



AGENDA  
ELGIN CITY COUNCIL  
REGULAR MEETING  
TUESDAY, MARCH 17, 2020  
CITY ANNEX COUNCIL CHAMBERS, 310 NORTH MAIN STREET  
7:00 PM

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. INVOCATION**

**IV. PLEDGE OF ALLEGIANCE**

**V. PUBLIC HEARING**

1. **Second Public Hearing - A RESOLUTION OF THE CITY OF ELGIN, TEXAS APPROVING A STRATEGIC PARTNERSHIP AGREEMENT WITH THE BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING CERTAIN FINDINGS RELATED THERETO**

Documents:

[EXSUMMARY - PUBLIC HEARING BRICKSTON SPA320.PDF](#)  
[RESOBRICKSTONSPA320.PDF](#)  
[BRICKSTON MUD - STRATEGIC PARTNERSHIP AGREEMENT320.PDF](#)

**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. CITY MANAGERS REPORT**

1. **Update On City Of Elgin Coronavirus Pandemic Response And/Or Planning**

Documents:

[EXSUMMARY - CORONAVIRUS REPORT.PDF](#)

2. **Elgin Police Department 2019 Racial Profiling Report**

Documents:

[ELGIN PD 2019 RACIAL PROFILING REPORT.PDF](#)  
[RACIAL PROFILING REPORT 2019 - COUNCIL.PDF](#)  
[REPORTVIEWERPDF.ASPX.PDF](#)

3. **Update On Removal Of Fire Destroyed Home At 501 W. Alamo.**

Documents:

[COUNCIL COVERSHEET.PDF](#)

4. **General Activity Report And/Or Project Update**

5. **Monthly Departmental Reports - February**

Documents:

[MONTHLY REPORT FEB 2020.PDF](#)

**VIII. 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. **CONSIDER REQUEST TO CLOSE STREETS FOR THE WESTERN DAYS FESTIVAL PARADE ON SATURDAY JUNE 27 FROM 8:00AM TO NOON.**

Documents:

**2. CONSIDER REQUEST TO WAIVE FEES FOR THE WESTERN DAYS FESTIVAL AND PARADE JUNE 25 – 27, 2020.**

Documents:

[EXECUTIVE SUMMARY WESTERN DAYS FESTIVAL PARADE FEE WAIVER REQUEST..PDF](#)  
[REQUESTS FOR WESTERN DAYS 2020.PDF](#)  
[WESTERN DAYS PARADE ROUTE.PDF](#)

**3. CONSIDER REQUEST TO WAIVE THE OPEN CONTAINER ORDINANCE FOR THE WESTERN DAYS FESTIVAL JUNE 26, 2020 FROM 4:00PM TO MIDNIGHT AND SATURDAY JUNE 27 FROM 8:00AM TO 8:00PM IN ELGIN MEMORIAL PARK.**

Documents:

[EXECUTIVE SUMMARY WESTERN DAYS FESTIVAL OPEN CONTAINER WAIVER REQUEST. .PDF](#)  
[REQUESTS FOR WESTERN DAYS 2020.PDF](#)

**4. City Council Meeting Minutes - March 3, 2020**

Documents:

[EXSUMMARY SHEET MINUTES.PDF](#)  
[CITY COUNCIL MINUTES 03-03-2020.PDF](#)

**IX. NEW BUSINESS**

**1. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE A BUILDING LEASE AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS AND THE ELGIN COMMUNITY CUPBOARD; AND PROVIDING FOR RELATED MATTERS.**

Documents:

[EX SUMMARY - CCUPBOARD BUILDING LEASE.PDF](#)  
[RESOCCUPBOARD LEASE320.PDF](#)  
[COMMUNITY CUPBOARD LEASE AGREEMENT320.PDF](#)

**2. A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE A FUNDING AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS AND THE ELGIN COMMUNITY CUPBOARD; AND PROVIDING FOR RELATED MATTERS**

Documents:

[EX SUMMARY - CCUPBOARD FUNDING AGREEMENT.PDF](#)  
[RESOCCUPBOARD FUNDING320.PDF](#)  
[COMMUNITY CUPBOARD FUNDING AGREEMENT 320.PDF](#)

**3. A RESOLUTION OF THE CITY OF ELGIN, TEXAS APPROVING A STRATEGIC PARTNERSHIP AGREEMENT WITH THE BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING CERTAIN FINDINGS RELATED THERETO**

Documents:

[EXSUMMARY - BRICKSTON SPA320.PDF](#)  
[RESOBRICKSTONSPA320.PDF](#)  
[BRICKSTON MUD - STRATEGIC PARTNERSHIP AGREEMENT320.PDF](#)

**4. 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 THAT REPLACES RESOLUTION 2017-03-07-10, THAT AUTHORIZED A PREVIOUS AGREEMENT BETWEEN THE TWO PARTIES, WITH TERMS AND CONDITIONS FOR THE PROVISION OF WHOLESALE WATER SERVICE TO AQUA WATER SUPPLY CORPORATION AND MAKING CERTAIN FINDINGS RELATED THERETO**

Documents:

[EXSUMMARY - AQUA AGREEMENT.PDF](#)  
[RES AUTH NEW WHOLESALE WATER AGREEMENT AQUA WSC 2-18-2020.PDF](#)  
[AMENDED AND RESTATED AGREEMENT\\_WHOLESALE WATER SERVICE FROM CITY OF ELGIN - FINAL REDLINE - FEB 2020.PDF](#)  
[EXHIBIT B - DESCRIPTION OF POINT OF DELIVERY.PDF](#)

**5. AN ORDINANCE AMENDING CHAPTER 30, SECTION 30-2, CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, BY DELETING THIS SECTION IN ITS ENTIRETY AND REPLACING IT WITH A NEW PERSONNEL POLICY, PROVIDING A SAVINGS CLAUSE; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

Documents:

[EX SUMM HR POLICY ORDINANCE 3-17-2020.PDF](#)  
[ORD ADOPT PERSONNEL POLICIES 3-17-2020.PDF](#)

**6. Consideration, Discussion And Possible Action To Award A Contract To The Low Bidder Royal Vista Inc. Incorporated, In The Amount Of \$826,214.00 For Construction Of The Central Lift Station And Authorize The City Manager To Fund The Project From 2016 CO Bond Funds As Planned.**

Documents:

[CENTRAL LIFT STATION EXEC SUMMARY.PDF](#)  
[BID AWARD RECOMMENDATION - CENTRAL LIFT STATION.PDF](#)

**X. 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.**

**XI. RECONVENE**

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

**XII. ANNOUNCEMENTS**

**XIII. ADJOURNMENT**

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)229-3222. 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 13, 2020, in accordance with Chapter 551 of the Texas Government Code.

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Amelia Sanchez, City Secretary



## Elgin City Council Meeting Agenda Item Executive Summary

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**ITEM:** Second Public Hearing - A RESOLUTION OF THE CITY OF ELGIN, TEXAS APPROVING A STRATEGIC PARTNERSHIP AGREEMENT WITH THE BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING CERTAIN FINDINGS RELATED THERETO

**DEPARTMENT:** City Council

### **PROPOSED ACTION:**

No Council action related to this specific agenda item; This item is to allow for public comments on a proposed Resolution authorizing a Strategic Partnership Agreement (SPA) with the Brickston Municipal Utility District (MUD).

### **BACKGROUND:**

Discussed at previous meetings; Texas Bridle Trails (“TBT”) intends to develop 650 +/- acres of land within City’s ETJ as “Brickston”, a master-planned, mixed-use community with park and recreational facilities to serve the community. Brickston will include commercial sites, as well as land sites for public safety and public-school facilities.

The Council previously approved a Development and Consent Agreement, that is binding upon TBT and the associated Brickston MUD. Said Agreement included a commitment on the part of the City to consent to the creation of the MUD in exchange for various commitments made by the developers.

As part of said agreement, the developers also agreed to a “Limited Purpose Annexation” in conformity with state law. Through this action, the City will annex all land within the MUD for limited purposes, including (a) imposing and collecting sales tax within the MUD and (b) subjecting the MUD to the development standards of the City (or as otherwise stipulated in our Development Agreement).

Included as part of this annexation, the City will provide “limited” city services to the MUD (namely Police and Library services), for which the MUD will pay for at a rate comparable to city residents.

### **BUDGET/FINANCIAL IMPACT:**

Funding for this item was { } included { } not included in the current-year budget {X} N/A

**RECOMMENDATION:** N/A

**ATTACHMENTS:** (a) Resolution, (b) Strategic Partnership Agreement

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} 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 APPROVING  
A STRATEGIC PARTNERSHIP AGREEMENT WITH THE  
BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING  
CERTAIN FINDINGS RELATED THERETO**

**WHEREAS**, the City Council has approved and authorized a Development and Consent Agreement with Texas Bridle Trails LLC and Brickston Municipal Utility District (MUD) to construct a master-planned, mixed-use residential project that will also include commercial uses, parks, and recreational facilities to serve the community; and,

**WHEREAS**, the Texas Local Government Code, Section 43.0751 authorizes the City and certain utility districts, such as the Brickston MUD, to negotiate and enter into a strategic partnership agreement by mutual consent; and,

**WHEREAS**, the proposed Strategic Partnership Agreement provides for annexation of all land within the MUD for limited purposes, including, but not limited to, imposing and collecting sales and use taxes within the MUD and subjecting the MUD to the development standards of the City; and,

**WHEREAS**, the Mayor and City Council have found and determined that the proposed Strategic Partnership Agreement with the Brickston Municipal Utility District will further the public interest and welfare.

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

**Section 1. Findings.** The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Authorization.** The Mayor is hereby authorized to execute the *Strategic Partnership Agreement between the City of Elgin, Texas and Brickston Municipal Utility District*, a copy of said agreement being attached hereto and marked Exhibit A; and made part of this Resolution as if copied verbatim herein.

**Section 3. Open Meetings.** The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**Section 4. Effective Date.** This Resolution shall take effect immediately upon passage.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Egin, Texas

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary

**STRATEGIC PARTNERSHIP AGREEMENT BETWEEN**  
**THE CITY OF ELGIN, TEXAS AND**  
**BRICKSTON MUNICIPAL UTILITY DISTRICT**

STATE OF TEXAS                   §  
                                             §  
COUNTY OF TRAVIS           §

This Strategic Partnership Agreement (this “Agreement”) is entered into by and between the City of Elgin, Texas (the “City”) and Brickston Municipal Utility District (the “District”).

