2 Non-Binding Mediation. In the event the measures provided for in Section 11.1 are not successful in resolving the dispute, Elgin and Aqua may, by mutual agreement of the Parties, enter into non-binding mediation in an attempt to resolve the dispute prior to commencing litigation. If so, Elgin and Aqua shall then mutually select an impartial individual to serve as mediator. In the event the Parties are unable to agree on an individual to serve as the mediator, either Party may apply to a District Judge for Bastrop County who shall be empowered to designate an individual to serve as the mediator.

11.3 Rates Not Subject to Mediation. Notwithstanding Sections 11.1 and 11.2, and in accordance with Sections 4.5 and 4.6, neither the Rates to be paid hereunder, nor the provisions for payments of said Rates, shall be subject to mediation or appeal.

11.4 Costs of Mediation. Each Party shall bear its own costs and expenses associated with any mediation or appeal of any provision of this Agreement.

ARTICLE XII.
REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Elgin Representations and Warranties. Elgin hereby represents and warrants to Aqua, as of the date hereof, as follows:

(i) Elgin has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(ii) This Agreement has been duly executed and delivered on behalf of Elgin by the appropriate officials of Elgin, and constitutes the legal, valid and binding obligation of Elgin, enforceable against Elgin in accordance with its terms except as the enforceability thereof may be limited by: (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally; and (ii) general equitable principles.

(iii) The execution, delivery and performance of this Agreement by Elgin have been duly authorized under the bylaws and all other applicable Requirements of Law of Elgin and will not contravene any provision of or constitute a default under any other agreement or instrument to which Elgin is a party or by which Elgin or its property may be bound, and do not conflict with any Requirement of Law currently in force and applicable to Elgin.

(iv) There is no legislation, litigation, action, suit, proceeding, or investigation pending or (to the best of Elgin's knowledge) threatened, against Elgin, whether related to the operation of any facility that will supply water under this Agreement, or otherwise, before or by any Governmental Authority which, if adversely determined, individually or in the aggregate: (A) could adversely affect the performance by Elgin of its obligations

hereunder; (B) could have a material adverse effect on the condition (financial or otherwise), business or operations of Elgin; or (C) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

12.2 Aqua Representations and Warranties. Aqua represents and warrants to Elgin, as of the date of this Agreement, as follows:

(i) Aqua is a retail public utility holding a CCN, and has all requisite power and authority to enter into and to perform its obligations hereunder, and to carry out the terms hereof and the transactions contemplated hereby.

(ii) This Agreement has been duly executed and delivered on behalf of Aqua, and constitutes the legal, valid and binding obligation of Aqua, enforceable against Aqua in accordance with its terms except as the enforceability thereof may be limited by: (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; and (ii) general equitable principles.

(iii) There is no legislation, litigation, action, suit, proceeding or investigation pending or (to the best of Aqua's knowledge) threatened, against Aqua or related to Aqua's activities by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate: (A) could adversely affect the performance by Aqua of its obligations hereunder; (B) could have a material adverse effect on the condition (financial or otherwise), business or operations of Aqua; or (C) questions the validity, binding effect or enforceability thereof or of this Agreement, any action taken or to be taken pursuant hereto or any of the transactions contemplated hereby.

(iv) No officer or employee of Elgin has been or will be compensated in any manner with respect to directly or indirectly bringing the Parties together, agreement negotiations, or the entering into this Agreement. In no event will Aqua pay a fee to or in any other manner compensate any of Elgin's elected officials or employees in connection with the acceptance of this Agreement. A breach of this Subsection 13.2(iv) shall result in automatic and immediate termination of this Agreement and shall be an Event of Default.

ARTICLE XIII.
TERM

This Agreement shall be effective as of the date first written above and shall remain in force and effect for a period of three (3) years from the Effective Date hereof. However, this Agreement may be terminated by either Party in accordance with Article X of this Agreement. As provided in Article X, earlier termination by Aqua shall render Aqua liable in damages for repayment of Elgin's stranded investment incurred in anticipation of providing services to Aqua throughout the term of this Agreement. Aqua agrees that Elgin has no obligation to provide it with water after the termination of this Agreement.

ARTICLE XIV.
MISCELLANEOUS

14.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their legal successors but the Agreement shall not be otherwise assignable in whole or in part by either Elgin or Aqua without first obtaining the written consent of the other.

14.2 Governing Law and Venue.

The Constitution and the laws of the State of Texas and the decisions of its courts shall govern with respect to any question or controversy that may arise hereunder. All amounts due

under this Agreement, including but not limited to payments due under this Agreement or damages for breach of this Agreement, shall be paid and be due in Bastrop County, Texas, which is the county in which the principal administrative offices of Elgin are located. It is specifically agreed that Bastrop County, Texas, is a principal place of performance of this Agreement. Venue for any actions arising under this Agreement shall lie exclusively in the courts of Bastrop County, Texas.

14.3 Notices. Unless the context requires immediate notice, which may be provided by telephone, any notice, request or other communication required by this Agreement between the Parties regarding the Agreement shall be given in writing and shall be deemed to have been given to the other Party upon either of the following dates:

(i) The date of the mailing thereof, as shown by a post office receipt, if mailed to the Party by registered or certified mail at the latest address specified for such other Party in writing; or

(ii) The date of the receipt thereof by such other Party if not so mailed by registered or certified mail. Notice shall be made to Elgin as follows:

City Manager, City of Elgin, P.O. Box 591, 310 North Main Street, Elgin, Texas, 78621

Notice to Aqua shall be made as provided on Exhibit C hereto.

(iii) The Parties shall have the right from time to time to change their respective addresses by giving written notice to the other Party.

14.4 No Waiver of Rights.

(a) No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character or shall be

effective unless in writing, duly executed by a duly authorized representative of the Party waiving any such default.