**RECITALS**

**WHEREAS**, the City is a home-rule municipal corporation created and existing under the laws of the State of Texas and situated in Travis and Bastrop Counties, Texas; and

**WHEREAS**, the District is a municipal utility district created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59 of the Texas Constitution; Chapter 8038 of the Texas Special District Local Laws Code (the “Enabling Legislation”); and Chapters 49 and 54 of the Texas Water Code, all as amended; and

**WHEREAS**, the City and the District are individually referred to as a “Party” and collectively as the “Parties”; and

**WHEREAS**, Chapter 43 of the Texas Local Government Code (the “Act”) and, specifically, Section 43.0751 of the Act authorize the City and the District to negotiate and enter this Agreement; and

**WHEREAS**, the District encompasses approximately \_\_\_\_\_ acres, more or less, located within the extraterritorial jurisdiction of the City as depicted on **Exhibit A** and more fully described on **Exhibit B** attached to this Agreement (the “Development”); and

**WHEREAS**, Texas Bridle Trails, LLC (the “Owner”) is the current owner of the Development, as reflected in the current tax rolls of the appraisal district of Travis County; and

**WHEREAS**, pursuant to Section 43.0751 of the Act, the City desires to annex the all the land in the Development for limited purposes, including, but not limited to, imposing and collecting sales and use taxes within the Development and subjecting the Development to the development standards of the City, subject to the limitations set forth in Section 2.4 hereof; and

**WHEREAS**, subject to the terms and conditions of this Agreement and for the health, safety, and welfare of the residents within the District, the District is willing to allow the City to annex the Development for the limited purposes set forth herein; and

**WHEREAS**, to facilitate the limited purpose annexation by the City of the Development, and for the health, safety, and welfare of the residents of the District, the Owner has submitted to

the City a petition requesting and consenting to the limited purpose annexation of the Development; and

**WHEREAS**, pursuant to the Act and the Owner's petition for limited purpose annexation, the Parties desire to enter into this Agreement to accomplish the annexation by the City of the Development for the limited purposes set forth herein; and

**WHEREAS**, the District provided notice of two public hearings in accordance with all applicable laws; and

**WHEREAS**, the board of directors of the District (the "Board") conducted two public hearings in accordance with all applicable laws at which members of the public who wished to present testimony or evidence regarding this Agreement were given the opportunity to do so; and

**WHEREAS**, the Board approved and adopted this Agreement on \_\_\_\_\_, 2020, in open session at a meeting held in accordance with all applicable laws; and

**WHEREAS**, the City provided notice of two public hearings in accordance with all applicable laws; and

**WHEREAS**, the City Council of the City (the "City Council") conducted two public hearings in accordance with all applicable laws at which members of the public who wished to present testimony or evidence were given the opportunity to do so; and

**WHEREAS**, the City Council approved and adopted this Agreement on \_\_\_\_\_, 2020, in open session in accordance with all applicable laws, which approval and adoption occurred after the Board approved and adopted this Agreement; and

**WHEREAS**, all notices, hearings and other procedural requirements imposed by law for the adoption of this Agreement have been met; and

**WHEREAS**, in accordance with the requirements of Subsection (p)(1) of the Act, this Agreement does not require the District to provide revenue to the City solely for the purpose of obtaining an agreement with the City to forego annexation of the District; and

**WHEREAS**, in accordance with the requirements of Subsection (p)(2) of the Act, this Agreement provides benefits for the City and the District that are reasonable and equitable; and

**WHEREAS**, the Parties agree and acknowledge that this Agreement is not intended to and does not void, modify or impact in any manner the Development Agreement dated February 6, 2019 between the Owner and the City (the "Development Agreement") and

**WHEREAS**, it is the intention of the Parties that the District shall continue in existence during the period of limited purpose annexation and, if applicable, after any dis-annexation of the Development, should the City determine not to annex the Development for full purposes as provided for herein.

**NOW THEREFORE**, for and in consideration of the mutual agreements contained in this Agreement, and for the good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the District and the City agree as follows:

## **ARTICLE I. RECITALS**

Section 1.1 The recitals set forth above are true and correct and are incorporated herein and made a part hereof as findings for all purposes.

## **ARTICLE II. ADOPTION OF AGREEMENT AND LIMITED PURPOSE ANNEXATION OF PROPERTY**

Section 2.1 Public Hearings. The Parties acknowledge and agree that prior to the execution of this Agreement, the Board and the City Council conducted public hearings to consider the adoption of this Agreement and that such hearings were noticed and conducted in accordance with all applicable laws.

Section 2.2 Effective Date. The effective date of this Agreement (the “Effective Date”) is the date it is approved and adopted by the City Council.

Section 2.3 Filing in Property Records. This Agreement shall be filed in the Real Property Records of Travis County, Texas.

Section 2.4 Limited Purpose Annexation of the Development. For the health, safety, and welfare of the residents of the District, the Parties agree that the City may annex the Development for the limited purposes of the following:

(a) Sales and Use Tax. Subject to the provisions set forth in this Agreement and to the extent permitted by applicable law, the City may impose and collect sales and use taxes authorized by Chapter 321 of the Texas Tax Code (the “Tax Code”) on sales consummated within the Development.

(b) Imposition of Development Standards. The limited purpose annexation contemplated in this Agreement shall specifically subject the Development to the City’s jurisdiction in regards to development standards and land use regulations. From and after the date of the limited purpose annexation *and except as modified by the Development Agreement*, the Development shall be subject to all in-City development regulations, including zoning and subdivision regulations, as if the Development were completely within the municipal limits and had been annexed for full purposes. To the extent of a conflict between the Development Agreement and any development standards, land use or zoning regulations, or subdivision regulations of the City, the terms of the Development Agreement shall apply. It is understood by the Parties that except as modified in the Development Agreement, the Development shall be considered zoned MF4 from and after the date of the limited purpose annexation.

The District acknowledges and agrees that the City Council may adopt a limited purpose annexation ordinance applicable to the Development at a meeting conducted in accordance with Chapter 551 of the Texas Government Code and that no further notices, hearings, or other procedures shall be required to adopt such limited purpose annexation

ordinance. The City may commence limited purpose annexation of the Development upon the Effective Date. The Parties further agree and acknowledge that this Agreement does not void, modify or otherwise impact the Development Agreement.

(c) Library and Police Services. From and after the date of the limited purpose annexation, the City shall provide library and police services to the Development to the same extent it provides such services to in-City properties. The Parties shall enter into an agreement for the provision of such services and for the payment of such services at a cost comparable to the costs incurred by the City for the provision of such services.

(d) Public Infrastructure. Subject to the subsections (a)-(c) above, from and after the date of the limited purpose annexation and except as modified by the Development Agreement, the District shall be fully responsible for all design, construction, funding, maintenance, and ownership of any and all infrastructure improvements within the boundaries of the District, including but not limited to streets, roadways, alleys, sidewalks, street lighting, public and private parkland facilities (unless conveyed to Home Owners Association {HOA} whereupon HOA is responsible), stormwater drainage facilities, retention walls, public landscaping/irrigation (unless conveyed to HOA whereupon HOA is responsible), and related engineering and design during the term of this Agreement or upon full annexation whichever occurs first. Upon the expiration of this Agreement resulting in full purpose annexation of the District, the City agrees to acquire, operate and maintain the Public Infrastructure.

Section 2.5 Limited Purpose Property and Sales and Use Tax Revenues. For purposes of this Agreement, all property within the Development may sometimes be referred to as “Limited Purpose Property”; and the sales and use taxes collected within the Limited Purpose Property shall be referred to as the “Sales and Use Tax Revenues”.

Section 2.6 Consent to Limited Purpose Annexation. The District on behalf of itself and all present and future owners of land within the District, hereby requests that the City annex the Limited Purpose Property solely for the purposes provided in this agreement. The District consents to such limited purpose annexation and to the collection of sales and use tax revenues by the City within the Limited Purpose Property. Such consent shall bind the District and, upon recording of this Agreement in the appropriate county records, each Owner and future Owner of land within the District.

Section 2.7 Limited District. The District is not a limited district as defined in Subsection 43.0751(a)(2) of the Act and shall not be a limited district after the date of the limited purpose annexation. After the limited purpose annexation, the District shall continue in full force and effect under Subsection 43.0751(f)(2) of the Act, with all the powers and duties of the District surviving.

Section 2.8 Property Taxes and District Liability for Debts of the City. During the term of this Agreement, (i) neither the District, nor any owners of taxable property within the District, are liable for any present or future debts of the City; and (ii) the City’s current and future ad valorem taxes will not be levied on any taxable property in the Development. The City acknowledges that pursuant to Subsection 43.130(c) of the Act and other applicable law, the City is not permitted to impose a tax on any property annexed for limited purposes, including the Development.

Section 2.9 Powers and Functions Retained by the District. The District is authorized to exercise all powers and functions of a municipal utility district provided by existing law or any amendments or additions thereto, including the District's Enabling Legislation. Nothing in this Agreement or the limited purpose annexation shall affect, modify or alter the District's power to finance and/or develop, own, operate or maintain a water, wastewater, drainage or roadway system to serve the District or to contract with entities to develop, own, operate or maintain water, wastewater, drainage and road systems to serve the District.

### **ARTICLE III. TAXATION**

Section 3.1 Collection of Sales and Use Tax Revenues. The City may impose a sales and use tax within the Limited Purpose Property pursuant to Subsection 43.0751(k) of the Act. The sales and use tax may be imposed on all eligible commercial activities at the rate allowed under the Tax Code. Collection of Sales and Use Tax Revenues shall take effect on the date described in Section 321.102 of the Tax Code.

Section 3.2 Payment of Sales and Use Tax. The Parties agree and acknowledge that the District will not share directly in the revenue derived from the City's Sales and Use Tax on the Commercial Property.

### **ARTICLE IV. FULL PURPOSE ANNEXATION**

Section 4.1 Subsection C-1 Full Purpose Annexation. The Development is exempt from the municipal annexation plan requirements pursuant to Section 43.052 of the Act. Consequently, the District consents, on its behalf and on behalf of all current and future owners of land included within the District, to the full purpose annexation of the Development in accordance with the procedures set forth in Chapter 43, Subchapter C-1, of the Texas Local Government Code upon the expiration of the term of this Agreement and on the Full Purpose Annexation Conversion Date, as defined in Section 4.2 of this Agreement.

Section 4.2 Full Purpose Annexation Conversion Date. Pursuant to Subsection (h) of the Act, the Limited Purpose Property shall be deemed to be within the full-purpose boundary limits of the City upon the Full Purpose Annexation Conversion Date without any further action by the City Council. The "Full Purpose Annexation Conversion Date" is the date upon which the City Council adopts an ordinance that includes the Development within the full-purpose boundary limits of the City, which date shall in no event occur prior to the expiration of the term of this Agreement. The Full Purpose Annexation Conversion Date may be altered only by mutual written agreement of the District and the City.