(b) Neither the failure by a Party to insist on any occasion upon the strict performance of the terms, conditions, and provisions of this Agreement, nor time or other indulgence granted by one Party to the other, shall act as a waiver of such breach.

14.5 Severability. In case any one or more of the Articles, Sections, provisions, clauses or words of this Agreement shall for any reason be held to be invalid, unenforceable or unconstitutional, such invalidity, unenforceability or unconstitutionality shall not affect any other Articles, Sections, provisions, clauses or words of this Agreement, and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, Section, provision, clause or word had not been included herein.

14.6 Entire Agreement. This Agreement contains all of the agreements between the Parties on the subjects contained herein. As of the Effective Date of this Agreement, this Agreement shall replace any and all prior agreements between the Parties, both oral and written, with regard to the subject matter.

14.7 Amendments. This Agreement may be changed or modified at any time by a written instrument signed by both Parties and only after having obtained approval from the governing bodies of Elgin and Aqua. No change or modification shall be made to this Agreement that will affect adversely the prompt payment, when due, of all monies to be paid by Aqua under the terms of the contract or that will adversely affect the tax-exempt status of any tax-exempt obligations issued by Elgin or Aqua. The foregoing notwithstanding, the Parties hereto agree to use their best efforts to modify this Agreement if the Internal Revenue Service determines that a

failure to do so would adversely affect the tax-exempt status of any outstanding tax-exempt obligations issued by Elgin or Aqua.

14.8 Cooperative Drafting. This Agreement is the product of a cooperative drafting effort by the Parties and shall not be construed or interpreted against either Party solely on the basis that one Party or its attorney drafted this Agreement or any portion of it.

14.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The Parties may execute this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement and exchange the counterparts of such documents by means of facsimile transmission, and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. Thereafter, the Parties shall promptly exchange original versions of this Agreement and all other agreements, certificates, instruments and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission.

14.10 Third Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to confer upon, or to give to, any legal Person other than the parties, any right, remedy, or Claim under or by reason of this Agreement. Any covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with any agreement of any Party with a third party.

14.11 Deadlines. To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below.

AQUA	**ELGIN**
By: _____	By: _____
_____,	_____,
Date: _____	Date: _____
ATTEST:	ATTEST:
By: _____	By: _____
Secretary, Board of Directors	Secretary
Date: _____	Date: _____

EXHIBITS

Exhibit A – Elgin's Terms and Conditions for Wholesale Service

Exhibit B – Point(s) of Delivery

Exhibit C – Name and Address for Notice to Aqua

EXHIBIT "A"

Elgin's Terms and Conditions for Wholesale Service

CITY OF ELGIN
TERMS AND CONDITIONS FOR WHOLESALE SERVICE

SECTION 1.0
DEFINITIONS

"Aqua" means Aqua Water Supply Corporation as represented by its Board of Directors.

"Aqua's Engineer" means a person or firm licensed by the State of Texas and engaged by Aqua to provide engineering consulting services to Aqua.

"Aqua's System" means collectively all of Aqua's production, distribution, and transmission facilities, including, without limitation, wells, ground storage reservoirs, pump stations, elevated storage tanks, water transmission and distribution lines connecting any of the aforementioned facilities, and other properties or interest therein wherever located for the production, distribution, and transmission of water.

"Capacity Charge" means the cost to have water service available under a Wholesale Service Agreement.

"Commodity Replacement Charge" means the charge assessed under a Wholesale Service Agreement for the purpose of replacing the water supply contracted for sale to Aqua

"Cost of Construction" means all expenses associated with constructing, installing and placing a facility into operation including, but not limited to, planning, engineering, clearing, surveying, legal, land acquisition, acquisition of rights-of-way, the construction contract, and the like.

"Elgin" means the City of Elgin, Texas.

"Elgin's Engineer" means a person or firm licensed by the State of Texas and engaged by the City of Elgin to provide engineering consulting services to Elgin.

"Elgin's System" means collectively all of Elgin's production, distribution, and transmission facilities, including, without limitation, wells, ground storage reservoirs, pump stations, elevated storage tanks, water transmission and distribution lines connecting any of the aforementioned facilities, and other properties or interest therein wherever located for the production, distribution, and transmission of water.

"Feasibility Study" means the report prepared by Elgin's Engineer to determine whether Elgin has adequate water supply and delivery capacity to supply the requested Wholesale Service for the standard contract period, and to identify the point on Aqua's System of the nearest available adequate supply.

"Maximum Daily Delivery Rate" means the maximum rate at which Elgin will deliver water to Aqua under a Wholesale Service Agreement in one twenty-four (24) hour period.

"Monthly Customer Charge" means the cost to have water available at a meter.

"Service Area" means that area to which Elgin may lawfully provide water service, whether within or outside the area described by the Certificate of Convenience and Necessity held by Elgin.

"Usage Charge" means the charge billed for water delivered through a metered point of delivery.

"Wholesale Service" means wholesale water service provided to a retail public utility, as defined by the Texas Water code, located outside of Elgin's service area. Water provided under Wholesale Service shall be partial requirements only, pursuant to a Wholesale Service Agreement between Elgin and Aqua. Such water shall be submetered for resale by Aqua within Aqua's service area. Elgin will not be a retail service provider to Aqua's customers.

SECTION 2.0
WHOLESALE SERVICE RATE SCHEDULE

Section 2.01 – Water Rates

The monthly charge for Wholesale Service shall be the sum of the Monthly Wholesale Charge and the Usage Charge.

The Monthly Wholesale Charge is a fixed charge assessed against the contractual Maximum Daily Delivery Rate (0.75 MGD) in the amount of $3,000.00. Such amount shall be payable in advance on a monthly basis.

The Usage Charge is applicable to all water actually delivered to Aqua by Elgin pursuant to the Wholesale Service Agreement in the amount of $3.15 per 1,000 gallons delivered.