Section 4.3 No Full-Purpose Annexation During Term of Agreement. On the thirty-ninth anniversary date of the Effective Date, the City Manager shall evaluate whether the City should negotiate a new strategic partnership agreement with the District, annex the District for full purposes upon the termination of this Agreement, or allow this Agreement to expire. Within six (6) months following the thirty-ninth anniversary date, the City Manager shall make a recommendation to the City Council regarding the negotiation of a new strategic partnership agreement, the full purpose annexation of the District, or the expiration of this Agreement. If the City Manager recommends that the City negotiate a new strategic partnership agreement or annex the District and the City Council approves the recommendation, the City shall begin negotiations

to enter into a new strategic partnership agreement or commence annexation of the District for full purposes at the expiration of this Agreement, as applicable. If the City Manager recommends that the City neither negotiate a new strategic partnership agreement nor annex the District for full purposes, and the City Council agrees, or if the City Council rejects the City Manager's recommendation to negotiate a new strategic partnership agreement or to annex the District for full purposes, the City may begin proceeding to dis-annex the Limited Purpose Property, if authorized under the applicable provisions of the Local Government Code. If the City decides to dis-annex the Limited Purpose Property and has the authority to dis-annex, the City may institute proceedings to accomplish such dis-annexation to be effective upon the expiration of the term of this Agreement. Such dis-annexation of the Limited Purpose Property shall not affect the existence, powers, or duties of the District, which shall remain in full force and effect.

## **ARTICLE V. TERM**

Section 5.1 This Agreement commences on the Effective Date and continues for forty (40) years.

## **ARTICLE VI. BREACH, NOTICE AND REMEDIES**

Section 6.1 Notification of Breach. If either Party commits a breach of this Agreement, the non-breaching Party shall give Notice, as defined in Section 7.2 herein, to the breaching Party that describes the breach in reasonable detail.

Section 6.2 Cure of Breach. The breaching Party shall commence curing the breach within fifteen (15) calendar days after receipt of the Notice of the breach and shall complete the cure within thirty (30) days from the date of commencement of the cure; however, if the breach is not reasonably susceptible to cure within such thirty (30)-day period, the non-breaching Party shall not bring any action so long as the breaching Party has commenced to cure within such thirty (30)-day period and diligently completes the work within a reasonable time without unreasonable cessation.

Section 6.3 Remedies for Breach. If the breaching Party does not substantially cure the breach within the stated period of time, the non-breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus and injunctive relief; provided, however, that the non-breaching Party shall not be entitled to terminate this Agreement. The Parties specifically waive any right that they have or in the future may have to terminate this Agreement. Damages, if any, to which any non-breaching Party may be entitled shall be limited to actual damages and shall not include special or consequential damages. In addition, the prevailing party in any such action shall be entitled to reasonable attorney's fees and costs of litigation as determined in a final, non-appealable order in a court of competent jurisdiction.

## **ARTICLE VII. ADDITIONAL PROVISIONS**

Section 7.1 Voting; Municipal Office. Pursuant to Section 43.130(a) of the Act, the qualified voters of an area annexed for limited purposes are entitled to vote in municipal elections regarding the election or recall of members of the governing body of the municipality, the election

or recall of the controller, if the office of controller is an elective position of the municipality, and the amendment of the municipal charter. The voters may not vote in any municipal bond election. Pursuant to Section 43.130(b) of the Act, residents of the Property will not be eligible to be a candidate for or to be elected to a municipal office until and unless the Development is annexed into the City for full purposes.

Section 7.2 Notices. Any notices, certifications, approvals, or other communications (a “Notice”) required to be given by one Party to another under this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (i) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (ii) 10 business days after the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid or; (iii) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such change to the other Party as provided in this Section 7.2.

**CITY:**

City of Elgin  
PO Box 591  
Elgin, Texas 78621  
Attn: City Manager

With Required Copy to:

Charlie Crossfield  
Sheets & Crossfield  
309 E. Main Street  
Elgin, Texas 78664-5264

**DEVELOPER:**

Texas Bridle Trails LLC  
c/o Garrett Rajkovich  
6475 Camden Ave #202  
San Jose, California 95120

With Required Copy to:

Ranch Road Development  
c/o Scott Miller  
3951 Hwy 71 Bldg. A  
Bastrop, Texas 78602

With Required Copy to:

Winstead PC  
Attn: Ross Martin  
2728 N. Harwood St., Ste. 500  
Dallas, Texas 75201

Section 7.3 No Waiver. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Parties. Any waiver shall be limited to the specific purpose for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

Section 7.4 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties hereby submit to the jurisdiction of the courts of Bastrop County, Texas and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

Section 7.5 Authority to Execute. The City represents and warrants to the District that the execution of this Agreement has been duly authorized by the City Council and that the person executing this Agreement on behalf of the City has been duly authorized to do so by the City Council. The District represents and warrants to the City that the execution of this Agreement has been duly authorized by the Board and that the person executing this Agreement on behalf of the District has been duly authorized to do so by the Board.

Section 7.6 Severability. The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision so severed.

Section 7.7 Changes in State or Federal Laws. If any state or federal law changes so as to make it impossible for the City or the District to perform its obligations under this Agreement, the Parties will cooperate to amend this Agreement in such a manner that is most consistent with the original intent of this Agreement as legally possible.

Section 7.8 Additional Documents and Acts. The Parties agree that at any time after execution of this Agreement, they will, upon request of the other Party, execute and/or exchange any other documents necessary to effectuate the terms of this Agreement and perform any further acts or things as the other Party may reasonably request to effectuate the terms of this Agreement.

Section 7.9 Assignment. This Agreement shall not be assignable without the other Party's written consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns as permitted by this Agreement.

Section 7.10 Amendment. This Agreement may be amended only with the written consent of the Parties and with approval of the City and the District.

Section 7.11 Interpretation. This Agreement has been negotiated by the Parties, each of which has been represented by counsel; consequently, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Section 7.12 No Third Party Beneficiaries. This Agreement is solely for the benefit of the City and the District, and neither the City nor the District intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone other than the City and the District.

Section 7.13 Governmental Powers. Neither Party waives or surrenders any of its respective governmental powers, immunities or rights, except as specifically waived pursuant in this Section 7.13. Each Party waives its respective governmental immunity from suit and liability only as to any action brought by the other Party to pursue the remedies available under this Agreement. Nothing in this Section 7.13 shall waive any claims, defenses or immunities that either Party has with respect to suits against them by persons or entities not a party to this Agreement.

Section 7.14 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

|           |                                      |
|-----------|--------------------------------------|
| Exhibit A | Depiction of the Development         |
| Exhibit B | Legal Description of the Development |

Section 7.15 Counterpart Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

**APPROVED AND ADOPTED BY THE CITY COUNCIL  
OF THE CITY OF ELGIN ON \_\_\_\_\_, 20\_\_.**

**CITY OF ELGIN**

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Egin, Texas

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
CHARLES CROSSFIELD, City Attorney

STATE OF TEXAS           §  
                                          §  
COUNTY OF \_\_\_\_\_ §

      This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of the City of \_\_\_\_\_, Texas on behalf of the  
city.

\_\_\_\_\_  
Notary Public, State of Texas

**APPROVED AND ADOPTED BY THE BRICKSTON MUNICIPAL  
UTILITY DISTRICT ON \_\_\_\_\_, 20\_\_.**

**BRICKSTON MUNICIPAL UTILITY  
DISTRICT**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title:           President, Board of Directors

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, the President, Board of Directors of the Brickston Municipal Utility District on  
behalf of the district.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit A - Depiction of the Development**

**Exhibit B - Legal Description of the Development**



## Elgin City Council Meeting Agenda Item Executive Summary

---

**ITEM:** Update on City of Elgin Coronavirus Pandemic Response and/or Planning

**DEPARTMENT:** City Manager

**PROPOSED ACTION:**

No Council action proposed, requested, or believed necessary at this time; This item is for a briefing of the City Council city planning and response to the COVID-19 coronavirus.

**BACKGROUND:**

This item is for an informational report and general discussion of the City's plans and/or response to the Coronavirus from the

As of March 13, the Texas Department of State Health Services (TDSHS) is reporting additional cases of the novel coronavirus, COVID-19, bringing the state total to thirty-nine (39) as of 10AM on March 13. Two (2) of those cases have been attributed as being in Travis County; however, the TDSHS notes that the "Travis County cases are pending confirmation of county of residence". **There have been NO CASES of COVID-19 reported in Bastrop County.** The City of Elgin continues work with local and state agencies to monitor and report information as conditions warrant.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was { } included { } not included in the current-year budget {X} N/A

**RECOMMENDATION:**

Review and discussion of City planning and/or response to the Coronavirus Pandemic; and direction to staff, if any, regarding same.

**ATTACHMENTS:**

None

- { } Staff will be making a detailed presentation on this agenda item at the meeting.
- {X} 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  
LAW ENFORCEMENT SERVICES

2019

# ELGIN POLICE DEPARTMENT ANNUAL REPORT

SANDRA BLAND ACT

February 15, 2020

Elgin City Council  
202 Depot Street  
Elgin, Texas 78621

Dear Distinguished Members of the City Council,

In 2001, The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. In previous years, 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 were implemented. Moreover, in 2017, the Sandra Bland Act was passed and signed into law (along with HB 3051 which introduced new racial and ethnic designations). The Sandra Bland Law requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Elgin Police Department and are included in this report.



This particular report contains three sections with information on 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. Further, you will find the Texas HB 3389, which, in 2009, introduced new requirements relevant to racial profiling as well as the Sandra Bland Act. 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 includes statistical data relevant to contacts, made during the course of motor vehicle stops and in accordance with the law, between 1/1/19 and 12/31/19. In addition, this section contains the TCOLE Tier 2 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**  
LAW ENFORCEMENT SERVICES

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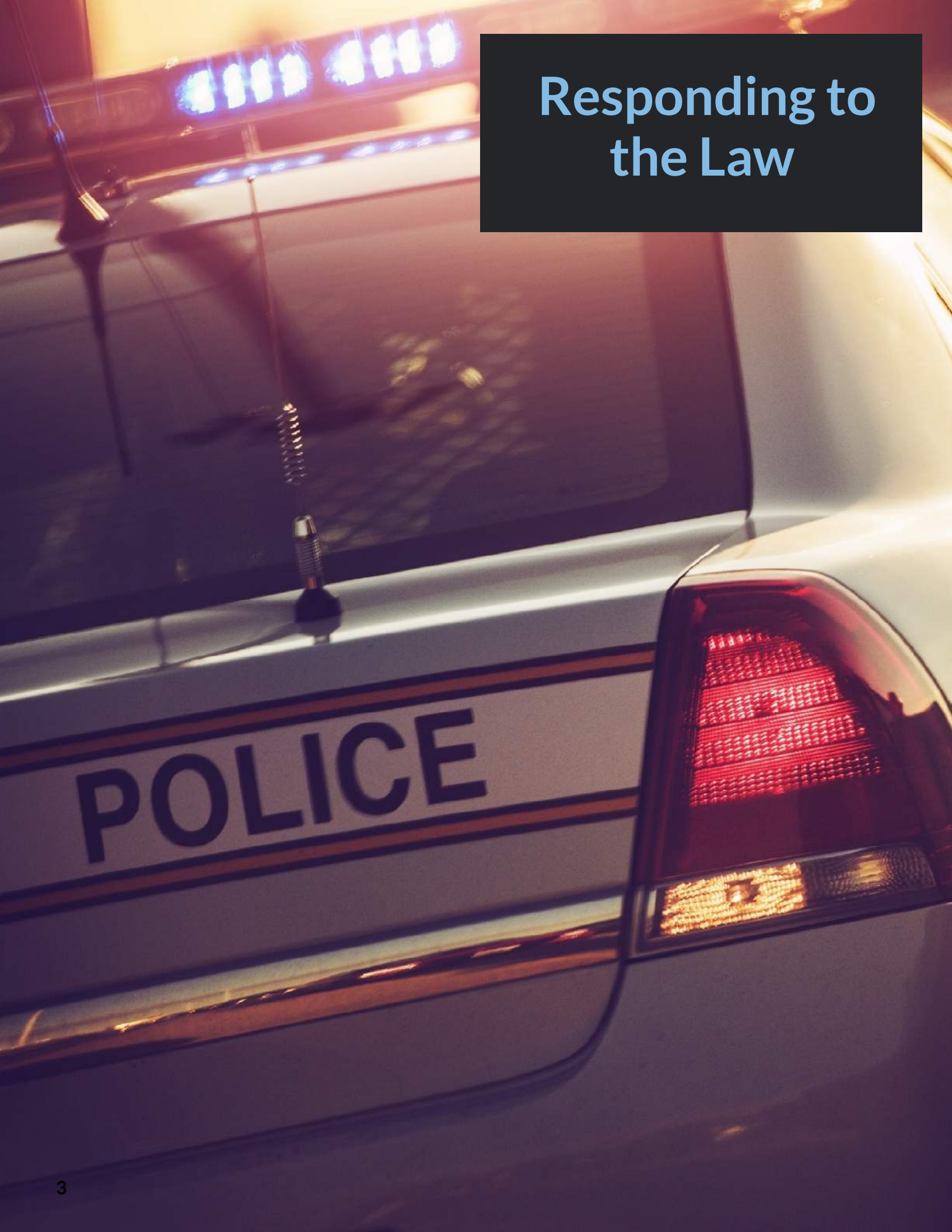
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A close-up, low-angle shot of the rear of a white police vehicle. The word "POLICE" is printed in large, bold, black capital letters on the rear panel. Above the text, a row of blue emergency lights is visible, some of which are flashing. To the right, a red taillight is illuminated. The car is parked on a dark surface, and the background is dark and out of focus.

# Responding to the Law





# Public Education on Filing Compliments and Complaints

## **Informing the Public on the Process of Filing a Compliment or 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 compliment or 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 compliment and complaint on a racial profiling violation by a Elgin Police officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

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

Photo Caption

Photo Caption

## Training

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





# Racial Profiling

## Course Number 3256

Texas Commission on Law Enforcement

September 2001

**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.





# Racial Profiling

## Course Number 3256

Texas Commission on Law Enforcement  
September 2001

### 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**

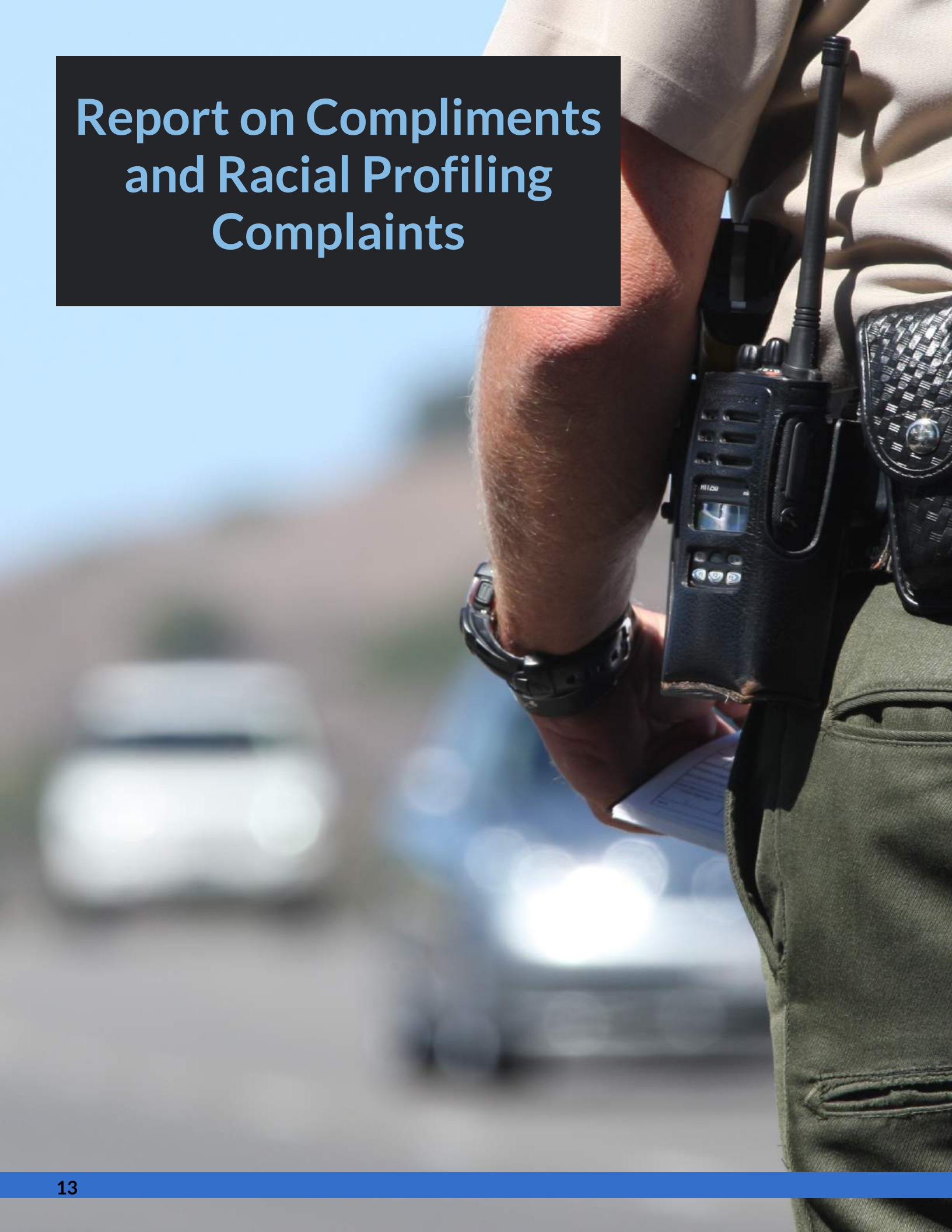
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

**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 Compliments and Racial Profiling Complaints



## Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/19---12/31/19, based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.



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 1/1/19 - 12/31/19.

### Complaints Filed for Possible Violations of The Texas Racial Profiling Law

| Complaint No. | Alleged Violation | Disposition of the Case |
|---------------|-------------------|-------------------------|
|               |                   |                         |
|               |                   |                         |
|               |                   |                         |
|               |                   |                         |
|               |                   |                         |
|               |                   |                         |
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|               |                   |                         |
|               |                   |                         |

### Additional Comments:

|  |
|--|
|  |
|  |
|  |
|  |
|  |
|  |

# Tables Illustrating Motor Vehicle-Related Contacts



# Tier 2 Data





## **Total stops: 4,508**

### **1. Gender**

1.1 Female: 1,685

1.2 Male: 2,823

### **2. Race or ethnicity**

2.1 Black: 821

2.2 Asian/Pacific Islander: 146

2.3 White: 1,646

2.4 Hispanic/Latino: 1,892

2.5 Alaska Native/American Indian: 3

### **3. Was race or ethnicity known prior to stop?**

3.1 Yes: 34

3.2 No: 4,474

### **4. Reason for stop?**

4.1 Violation of law: 288

4.2 Pre-existing knowledge: 30

4.3 Moving traffic violation: 3,092

4.4 Vehicle traffic violation: 1,098



18

## **5. Street address or approximate location of the stop**

- 5.1 City street: **2,415**
- 5.2 US highway: **1,902**
- 5.3 County road: **15**
- 5.4 State Highway: **119**
- 5.5 Private Property: **57**

## **6. Was a search conducted?**

- 6.1 Yes: **288**
- 6.2 No: **4,220**

## **7. Reason for Search?**

- 7.1 Consent: **22**
- 7.2 Contraband in plain view: **19**
- 7.3 Probable cause: **130**
- 7.4 Inventory: **2**
- 7.5 Incident to arrest: **115**

## **8. Was Contraband discovered?**

- 8.1 Yes: **146**
- 8.2 No: **142**

## **9. Description of contraband**

- 9.1 Drugs: **120**
- 9.2 Currency: **0**
- 9.3 Weapons: **3**
- 9.4 Alcohol: **15**
- 9.5 Stolen property: **1**
- 9.6 Other: **7**

## **10. Result of the stop**

- 10.1 Verbal warning: **13**
- 10.2 Written warning: **2,063**
- 10.3 Citation: **2,282**
- 10.4 Written Warning and Arrest: **25**
- 10.5 Citation and Arrest: **22**
- 10.6 Arrest: **103**

## **11. Arrest based on**

- 11.1 Violation of Penal Code: **65**
- 11.2 Violation of Traffic Law: **5**
- 11.3 Violation of City Ordinance: **0**
- 11.4 Outstanding Warrant: **80**

## **12. Was physical force resulting in bodily injury used during stop?**

- 12.1 Yes: **1**
- 12.2 No: **4,507**



Table 1. (Motor Vehicle Contacts Including Tickets, Citations and Warnings). (1/1/19-12/31/19).

| Race/Ethnicity            | All Motor Vehicle Contacts |            | Tickets or Citations* |            | Verbal Warnings |            | Written Warnings |            |
|---------------------------|----------------------------|------------|-----------------------|------------|-----------------|------------|------------------|------------|
|                           | N                          | %          | N                     | %          | N               | %          | N                | %          |
| White                     | 1,646                      | 37         | 720                   | 32         | 2               | 15         | 884              | 43         |
| Black                     | 821                        | 18         | 386                   | 17         | 2               | 15         | 383              | 19         |
| Hispanic or Latino        | 1,892                      | 42         | 1,079                 | 47         | 9               | 69         | 744              | 36         |
| Asian or Pacific Islander | 128                        | 3          | 84                    | 4          | 0               | 0          | 44               | 2          |
| Alaska Native or American | 3                          | .07        | 3                     | .1         | 0               | .0         | 0                | 0          |
| Middle Eastern **         | 18                         | .4         | 10                    | .4         | 0               | 0          | 8                | .4         |
| Other                     | 0                          | 0          | 0                     | 0          | 0               | 0          | 0                | 0          |
| <b>TOTAL</b>              | <b>4,508</b>               | <b>100</b> | <b>2,282</b>          | <b>100</b> | <b>13</b>       | <b>100</b> | <b>2,063</b>     | <b>100</b> |

\*Includes stops for alleged violation of a law or ordinance, tickets/citations, and verbal and written warnings

"N" represents "number" of all motor vehicle-related contacts

\*\*Race/Ethnicity is defined by HB 3051.