The Monthly Wholesale Charge and Usage Charge may be changed by Elgin from time to time and Elgin will give Aqua thirty (30) days written notice of any such change.

Section 2.02 -- Miscellaneous Fees and Requirements for Service

a. Reconnection Fees

Base Reconnection Fee	$60.00
Past Due Balance	As applicable

If disconnected for non-payment, the above Reconnection Fee must be paid before service can be restored to Aqua. A Base Fee of $60.00 shall be charged for all reconnections.

b. Late Charge

A 10% penalty will be added for payment received after the 10th day of the month. Failure to pay by the 10th, may require disconnection. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing.

c. Returned Check Charge $ 35.00

SECTION 3.0
SERVICE RULES AND REGULATIONS

Section 3.01 – Application for Wholesale Service

Wholesale Service is provided pursuant to a Wholesale Service Agreement, after (i) receipt of an application for Wholesale Service, and (ii) a determination is made by Elgin that Wholesale Service is available to Aqua. Service will be provided by Elgin in its sole determination, taking into consideration the proposed place of use of the water, the furtherance of the goals of regionalization, the optimal use of Elgin's infrastructure, and other policies and guidelines adopted by Elgin from time to time.

Aqua will meet the following minimum qualifications for Wholesale Service including, but not limited to:

1. Aqua is a retail public utility as defined by the Texas Water Code that holds a valid Certificate of Convenience and Necessity ("CCN") for the provision of retail water utility service issued by the Texas Commission on Environmental Quality, its predecessors or successors.

2. Aqua's service area is adjacent to the CCN held by Elgin.

3. Aqua has other water supplies available and will not be a full-requirements wholesale customer of Elgin.

Section 3.02 -- Billing

Water bills shall be rendered monthly unless service is terminated before the end of a billing cycle.

Payment is considered late if not received at Elgin's office or postal address by the 10th of the month. A 10% penalty will be added for payment received after the 10th day of the month. Failure to pay by the 10th may result in disconnection.

Section 3.03 -- Service Disconnection

Wholesale service may be disconnected if a bill has not been paid and proper notice has been given.

Proper notice shall consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. If applicable, the notice must also list the past due balance.

Service may be disconnected after proper notice for any of the following reasons:

1. Failure to pay a delinquent account or to comply with a deferred payment agreement;

2. Willful violation of a usage rule when that violation interferes with another member's service;

3. Other reasons set forth in the Wholesale Service Agreement.

Service may only be disconnected without notice:

1. When a known dangerous condition exists, for as long as the condition exists;

2. When service is established through meter bypassing, an unauthorized connection or unauthorized reconnection; or

3. In instances of tampering with Elgin's meter or equipment.

Section 3.04 -- Litigation

These Terms and Conditions shall be construed under and in accordance with the laws of the State of Texas. All obligations of the parties created under these Terms and Conditions shall be performable in Bastrop County, Texas. All payments required to be made to Elgin under the Wholesale Service Agreement shall be made at Elgin's offices in Bastrop County, Texas. Bastrop County, Texas shall be the exclusive place of venue for any disputes arising under the Wholesale Service Agreement.

EXHIBIT "B"

Point(s) of Delivery

Point(s) of delivery to be determined on an as needed basis.

EXHIBIT "C"

Name and Address for Notice to Aqua

Dave McMurry
General Manager
Aqua Water Supply Corporation
415 Old Austin Highway
Drawer P
Bastrop, Texas 78602

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
CONSIDERATION OF AN ENCROACHMENT AGREEMENT BETWEEN ERNEST GENE FRANZ AND DOROTHY ANN FRANZ, THE OWNERS OF FRANZ ADDITION LOCATED AT 701 N AVENUE H AND 504 E 7th STREET IN THE CITY OF ELGIN.

DEPARTMENT: Administration

PROPOSED ACTION:
Authorize the execution of an encroachment agreement with Ernest G. & Dorothy A. Franz for the encroachment of the East 7th Street right-of-way at 701 N Avenue H by a metal building, frame garage, concrete walkway, and concrete pad.

BACKGROUND:
The City has received a request from Ernest G. & Dorothy A. Franz, the owners for 701 North Avenue H for an encroachment agreement to allow an encroachment on or over a portion of the East 7th Street right-of-way by a metal building, frame garage, concrete walkway, and concrete pad. They current owners are preparing the property for slae; and encroachment was discovered in the subdivision process. Staff has consulted wit the City Attorney's office who prepared the agreement. See Request submitted by Michael D Olson and map showing encroachments.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ○ not included in the current-year budget ◉ N/A

RECOMMENDATION:
Staff recommends authorizing the execution of the Encroachment Agreement prepared by the City Attorney.

ATTACHMENTS:

Franz Encroachment Agreement Request and Map
Encroachment Agreement

○ **Staff will be making a detailed presentation on this agenda item at the meeting.**
◉ **Staff will provide brief comments and answer questions on this item at the meeting.**
○ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

DALE L. OLSON
Registered Professional Land Surveyor
711 Water Street
Bastrop, TX 78602
Phone (512) 321-5476 * Fax (512) 303-5476