\*\*Not Required Racial/Ethnic Components



**Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison (Austin-Marble Falls CSA)**

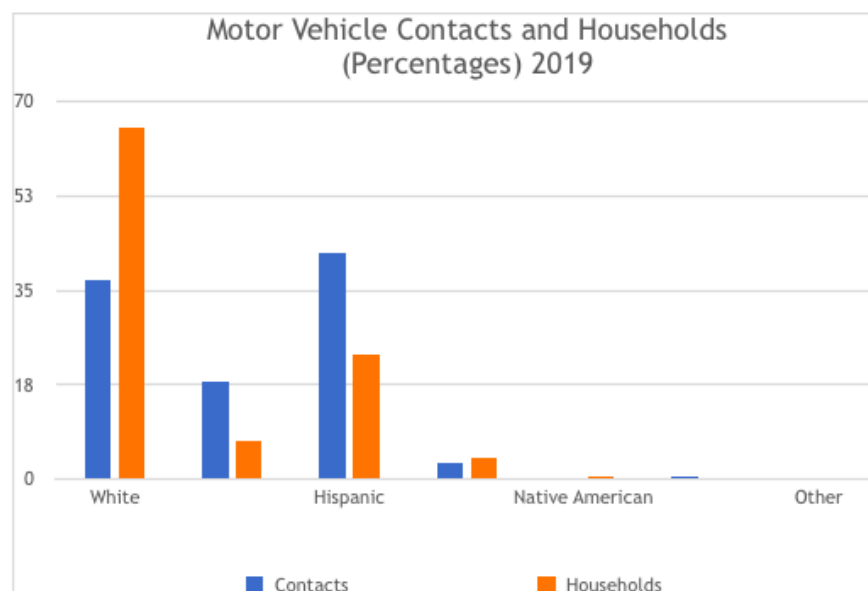
Comparison of motor vehicle-related contacts with households that have vehicle access (in percentages). (1-1-2019 to 12-31-2019).

| Race/Ethnicity*                  | Contacts (in percentages) | Households With Vehicle Access (in percentages) |
|----------------------------------|---------------------------|-------------------------------------------------|
| White                            | 37                        | 65                                              |
| Black                            | 18                        | 7                                               |
| Hispanic or Latino               | 42                        | 23                                              |
| Asian or Pacific Islander        | 3                         | 4                                               |
| Alaska Native or American Indian | .07                       | .5                                              |
| Middle Eastern                   | .4                        | N/A                                             |
| Other**                          | 0                         | N/A                                             |
| <b>TOTAL</b>                     | 100                       | 100                                             |

"N" represents "number" of all motor vehicle contacts

\*\* Race/Ethnicity is defined by HB 3051

\*\* Not Required Racial/Ethnic Components



**Table 3. Motor Vehicle Searches and Arrests**

(1-1-2019 to 12-31-2019),

| Race/Ethnicity            | Searches |     | Consensual Searches |     | Custody Arrests |     |
|---------------------------|----------|-----|---------------------|-----|-----------------|-----|
|                           |          |     |                     |     |                 |     |
|                           | N        | %   | N                   | %   | N               | %   |
| White                     | 68       | 24  | 11                  | 50  | 40              | 27  |
| Black                     | 94       | 33  | 3                   | 14  | 50              | 33  |
| Hispanic or Latino        | 125      | 43  | 8                   | 36  | 60              | 40  |
| Asian or Pacific Islander | 0        | 0   | 0                   | 0   | 0               | 0   |
| Alaska Native or American | 0        | 0   | 0                   | 0   | 0               | 0   |
| Middle Eastern **         | 1        | .3  | 0                   | 0   | 0               | 0   |
| Other**                   | 0        | 0   | 0                   | 0   | 0               | 0   |
|                           |          |     |                     |     |                 |     |
| <b>TOTAL</b>              | 288      | 100 | 22                  | 100 | 150             | 100 |

"N" represents "number" of all motor vehicle contacts

\*\* Race/Ethnicity is defined by HB 3051

\*\* Not Required Racial/Ethnic Components

**Table 4. Total Number of Instances where Officers Knew/Did not Know Race/Ethnicity of Individuals Before Being Detained (1-1-2019 to 12-31-2019)**

| Total Number of Instances Officers <u>KNEW</u> Race and Ethnicity of Individuals Before Being Detained | Total Number of Instances Officers <u>DID NOT KNOW</u> Race and Ethnicity of Individuals Before Being Detained |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| 34                                                                                                     | 4,474                                                                                                          |
|                                                                                                        |                                                                                                                |
|                                                                                                        |                                                                                                                |

**Table 5. Instances where Peace Officers Used Physical Force that Resulted in Bodily Injury**  
(1-1-2019 to 12-31-2019).

| Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury | Location of Stop | Reason for Stop                  |
|-----------------------------------------------------------------------------------|------------------|----------------------------------|
|                                                                                   |                  |                                  |
| Case #1903757                                                                     | 301 S. Main St.  | Moving Traffic Violation/Evading |
|                                                                                   |                  |                                  |
|                                                                                   |                  |                                  |
|                                                                                   |                  |                                  |
|                                                                                   |                  |                                  |



Table 6. Search Data. (1-1-2019 to 12-31-2019).

| Race/Ethnicity            | Searches |     | Contraband/<br>Evidence Found |     | Contraband/<br>Evidence Not<br>Found |     | Arrests |     |
|---------------------------|----------|-----|-------------------------------|-----|--------------------------------------|-----|---------|-----|
|                           | N        | %   | N                             | %   | N                                    | %   | N       | %   |
| White                     | 68       | 24  | 36                            | 25  | 32                                   | 23  | 40      | 27  |
| Black                     | 94       | 33  | 43                            | 29  | 51                                   | 36  | 50      | 33  |
| Hispanic or Latino        | 125      | 43  | 66                            | 45  | 59                                   | 41  | 60      | 40  |
| Asian or Pacific Islander | 0        | 0   | 0                             | 0   | 0                                    | 0   | 0       | 0   |
| Alaska Native or American | 0        | 0   | 0                             | 0   | 0                                    | 0   | 0       | 0   |
| Middle Eastern **         | 1        | .3  | 1                             | .7  | 0                                    | 0   | 0       | 0   |
| Other**                   | 0        | 0   | 0                             | 0   | 0                                    | 0   | 0       | 0   |
|                           |          |     |                               |     |                                      |     |         |     |
| <b>TOTAL</b>              | 288      | 100 | 146                           | 100 | 142                                  | 100 | 150     | 100 |

"N" represents "number" of all motor vehicle contacts

\*\* Race/Ethnicity is defined by HB 3051

\*\* Not Required Racial/Ethnic Components



### Table 7. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1-1-2019 to 12-31-2019.

#### Data Audits on Racial Profiling Data (1-1-2019 to 12-31-2019).

| Number of Data Audits Completed | Date of Completion | Outcome of Audit                     |
|---------------------------------|--------------------|--------------------------------------|
| 1                               | 5/1/2019           | Data reviewed is valid and reliable. |
| 2                               | 8/20/2019          | Data reviewed is valid and reliable. |
| 3                               | 1/15/20            | Data reviewed is valid and reliable. |
|                                 |                    |                                      |

#### Additional Comments:

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|--|
|  |
|  |
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|  |
|  |
|  |





# Analysis and Interpretation of Data

In an effort to understand the analysis provided in this report, it is crucial that the evolution of the Texas Racial Profiling Law and its requirements, is discussed. That is, in 2001, the Texas legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. Thus, 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 was 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 mentioned previously, in 2009, the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1st, 2010. These changes included, but are were not limited to, the re-definition of a contact to include motor vehicles where a citation was issued or an arrest made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. Also, the 2009 law required adding "middle eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1st of each year.

In 2017, the Texas Legislators passed H.B. 3051 which removed the Middle Eastern data requirement but standardized the racial and ethnic categories relevant to the individuals that came in contact with the police. In addition, the Sandra Bland Act (S.B. 1849) was passed and became law. Thus, the most significant legislative act in Texas history regarding data requirements on law enforcement contacts, became law and took effect on January 1, 2018. The Sandra Bland Act not only requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

*1. A comparative analysis of the information compiled (under Article 2.133):*

- 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;*
- b. Examine the disposition of motor vehicle 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 stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

*2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.*

In an effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Elgin Police Department commissioned the analysis of its 2019 contact data. Thus, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2019 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the “other” category, as optional categories), that came in contact with the police in the course of a motor vehicle related contact, and were either issued a ticket, citation, warning were issued or an arrest was made. Also, included in this data were instances where a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest and use of physical force resulting in bodily injury.

The additional data analysis performed was based on a comparison of the 2019 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 2019 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 accepted the recommendation to utilize 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 2 (2019) Motor Vehicle-Related Contact Analysis**

When analyzing the enhanced Tier 2 data collected in 2019, it was evident that most motor vehicle-related contacts were made with males and most of the contacts were made with Hispanic drivers. This was followed by White and Black drivers. In most instances, police officers report not knowing the race or ethnicity prior to the stop. Further, they cite as the primary reason for the stop to have been a “moving traffic violation”. This was followed by “vehicle traffic violation”.

In 2019, most of the contacts made took place in city streets. The Elgin Police Department cites that most contacts did not result in a search. Of those searches made, most were based on probable cause. The second most significant reason for a search was “incident to arrest”. In addition, contraband was found as a result of most searches. Of the contraband found, in most instances, drugs were cited as the most frequent contraband found.

The data also shows that the majority of stops resulted in a citation. This was followed by “written warnings”. When an arrest was made, the most frequent reason provided was an outstanding warrant. Also, one of the contacts resulted in the use of physical force which caused bodily injury.