October 14,2016

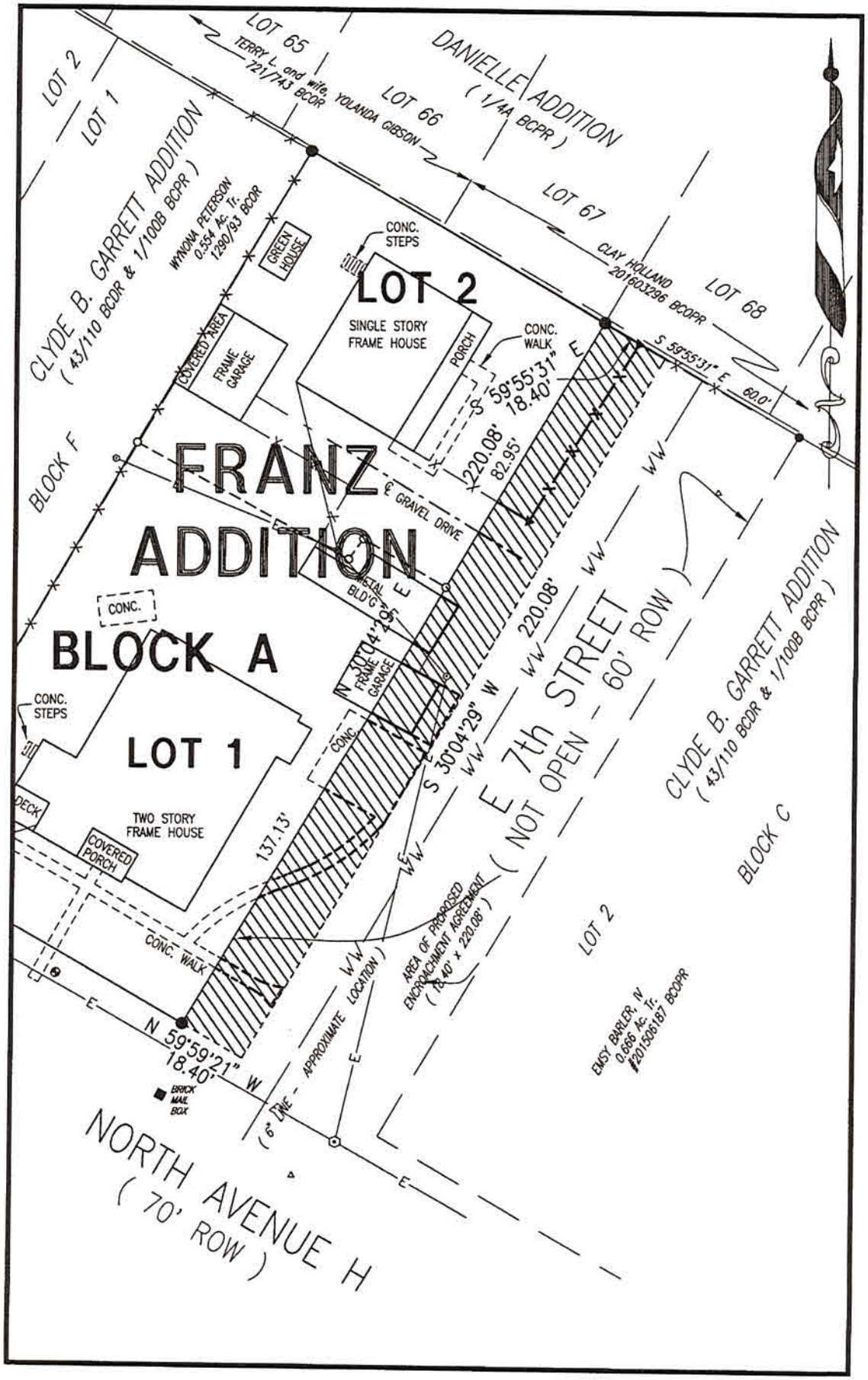
To: City of Elgin
Gary Cook, Director of Planning and Development
P.O. Box 591
Elgin, Texas, 78621

Re: Franz Addition
Application for Encroachment Agreement

The owners of Franz Addition, Ernest Gene Franz and Dorothy Ann Franz, would like to request an Encroachment Agreement for an area of 18.40 feet by 220.08 feet along the west portion of East 7th Street, presently Not Open, north of North Avenue H and between our proposed Franz Addition, being a portion of Lot 1, Block F, Garrett Addition and Lot 2, Block C, Garrett Addition, in the City of Elgin. Enclosed is a copy of a portion of a survey showing the improvement encroachments into E 7th Street. There is a plat note on the proposed Franz Addition that reserves the right of the city to repossess the encroachment area for public improvements. The owners would like to request the continued use of this area.

Thank you for this consideration.

Michael D. Olson
Reg. Pro. Land Surveyor 5386


LOT 65
TERRY L. and wife, YOLANDA GIBSON
221/743 BCOR
LOT 66
DANIELLE ADDITION
(1/44 BCPR)
LOT 67
CLAY HOLLAND
2016O3296 BCOPR
LOT 68
LOT 2
LOT 1
CLYDE B. GARRETT ADDITION
(43/110 BCOR & 1/100B BCPR)
WYNONA PETERSON
0.554 Ac. Tr.
1290/93 BCOR
GREEN HOUSE
CONC. STEPS
LOT 2
SINGLE STORY FRAME HOUSE
PORCH
CONC. WALK
COVERED AREA
FRAME GARAGE
S 59°55'31" E
18.40'
S 59°55'31" E
60.0'
220.08'
82.95'
BLOCK F
FRANZ ADDITION
℄ GRAVEL DRIVE
W/W
W/W
W/W
W/W
W/W
W/W
METAL BLD'G
N 30°04'29" E
CONC.
BLOCK A
CONC. STEPS
LOT 1
TWO STORY FRAME HOUSE
DECK
COVERED PORCH
CONC.
FRAME GARAGE
S 30°04'29" W
220.08'
137.13'
E 7th STREET
(NOT OPEN - 60' ROW)
CLYDE B. GARRETT ADDITION
(43/110 BCOR & 1/100B BCPR)
BLOCK C
CONC. WALK
AREA OF PROPOSED ENCROACHMENT AGREEMENT
(10.40' x 220.08')
LOT 2
EMSY BARLER, IV
0.666 Ac. Tr.
#20150618? BCOPR
N 59°59'21" W
18.40'
BRICK MAIL BOX
(6" ONE - APPROXIMATE LOCATION)
NORTH AVENUE H
(70' ROW)

ENCROACHMENT AGREEMENT

This Encroachment Agreement, hereinafter "Agreement," is made and entered into between Ernest G. & Dorothy A. Franz, hereinafter referred to as the "Owners," whose address is 605 N. Highway 95, Elgin, Texas 78621, and the City of Elgin, Texas, hereinafter the "City," a municipal home-rule corporation whose address is 310 N. Main St., Elgin, Texas 78621, and becomes effective on the date indicated below. The City and the Owners agree as follows:

A. City is the record holder of the public right-of-way known as East 7th Street (hereinafter the "ROW"), as shown on Exhibit "A", attached hereto and incorporated herein.