### **Comparative Analysis**

The data analysis of motor vehicle contacts to the census data relevant to the number of “households” in the Austin-Marble Falls CSA who indicated, in the 2010 census, that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites and Asians that came in contact with the police was lower than the percentage of White and Asian households in the Austin-Marble Falls CSA that claimed, in the 2010 census, to have access to vehicles. The opposite was true of Blacks and Hispanics. That is, a higher percentage of Blacks and Hispanics came in contact with the police than the percentage of Black and Hispanic households in the Austin-Marble Falls CSA that claimed, in the 2010 census, to have access to vehicles.

The analysis of the searches performed shows that most searches produced contraband. This is above national law enforcement trends. In addition, of those searches that produced contraband, the majority of them involved Hispanic contacts. This was followed by Blacks.

## Summary of Findings

The most recent Texas Racial Profiling Law requires that police department perform data audits in order to validate the data being reported. Consistent with this requirement, the Elgin Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in table 7, the audits performed have shown that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

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.

As part of this effort, the Elgin Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in future years.
- 2) Commission data audits in 2020 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive analysis of the data included in this report demonstrates that the Elgin Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of tier 2 data, and ensures that the practice of racial profiling is not tolerated.





# Checklist

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

- ✓ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✓ Include in the racial profiling policy, a 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 compliment and complaint process.
- ✓ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✓ Collect, report and analyze motor vehicle data (Tier 2).
- ✓ Commission Data Audits and a Search Analysis.
- ✓ 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 2) and present this to the local governing body and TCOLE by March 1, 2020.
- ✓ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

# LEGISLATIVE & ADMINISTRATIVE ADDENDUM





# TCOLE GUIDELINES

## Guidelines for Compiling and Reporting Data under Senate Bill 1074

### Background

Senate Bill 1074 of the 77<sup>th</sup> 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 77<sup>th</sup> 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 an 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, 2001

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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.

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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.

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Chief Clerk of the House

Approved:

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Date

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Governor

# Modifications to the Original Law

## (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.

# Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

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

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino [~~Native American, or Middle Eastern descent~~].

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino [~~or Native American descent~~].

SECTION 3. This Act takes effect September 1, 2017.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

# The Sandra Bland Act

## (S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

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

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b)

or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mentally ill] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous

municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

- (1) establishing [a] new collaboratives; or
  - (2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].
- (b) The department shall require each entity awarded a grant under this section to:
- (1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]
  - (2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and
  - (3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

- (1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;
  - (2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and
  - (3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.
- (b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).
- (c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

### ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible]

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules

and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16) adopt a policy for gathering and distributing to jails under the commission's

jurisdiction information regarding:

- (A) common issues concerning jail administration;
- (B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and
- (C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

- (A) determine if a prisoner is pregnant; and
- (B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk

individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and  
(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;  
(2) an attempted suicide;  
(3) a death;  
(4) a serious bodily injury, as that term is defined by  
Section 1.07, Penal Code;  
(5) an assault;  
(6) an escape;  
(7) a sexual assault; and  
(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

#### ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not

be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program 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. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

## ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(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 compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(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 **ticket, citation, or warning** 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;

(D) **whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;**

(E) **the location of the stop; and**

(F) **the reason for the stop; 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 Texas Commission on Law Enforcement; 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 stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. **The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code.** If a law enforcement agency installs video or audio equipment or **equips peace officers with body worn cameras** as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

**(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.**

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

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

(1) a physical description of any 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;

(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 of the contraband or evidence;

(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;

(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 verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(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; [and]

(B) examine the disposition of motor vehicle 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 stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; 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.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

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 in law enforcement motor vehicles and

motorcycles or equipping peace officers with body worn cameras [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 in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [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 in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [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 in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [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 taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(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 an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the

guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and

(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

\_\_\_\_\_  
Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:  
Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:  
Yeas 137, Nays 0, one present not voting.

#### ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\_\_\_\_\_  
Chief Clerk of the House

# **ELGIN POLICE DEPARTMENT RACIAL PROFILING POLICY**

## 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 White, Black, Hispanic or Latino, Asian or Pacific Islander, or Alaska Native or American Indian descent, Texas House Bill 3051 (2017-2018).

### 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 motor vehicle 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.

## COMPLIMENTS

If citizens want to give feedback in the form of a compliment with respect to each ticket, citation, or warning issued by an officer they may do so by calling us (512-285-5757), by mailing your compliment to 202 Depot St., Elgin, Texas 78621, or e-mailing us at [chiefofpolice@pd.ci.elgin.tx.us](mailto:chiefofpolice@pd.ci.elgin.tx.us). Complimenting an Elgin Police department employee may also be done by going to <http://www.elgintx.com/241/Police-Department>, completing and submitting the form.

Verbal commendations may also be given to any department supervisor.

## 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 video 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.

Citizens may also contact the Elgin Police Department if it is believed that the conduct of an employee was inappropriate. This can be done by phone (512-285-5757), by mailing the complaint to 202-Depot St., Elgin, Texas 78621, or e-mailing it to [chiefofpolice@pd.ci.elgin.tx.us](mailto:chiefofpolice@pd.ci.elgin.tx.us). The complaint process is slightly more involved to comply with state law regarding complaints on police personnel. The complaint form may be downloaded at <http://www.elgintx.com/241/Police-Department>.

## 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 prohibiting 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 Motor vehicle tickets, citation, or warning is issued and to arrests made as a result of those stops. Whether the officer knew the race or ethnicity of the individual detained before detaining that individual; whether the officer used physical force that resulted in bodily injury, as that term is

defined in Section 1.07, Penal Code (“means physical pain, illness, or any impairment of physical condition), during the stop;

- a. The location of the stop; and
- b. The reason for the stop.

## OFFICER RESPONSIBILITIES

Officers will engage in motor vehicle 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.

### Motor Vehicle Stops

1. Officers will continue to conduct motor vehicle 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.

## 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 TCOLE 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 motor vehicle 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 video for at least one of his/her motor vehicle stops on a monthly basis to confirm video usage and compliance with profiling law. Each patrol officer's supervisor shall evaluate and compare the number of searches resulting from motor vehicle stops and whether contraband or other evidence was discovered in the course of those searches (SEARCH ANALYSIS), which complies with CCP Art. 2.133.

## OFFICE OF THE CHIEF RESPONSIBILITIES

The Office of the Chief will be responsible for oversight of the reporting process. The office of the Chief of Police is responsible for auditing reports to ensure that the race and ethnicity of the person operating the motor vehicle is being reported. 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 is required to publish not later than March 1 of each year an annual report that contains information compiled during the previous year; The Office of the Chief is required to submit an annual report of the information collected to:

- i. The Texas Commission on Law Enforcement; and
- ii. The City Council in accordance with CCP Art. 2.134 (c)

# Contact Information

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

Del Carmen Consulting, LLC

817.681.7840

[www.texasracialprofiling.com](http://www.texasracialprofiling.com)

[www.delcarmenconsulting.com](http://www.delcarmenconsulting.com)

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DEL CARMEN CONSULTING, LLC  
LAW ENFORCEMENT SERVICES



# **City of Elgin Elgin Police Department**

## **2019 Annual Racial Profiling Report Presentation**

**February 2020**

## Introduction

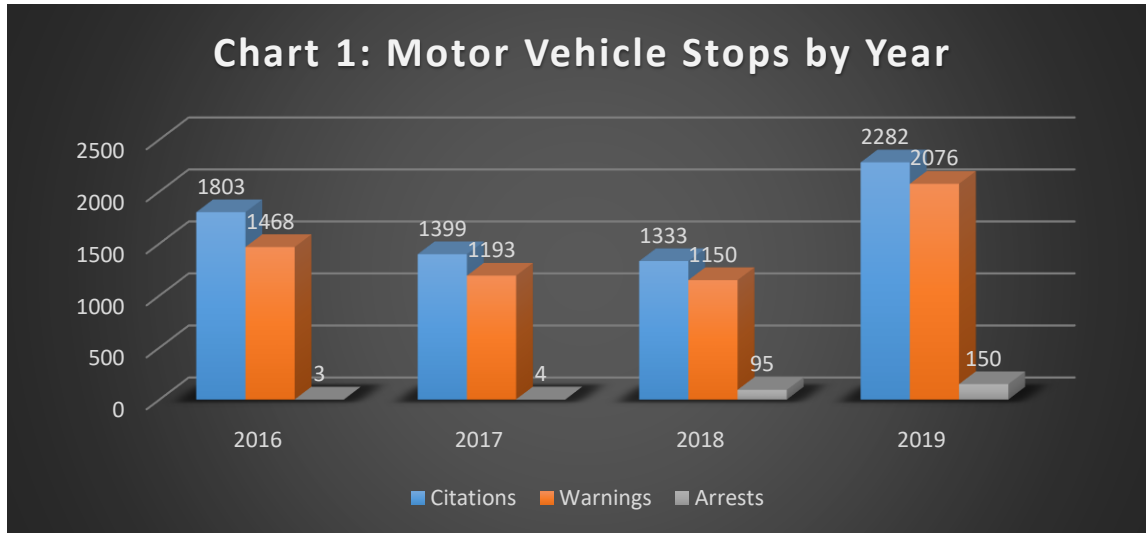
This report contains data regarding all motor vehicle stops made by Elgin Police Department police officers during 2019. The department maintains a strong stance against racial profiling; its policy and practice is to provide law enforcement services and to enforce the law equally and fairly without discrimination toward any individual(s) or group. The City of Elgin has a citizen complaint process where any allegations of racial profiling can be brought forward for investigation. Starting in 2018, the Elgin Police Department began using Tier 2 data collection as a result of state law and best practices.

This report contains the following:

- Motor vehicle stops in which a warning, or a citation was issued or an arrest was made - by year and by race/ethnicity (Tier 2 data for the 2nd year)
- Searches resulting from those stops - by year, by race/ethnicity, type and arrest information
- Search results ("hit rate") - by year and by race/ethnicity
- Racial profiling complaints - including reason for contact and outcome

### Motor vehicle stops resulting in a citation, a warning or an arrest:

Elgin police officers made 4508 motor vehicle contacts in 2019. This compares to 2578 motor vehicle contacts in 2018, 2596 contacts in 2017, and 3274 contacts for 2016.



- Arrests for 2016/2017 are for contacts that were cited and arrested only.
- A 75% increase between 2018 and 2019 data for total contacts including citations, warnings and arrests
- Arrests for 2019 totaled 150 under the following categories:
  - Outstanding warrants – 80 or 53% (54 or 57% in 2018)
  - Violations of the Penal Code (such as DWI, Illegal Drugs) – 65 or 43% in 2019 (37 or 40% in 2018)

- Violations of the Traffic Code (such as DWLI, No DL 3<sup>rd</sup>) – 5 for 2019 and 4 for 2018.