B. The Owners own the real property adjacent to the ROW at 701 N. Ave H, Elgin, Texas 78621.

C. The Owners has requested that the City allow an encroachment on or over a portion of the ROW, with the encroaching structures being in the nature of a metal building, frame garage, concrete walkway, and concrete pad, as called out in Exhibit "A".

D. By execution of this Agreement, the City grants its limited consent for the Owners to encroach on or over a portion of the ROW ***strictly subject to the following conditions:***

(1) The encroaching structures may be located only as depicted on the attached Exhibit "A", and that no further encroachment or improvements of any kind in the ROW belonging to the City shall be allowed;

(2) The existence of the encroaching structures shall be subject to any and all relevant requirements of the Elgin Code of Ordinances, including but not limited to the Building Code;

(3) Use, maintenance, repair and removal of the encroaching structures shall be solely at the risk and liability of the Owners, and not at the risk and liability of the City in any manner whatsoever;

(4) Removal of the encroaching structures, or a portion thereof, shall cause the immediate termination of this Agreement;

(5) The permission of the City in allowing such encroachment shall be strictly limited to this particular request, and shall not ever be construed as establishing any precedent whatsoever;

(6) The parties expressly agree that the City has full authority in an emergency to remove or permit to be removed, in whole or part, the

encroaching structures, and such removal shall be allowed without notice to the Owners and without any obligation whatsoever on the part of the City to replace or repair any part or the whole of the encroaching structures;

(7) In a non-emergency situation, the Owners agree to be solely responsible for removal of the encroaching structures to the City's satisfaction, and such removal shall be completed by the Owners within forty-eight (48) hours of actual notice to the Owners of the City's directive to remove same. The parties expressly agree that, in the event the Owners fails to remove the encroaching structures to the City's satisfaction following notice, then and in that event the City may cause the encroaching structures to be removed at the expense of the Owners;

(8) The parties expressly agree that the City shall never be responsible in any manner whatsoever for damage caused to the encroaching structures related to the City's use or maintenance of the ROW;

(9) The Owners shall indemnify and hold the City harmless from any and all loss, damage, penalty, liability, cost and expense, including without limitation reasonable attorney's fees, that may be incurred by, imposed upon, or asserted by reason of any suit, action, legal proceeding, claim, demand, regulatory proceeding, or litigation arising from any act done or omitted to be done by any party, excepting only any loss, damage, penalty, liability, cost or expenses resulting from negligence or willful misconduct of the City. Nothing herein shall be deemed to limit the rights (including but not limited to the right to seek contribution) of the City or the Owners against any third party who may be liable for an indemnified claim. The parties agree that in no event shall the City be liable to the Owners for any incidental, indirect, special, punitive, consequential or similar damages of any kind including without limitation loss of profits, loss of business or interruptions of business, whether such liabilities are predicated on contract, tort, strict liability or any other legal theory. This indemnification shall apply to the Owners, and to each of its successors, assigns, officers, employees and officials. The parties agree that the provisions of this section shall survive the termination of this agreement; and

(10) Relative to any subsequent purchaser of the encroaching structures, the Owners expressly agrees to adequately inform any such purchaser of the property as to the existence of this Agreement and provide a copy of same.

(11) The City reserves the right to rescind this Agreement at any time, with or without cause.

By execution below by the Owners and the respective appropriate authorities of the City of Elgin, Texas, the signatories bind the entities to obey all conditions of this Agreement.

City of Elgin, Texas

By: _____
Chris Cannon, Mayor

Date Signed: _____

ATTEST:

By: _____
Amelia Sanchez, City Secretary

Owners:

By: Ernest G. Franz
Ernest G. Franz

Date Signed: FEB 2, 2017

By: Dorothy A. Franz
Dorothy A. Franz

Date Signed: FEB 2, 2017

ACKNOWLEDGMENTS

THE STATE OF TEXAS

COUNTY OF BASTROP

This instrument was acknowledged before me on this 2ND day of FEB., 2017, by Ernest G. Franz, whose name is subscribed to the preceding instrument, and acknowledged to me that he executed it for the purposes and consideration expressed in it.

MELISSA LIPIEC
Notary Public, State of Texas
Comm. Expires 05-18-2019
Notary ID 12424458-5

Melissa Lipiec
Notary Public in and for the State of Texas

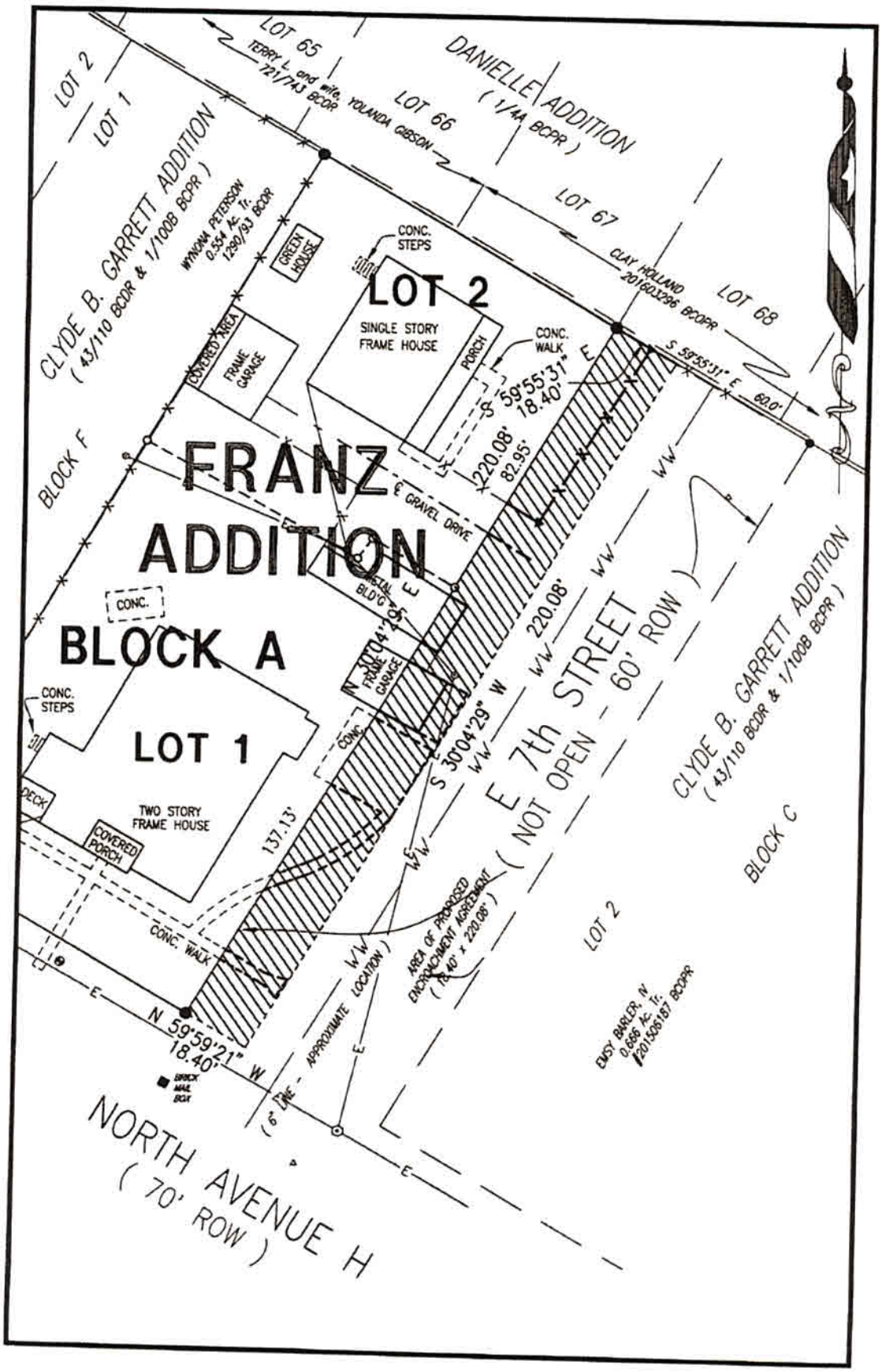
THE STATE OF TEXAS

COUNTY OF BASTROP

This instrument was acknowledged before me on this 2nd day of FEB, 2017, by Dorothy A. Franz, whose name is subscribed to the preceding instrument, and acknowledged to me that he executed it for the purposes and consideration expressed in it.

Melissa Lipiec
Notary Public in and for the State of Texas

EXHIBIT A


FRANZ ADDITION
BLOCK A
LOT 1
LOT 2
SINGLE STORY FRAME HOUSE
TWO STORY FRAME HOUSE
FRAME GARAGE
COVERED AREA
GREEN HOUSE
CONC. STEPS
CONC. WALK
PORCH
DECK
COVERED PORCH
CONC.
BRICK MAIL BOX
GRAVEL DRIVE
LOT 65
LOT 66
LOT 67
LOT 68
LOT 2
LOT 1
BLOCK F
BLOCK C
DANIELLE ADDITION (1/4A BCPR)
CLYDE B. GARRETT ADDITION (43/110 BCDR & 1/100B BCPR)
CLYDE B. GARRETT ADDITION (43/110 BCDR & 1/100B BCPR)
TERRY L. and wife, YOLANDA GIBSON 721/743 BCDR
WYNONA PETERSON 0.554 Ac. Tr. 1290/93 BCDR
CLAY HOLLAND 2015003296 BCOPR
DUSTY BARLER, IV 0.686 Ac. Tr. #2015006187 BCOPR
E 7th STREET (NOT OPEN - 60' ROW)
NORTH AVENUE H (70' ROW)
AREA OF PROPOSED ENCROACHMENT AGREEMENT (82.40' x 220.08')
APPROXIMATE LOCATION
(6' LINE)
S 59°55'31" E 60.0'
S 59°55'31" E 18.40'
N 59°59'21" W 18.40'
S 30°04'29" W 220.08'
N 30°04'29" E 220.08'
137.13'
82.95'
W/W
E

ELGIN CITY COUNCIL MEETING
AGENDA ITEM EXECUTIVE SUMMARY

ITEM:
A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE A COOPERATIVE AGREEMENT WITH SF DEVELOPMENT, INC. FOR THE SHARING OF COSTS RELATED TO THE CONSTRUCTION OF A WASTEWATER LINE AND A LIFT STATION IN THE SARATOGA FARMS SUBDIVISION AND MAKING CERTAIN FINDINGS RELATED THERETO

DEPARTMENT: Administration

PROPOSED ACTION:
Approval of a cost-sharing agreement with the developers of the Saratoga Farms residential project that will facilitate the construction of a greatly enhanced wastewater services in a currently underserved area of the city adjacent to the new Lee Dildy Boulevard (south of and and parallel to US Highway 290).

BACKGROUND:
See attached staff memorandum.

BUDGET/FINANCIAL IMPACT:
Funding for this item was ○ included ◉ not included in the current-year budget ○ N/A

RECOMMENDATION:
Adoption of the Resolution and approval of the cost-sharing agreement with the developers of the Saratoga Farms as presented.