**Table 1: Motor Vehicle Stops by Race/Ethnicity:**

|                 | 2016 Contacts* |             | 2017 Contacts* |             | 2018 Contacts |             | 2019 Contacts |             |
|-----------------|----------------|-------------|----------------|-------------|---------------|-------------|---------------|-------------|
| Race/Ethnicity  | Count          | % Total     | Count          | % Total     | Count         | % Total     | Count         | % Total     |
| Caucasian       | 669            | 37%         | 546            | 39%         | 1008          | 39%         | 1646          | 37%         |
| African         | 295            | 16%         | 229            | 16%         | 440           | 17%         | 821           | 18%         |
| Hispanic        | 802            | 44%         | 595            | 42%         | 1065          | 41%         | 1892          | 42%         |
| Asian           | 32             | 2%          | 12             | 0.90%       | 58            | 2%          | 128           | 3%          |
| Native American | 2              | 0.10%       | 2              | 0.10%       | 0             | 0%          | 3             | 0.07%       |
| Middle Eastern  | 1              | 0.05%       | 8              | 0.60%       | 7             | 0.20%       | 18            | 0.40%       |
| Other           | 5              | 0.20%       | 11             | 0.80%       | 0             | 0%          | 0             | 0%          |
| <b>Total</b>    | <b>1806</b>    | <b>100%</b> | <b>1403</b>    | <b>100%</b> | <b>2578</b>   | <b>100%</b> | <b>4508</b>   | <b>100%</b> |

\*Categories do not include warnings

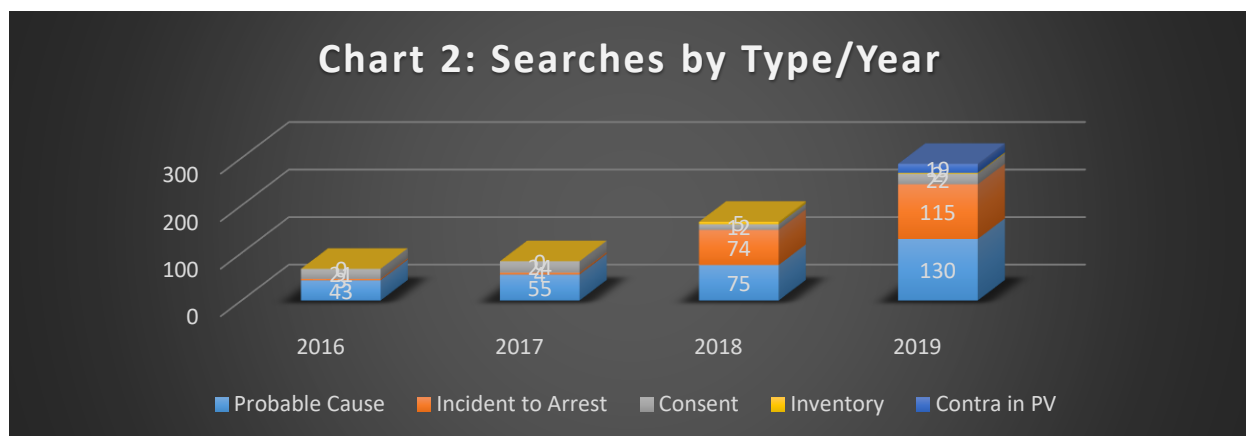
- The distribution of stops by race/ethnicity in 2019 was similar to that seen in 2018, with a 2% reduction in Caucasian and 1% increase noted for Africans and Hispanics.
- While opting to use the Fair Roads Standard for our analysis, there are various challenges with this method in being able to provide a fair and accurate report. We chose to use this method because it is the method recommended by many civil rights groups in Texas and in an effort to show good will and transparency within our community.
  - Based on 2010 US Census data relevant to the number of households that have access to vehicles while controlling for race and ethnicity of the heads of households.
  - Census data contains information on residents of a community, regardless of the fact they may or may not be among the driving population.
  - Census data captures information on city residents only and excludes any contacts that may be made with non-resident.

(See Analysis section in Del Carmen report pg. 26-27)

- Most notable in the additional analysis conducted by EPD is that of the 4508 contacts made only 1377 (**31%**) reported to be residents of Elgin. (26% reported to be residents in 2018)

### **Searches resulting from motor vehicle stops**

The number of searches resulting from motor vehicle contacts increased from 166 in 2018 to 288 in 2019. The search rate (searches as a percent of total contacts) was **6%** for 2018 and 2019.



Note: data for 2017 and 2016 exclude searches from warnings.

**Table 2: Searches by Race/Ethnicity**

|                 | 2016 Searches* |             | 2017 Searches* |             | 2018 Searches |             | 2019 Searches |             |
|-----------------|----------------|-------------|----------------|-------------|---------------|-------------|---------------|-------------|
| Race/Ethnicity  | Count          | % Total     | Count          | % Total     | Count         | % Total     | Count         | % Total     |
| Caucasian       | 19             | 28%         | 20             | 24%         | 44            | 27%         | 68            | 24%         |
| African         | 22             | 33%         | 24             | 29%         | 46            | 28%         | 94            | 33%         |
| Hispanic        | 26             | 38%         | 38             | 46%         | 76            | 46%         | 125           | 43%         |
| Asian           | 0              | 0%          | 0              | 0%          | 0             | 0%          | 0             | 0%          |
| Native American | 0              | 0%          | 0              | 0%          | 0             | 0%          | 0             | 0%          |
| Middle Eastern  | 0              | 0%          | 1              | 1%          | 0             | 0%          | 1             | 0.35%       |
| Other           | 0              | 0%          | 0              | 0%          | 0             | 0%          | 0             | 0%          |
| <b>Total</b>    | <b>67</b>      | <b>100%</b> | <b>83</b>      | <b>100%</b> | <b>166</b>    | <b>100%</b> | <b>288</b>    | <b>100%</b> |

\*Categories do not include warnings

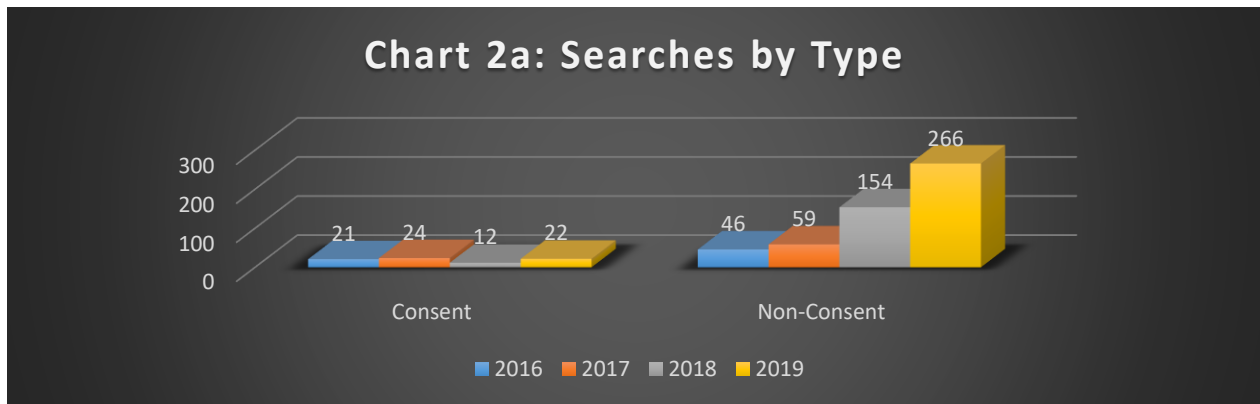
The distribution of **total** searches by race/ethnicity in 2019 were consistent with 2018 with Caucasians and Hispanics decreasing by 3% and Africans increasing 5%.

### Searches resulting from motor vehicle stops by search type

Searches that result from motor vehicle stops can be categorized as **consent or non-consent searches**:

- **Consent searches** occur when the officer asks for permission to conduct the search and the citizen consents to be searched. Under most circumstances, a driver must give permission for a search in writing before a consent search can be initiated.
- **Non-consent searches** occur after an arrest or if the officer develops probable cause. Probable cause requires reasonable grounds to suspect a person has committed or is committing a crime and gives an officer the legal authority to search without consent.

The following shows the distribution of total searches by type for 2016 through 2019.



- Consent searches increased from 12 in 2018 to 22 in 2019. (This is in direct proportion to the increase in total contacts that increased by 75%).
- 2016 and 2017 data does not include searches from warmings.

EPD Policy 4/2.03.02 Motor Vehicle Searches and 4/2/03.05 Warrant-Less Search and Seizure has been amended to reinforce that officers should be deliberate when making search decisions:

*Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation.*

A consent to search form was implemented that must be completed by the officer and signed by the violator on video prior to conducting a consent search. This process is tracked, and reviewed by supervisors to ensure consistent and professional practices.

#### **Searches resulting from motor vehicle stops: by search type, race/ethnicity and arrest data**

**Table 2a: Search Types and Arrests by Race/Ethnicity (2018)**

| Race/Ethnicity  | Searches   |             | Consent Searches |             | Arrests   |             |
|-----------------|------------|-------------|------------------|-------------|-----------|-------------|
|                 | Count      | % Total     | Count            | % Total     | Count     | % Total     |
| Caucasian       | 44         | 27%         | 2                | 17%         | 21        | 22%         |
| African         | 46         | 28%         | 4                | 33%         | 25        | 26%         |
| Hispanic        | 76         | 46%         | 6                | 50%         | 49        | 52%         |
| Asian           | 0          | 0%          | 0                | 0%          | 0         | 0%          |
| Native American | 0          | 0%          | 0                | 0%          | 0         | 0%          |
| Middle Eastern  | 0          | 0%          | 0                | 0%          | 0         | 0%          |
| Other           | 0          | 0%          | 0                | 0%          | 0         | 0%          |
| <b>Total</b>    | <b>166</b> | <b>100%</b> | <b>12</b>        | <b>100%</b> | <b>95</b> | <b>100%</b> |

**Table 2b: Search Types and Arrests by Race/Ethnicity (2019)**

| Race/Ethnicity  | Searches   |             | Consent Searches |             | Arrests    |             |
|-----------------|------------|-------------|------------------|-------------|------------|-------------|
|                 | Count      | % Total     | Count            | % Total     | Count      | % Total     |
| Caucasian       | 68         | 24%         | 11               | 50%         | 40         | 27%         |
| African         | 94         | 33%         | 3                | 14%         | 50         | 33%         |
| Hispanic        | 125        | 43%         | 8                | 36%         | 60         | 40%         |
| Asian           | 0          | 0%          | 0                | 0%          | 0          | 0%          |
| Native American | 0          | 0%          | 0                | 0%          | 0          | 0%          |
| Middle Eastern  | 1          | 0.35%       | 0                | 0%          | 0          | 0%          |
| Other           | 0          | 0%          | 0                | 0%          | 0          | 0%          |
| <b>Total</b>    | <b>288</b> | <b>100%</b> | <b>22</b>        | <b>100%</b> | <b>150</b> | <b>100%</b> |

- In 2018, 6% of contacts resulted in searches and 4% resulted in arrest. In 2019, 6% of contacts resulted in searches and 3% resulted in arrest.
- Percentages for Hispanic arrests/searches included: 52% warrants, 35% DWI, 12% POCS, 1% DWLI (1 arrest). All were non-discretionary and in compliance with current policy.
- Percentages for African arrests/searches included: 60% warrants, 14% DWI, 8% DWLI (4 arrests), 6% POCS, 4% UUMV, 2% each for EPO violations, evading, weapons violations, terroristic threat.
- Percentages for Caucasian arrests/searches included: 53% warrants, 25% DWI, 18% POCS, 2% each for evading and UUMV.