ATTACHMENTS:
Resolution
Agreement

○ **Staff will be making a detailed presentation on this agenda item at the meeting.**
◉ **Staff will provide brief comments and answer questions on this item at the meeting.**
○ **This is a routine procedural item and no presentation is planned for the meeting.**

Councilmembers who have any detailed questions or would like to request additional information regarding this item are encouraged to contact the City Manager at their earliest convenience.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR TO EXECUTE A COOPERATIVE AGREEMENT WITH SF DEVELOPMENT, INC. FOR THE SHARING OF COSTS RELATED TO THE CONSTRUCTION OF A WASTEWATER LINE AND A LIFT STATION IN THE SARATOGA FARMS SUBDIVISION AND MAKING CERTAIN FINDINGS RELATED THERETO

WHEREAS, the City of Elgin, Texas (the "City") has authorized the Lee Dildy Construction Project that will include the construction of Lee Dildy Boulevard and the extension of Saratoga Farms Boulevard and Roy Rivers Boulevard with appropriate road, drainage, and utility improvements; and,

WHEREAS, the City and SF Development, Inc. (the "Developer") desire to co-operate in the construction of 12" wastewater line(s) and a lift station with associated force main ("the Project") which will be mutually beneficial to the both entities; and,

WHEREAS, the City agrees to reimburse Developer for a portion of the costs to design and construct the Project; and,

WHEREAS, the City and Developer now wish to memorialize their respective duties and obligations with respect to the Project.

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

Section 1. That the above recitals are true and correct; and the Mayor is authorized to execute an Agreement with SF Development, Inc. to define terms and conditions for reimbursement to the Developer for a portion of the costs to design and construct the Project, a copy of said Agreement being attached hereto and made part of this Resolution as if copied verbatim therein.

Section 2. This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED this 7th day of March, 2017.

_____
CHRIS CANNON, Mayor
City of Egin, Texas

ATTEST:

_____
AMELIA SANCHEZ, City Secretary

COST PARTICIPATION AGREEMENT REGARDING THE CONSTRUCTION OF A 12" WASTEWATER LINE AND A LIFT STATION IN SARATOGA FARMS SUBDIVISION SECTION FOUR

THE STATE OF TEXAS §
§ KNOW ALL BY THESE PRESENTS:
COUNTY OF BASTROP §

THIS COST PARTICIPATION AGREEMENT (this "**Agreement**") is entered into between the **CITY OF ELGIN, TEXAS**, a Texas home-rule city (the "**City**"), and **SF DEVELOPMENT, INC.,** a Texas corporation, its successors and assigns ("**Developer**"). In this Agreement, the City and Developer are sometimes individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

RECITALS

WHEREAS, the City and Developer desire to co-operate in the construction of 12" wastewater line(s) and a lift station with associated force main to be located as shown on **Exhibit "A"**, attached hereto and incorporated herein (the "**Project**"), which will be mutually beneficial to the Parties; and

WHEREAS, the City agrees to reimburse Developer for a portion of the costs to design and construct the Project; and

WHEREAS, the Parties wish to memorialize their respective duties and obligations with respect to the Project;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I.

TERMS

A. Recitals. The Recitals above are incorporated herein.

B. Developer Participation. Developer agrees to pay for all costs related to the design and construction of the Project (the "**Project Costs**") in accordance with the design plans as approved in writing by the City prior to contract award. Developer shall award a contract for the Project on or before April 1, 2017 and shall substantially complete construction of the Project on or before September 1, 2017. Pursuant to Texas Local Government Code §212.072(b)(1), Developer need not comply with the competitive sealed bidding procedure set forth in Chapter 252 of the Texas Local Government Code with respect to the award of contract for the Project.

C. City Participation. The City agrees to reimburse Developer in an amount equal to 21% of the Project Costs, not to exceed $211,662.00, conditioned upon Developer constructing the Project pursuant to the design plans previously approved by the City.

D. Reimbursement. The City will make payment to Developer as required by this Agreement within ten (10) days after the later to occur of: (i) receipt of Developer's written request for payment, and (ii) the date on which the Project has been approved by the City for use by the public. Said written request for payment must include proof of payment of the Project Costs. The City reserves the right to withhold any reimbursement that is not directly related to the Project.

II.

GENERAL PROVISIONS

A. Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid portion had never been contained herein.

B. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

C. Entire Agreement. Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties regarding the sharing of costs for the Project and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter hereof.

D. Amendments. Any amendment of this Agreement must be in writing and shall be effective if signed by the authorized representatives of both Parties.

E. Applicable Law; Venue. This Agreement shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Bastrop County, Texas.

F. Force Majeure. The Parties shall not be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

G. Exhibit. The following exhibit is attached to this Agreement and incorporated herein by reference:

Exhibit "A" – The Project

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

I. Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

J. Notices. Notices provided hereunder shall be sufficient if forwarded to the other party by hand-delivery or via U.S. Postal Service, postage prepaid, to the address of the other party shown below:

CITY: City of Elgin
Attn: City Manager
310 N. Main St.
Elgin, Texas 78621

DEVELOPER: SF Development, Inc.
Attn: John S. Lloyd
4720-4 Rockcliff Road
Austin, Texas 78746

K. No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties.

(signatures on following page)

CITY OF ELGIN:

ATTEST:

By: _____
Chris Cannon, Mayor

_____
Amelia Sanchez, City Secretary

Date: _____

SF DEVELOPMENT, INC.:

By: _____
John S. Lloyd, President

Date: _____

STATE OF TEXAS §
§
COUNTY OF BASTROP §

On this ____ day of _____, 2017, before me, the undersigned notary public, personally appeared Chris Cannon, Mayor of the City of Elgin, Texas, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

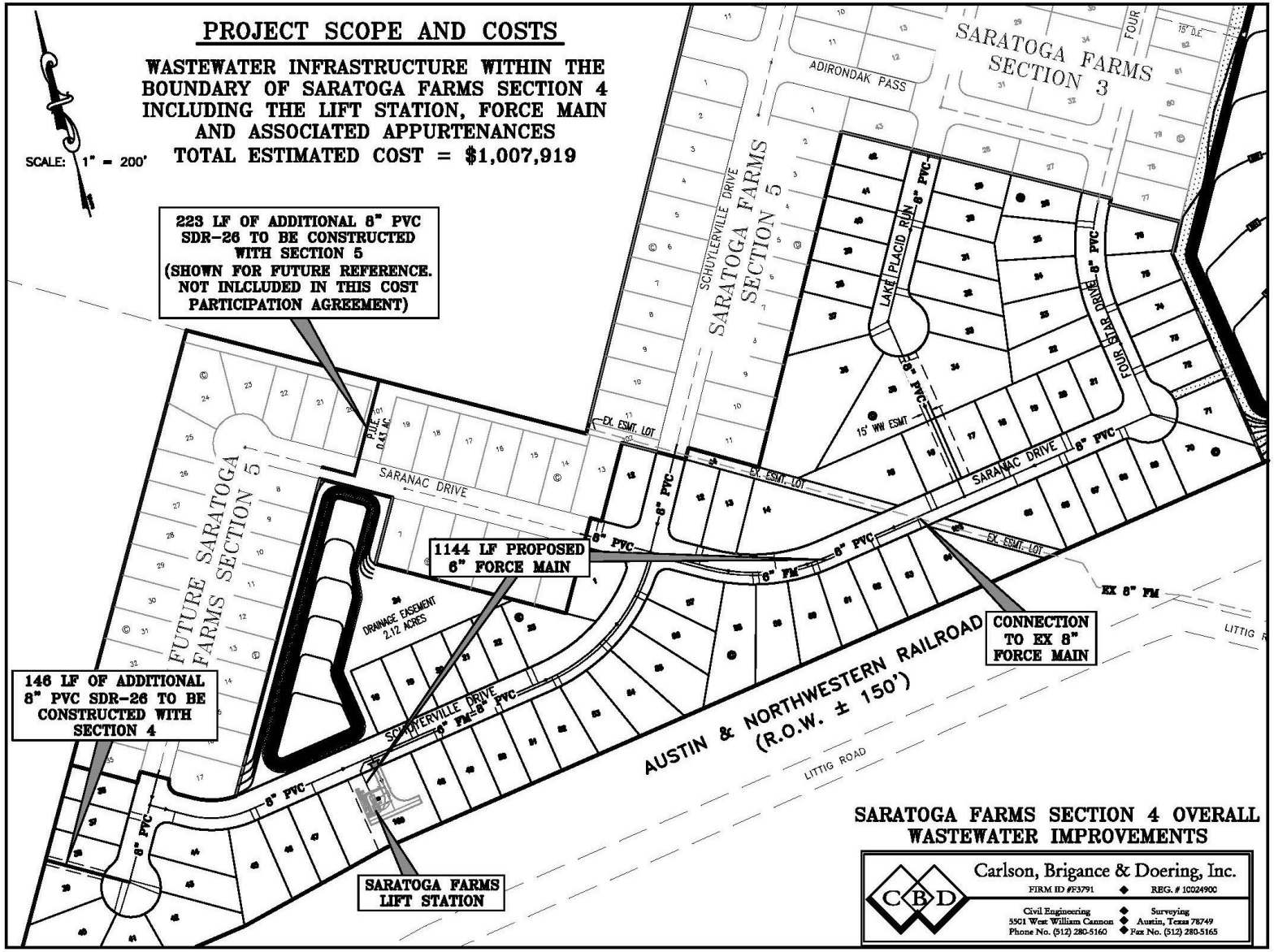
On this ____ day of _____, 2017, before me, the undersigned notary public, personally appeared John S. Lloyd, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

_____
Notary Public, State of Texas

EXHIBIT "A"

The Project

[attached]


PROJECT SCOPE AND COSTS
WASTEWATER INFRASTRUCTURE WITHIN THE BOUNDARY OF SARATOGA FARMS SECTION 4 INCLUDING THE LIFT STATION, FORCE MAIN AND ASSOCIATED APPURTENANCES
TOTAL ESTIMATED COST = $1,007,919
SCALE: 1" = 200'
223 LF OF ADDITIONAL 8" PVC SDR-26 TO BE CONSTRUCTED WITH SECTION 5 (SHOWN FOR FUTURE REFERENCE. NOT INLCLUDED IN THIS COST PARTICIPATION AGREEMENT)
1144 LF PROPOSED 6" FORCE MAIN
146 LF OF ADDITIONAL 8" PVC SDR-26 TO BE CONSTRUCTED WITH SECTION 4
SARATOGA FARMS LIFT STATION
CONNECTION TO EX 8" FORCE MAIN
SARATOGA FARMS SECTION 3
SARATOGA FARMS SECTION 5
FUTURE SARATOGA FARMS SECTION 5
ADIRONDAK PASS
SCHUYLERVILLE DRIVE
LAKE PLACID RUN
FOUR STAR DRIVE
SARANAC DRIVE
DRAINAGE EASEMENT 2.12 ACRES
AUSTIN & NORTHWESTERN RAILROAD (R.O.W. ± 150')
LITTIG ROAD
EX 8" FM
15' WW ESMT
EX. ESMT. LOT
8" PVC
6" FM
SARATOGA FARMS SECTION 4 OVERALL WASTEWATER IMPROVEMENTS
Carlson, Brigance & Doering, Inc.
FIRM ID #F3791 ◆ REG. # 10024900
Civil Engineering ◆ Surveying
5501 West William Cannon ◆ Austin, Texas 78749
Phone No. (512) 280-5160 ◆ Fax No. (512) 280-5165