### **Searches resulting from motor vehicle stops: “hit rates”**

Productive searches or “hits” are searches where contraband is found (e.g., drugs or weapons). The table below shows that, for all searches, the average hit rate was 51% in 2019.

**Table 3: Search Hit Rates – All Searches**

| Race/Ethnicity  | 2017*     |           |            | 2018      |            |            | 2019       |            |            |
|-----------------|-----------|-----------|------------|-----------|------------|------------|------------|------------|------------|
|                 | Hits      | Searches  | Hit Rate   | Hits      | Searches   | Hit Rate   | Hits       | Searches   | Hit Rate   |
| Caucasian       | 12        | 20        | 60%        | 20        | 44         | 45%        | 36         | 68         | 53%        |
| African         | 12        | 24        | 50%        | 19        | 46         | 42%        | 43         | 94         | 46%        |
| Hispanic        | 18        | 38        | 47%        | 36        | 76         | 47%        | 66         | 125        | 53%        |
| Asian           | 0         | 0         | 0%         | 0         | 0          | 0%         | 0          | 0          | 0%         |
| Native American | 0         | 0         | 0%         | 0         | 0          | 0%         | 0          | 0          | 0%         |
| Middle Eastern  | 1         | 1         | 100%       | 0         | 0          | 0%         | 1          | 1          | 100%       |
| Other           | 0         | 0         | 0%         | 0         | 0          | 0%         | 0          | 0          | 0%         |
| <b>Total</b>    | <b>43</b> | <b>83</b> | <b>52%</b> | <b>75</b> | <b>166</b> | <b>45%</b> | <b>146</b> | <b>288</b> | <b>51%</b> |

\*Categories do not include warnings

- Searches incident to arrest are not made primarily for evidentiary purposes but for safety prior to transporting which ordinarily will not produce discovery of contraband. In 2019, of the 115 searches made incident to an arrest only 13 found contraband. For 2018, 5 of the 75 resulted in finding contraband. When this data is removed the actual “hit rates” for discretionary searches increase.

|                                          | 2018      |            |            | 2018       |            |            |
|------------------------------------------|-----------|------------|------------|------------|------------|------------|
|                                          | Hits      | Searches   | Hit Rate   | Hits       | Searches   | Hit Rate   |
| <b>Total Searches Incident to Arrest</b> | <b>75</b> | <b>166</b> | <b>45%</b> | <b>146</b> | <b>288</b> | <b>51%</b> |
| <b>Adjusted Total less SIA</b>           | <b>70</b> | <b>91</b>  | <b>77%</b> | <b>133</b> | <b>173</b> | <b>77%</b> |

Because consent searches involve increased officer discretion and judgment (as compared to non-consent searches), it is important to examine these hit rates separately. The average hit rate for consent searches in 2017 was 29%. With training, new policies and documentation requirements in place, the hit rate for consent searches in 2018 increased to 75%. In 2019, the hit rate for consent searches was 55%.

The relatively high hit rates across races/ethnicities reflects that racial profiling related to searches is not occurring.

#### **Racial profiling complaints:**

For 2018 there were no complaints received related to racial profiling.

# Racial Profiling Report | Full

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Reporting Date: 02/18/2020

Agency Name: ELGIN POLICE DEPT.  
TCOLE Agency Number: 021202

Chief Administrator: PATRICK D. SOUTH

Agency Contact Information:  
Phone: (512) 285-5757  
Email: psouth@pd.ci.elgin.tx.us

Mailing Address:  
202 DEPOT ST.  
ELGIN, TX 78621

This Agency filed a full report

ELGIN POLICE DEPT. has adopted a detailed written policy on racial profiling. Our policy:

- 1.) clearly defines acts constituting racial profiling;
- 2.) strictly prohibit peace officers employed by the ELGIN POLICE DEPT. from engaging in racial profiling;
- 3.) implements a process by which an individual may file a complaint with the ELGIN POLICE DEPT. if the individual believes that a peace officer employed by the ELGIN POLICE DEPT. has engaged in racial profiling with respect to the individual;
- 4.) provides public education relating to the agency's complaint process;
- 5.) requires appropriate corrective action to be taken against a peace officer employed by the ELGIN POLICE DEPT. who, after an investigation, is shown to have engaged in racial profiling in violation of the ELGIN POLICE DEPT. 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; 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.

Executed by: Patrick South, Chief of Police

Date: 02/18/2020

# Total stops: 4508

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**Gender**

|               |             |
|---------------|-------------|
| <b>Female</b> | <b>1685</b> |
| <b>Male</b>   | <b>2823</b> |

**Race / Ethnicity**

|                                 |             |
|---------------------------------|-------------|
| <b>Black</b>                    | <b>821</b>  |
| <b>Asian / Pacific Islander</b> | <b>146</b>  |
| <b>Hispanic / Latino</b>        | <b>1646</b> |
| <b>White</b>                    | <b>1892</b> |
| <b>Alaska Native / American</b> | <b>3</b>    |

**Was race or ethnicity known prior to stop?**

|            |             |
|------------|-------------|
| <b>Yes</b> | <b>34</b>   |
| <b>No</b>  | <b>4474</b> |

**Reason for stop?**

|                                  |             |
|----------------------------------|-------------|
| <b>Violation of law</b>          | <b>288</b>  |
| <b>Preexisting knowledge</b>     | <b>30</b>   |
| <b>Moving traffic violation</b>  | <b>3092</b> |
| <b>Vehicle traffic violation</b> | <b>1098</b> |

**Street address or approximate location of the stop**

|                                  |             |
|----------------------------------|-------------|
| <b>City street</b>               | <b>2415</b> |
| <b>US highway</b>                | <b>1902</b> |
| <b>County road</b>               | <b>15</b>   |
| <b>State highway</b>             | <b>119</b>  |
| <b>Private property or other</b> | <b>57</b>   |

**Was a search conducted?**

|            |             |
|------------|-------------|
| <b>Yes</b> | <b>288</b>  |
| <b>No</b>  | <b>4220</b> |

**Reason for Search?**

|                   |            |
|-------------------|------------|
| <b>consent</b>    | <b>22</b>  |
| <b>contraband</b> | <b>19</b>  |
| <b>probable</b>   | <b>130</b> |
| <b>inventory</b>  | <b>2</b>   |

|                                                                        |      |
|------------------------------------------------------------------------|------|
| ncident to arrest                                                      | 115  |
| <b>Was Contraband discovered?</b>                                      |      |
| Yes                                                                    | 146  |
| No                                                                     | 142  |
| <b>Description of contraband</b>                                       |      |
| Drugs                                                                  | 120  |
| Currency                                                               | 0    |
| Weapons                                                                | 3    |
| Alcohol                                                                | 15   |
| Stolen property                                                        | 1    |
| Other                                                                  | 7    |
| <b>Result of the stop</b>                                              |      |
| Verbal warning                                                         | 13   |
| Written warning                                                        | 2063 |
| Citation                                                               | 2282 |
| Written warning and arrest                                             | 25   |
| Citation and arrest                                                    | 22   |
| Arrest                                                                 | 103  |
| <b>Arrest based on</b>                                                 |      |
| Violation of Penal Code                                                | 65   |
| Violation of Traffic Law                                               | 5    |
| Violation of City Ordinance                                            | 0    |
| Outstanding Warrant                                                    | 80   |
| <b>Was physical force resulting in bodily injury used during stop?</b> |      |
| Yes                                                                    | 1    |
| No                                                                     | 4507 |

Submitted electronically to the



The Texas Commission on Law  
Enforcement



## Elgin City Council Meeting Agenda Item Executive Summary

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**ITEM:** Update on removal of fire destroyed home at 501 W. Alamo.

**DEPARTMENT:** Development Services.

**PROPOSED ACTION:** Receive update on removal of fire destroyed home at 501 W. Alamo.

**BACKGROUND:** The owner has given the City written permission to remedy code enforcement related items on the premises. Our Dept. has received an estimate for removal of the fire damaged building and the two (2) accessory buildings on the premises. This has been estimated at \$12,150, this estimate includes capping of the gas line and removal of electrical. All concrete and fencing will stay as this would increase the estimate and these are not code enforcement issues. Originally, we received another estimate, but this cost was higher. In order to provide funding this could involve moving money around the General Fund. Once funding is in place, in accordance with our purchasing requirements, this cost can be approved by the City Manager. Once the contract is signed and removal crews are staged it will take five (5) days to remove the home and accessory buildings. All costs to remedy the issue will be placed back on the property through a lien.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was { } included {X} not included in the current-year budget { } N/A

**RECOMMENDATION:** N/A

**ATTACHMENTS:** None.

{ } 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.

{X} 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.*



# Monthly Report of Operations

As of Feb 29, 2020

| Administration                                  | Feb '19   | Feb '20   | %      | YTD 2-29-19 | YTD 2-29-20 | %       |
|-------------------------------------------------|-----------|-----------|--------|-------------|-------------|---------|
| <b>Human Resources</b>                          |           |           |        |             |             |         |
| Total FTE - Filled Positions                    | -         | 104.0     | ➡ 0%   |             |             |         |
| Vacancies - all funds                           | -         | 9         | ➡ 0%   |             |             |         |
| New Hires                                       | 2         | 3         | ⬆ 50%  | 16          | 11          | ⬇ -31%  |
| Separations                                     | 5         | 2         | ⬇ -60% | 11          | 8           | ⬇ -27%  |
| <b>Municipal Court</b>                          |           |           |        |             |             |         |
| Total Active Cases Pending (beg. of Month)      | 15,829    | 15,869    | ⬆ 0%   |             |             |         |
| New Cases Filed (incl reactivation of inactive) | 303       | 314       | ⬆ 4%   | 1,439       | 1,712       | ⬆ 19%   |
| # of Magistrations                              | 31        | 34        | ⬆ 10%  | 154         | 166         | ⬆ 8%    |
| Total Cases Disposed of                         | 236       | 227       | ⬆ -4%  | 937         | 1,723       | ⬆ 84%   |
| Cases placed on Inactive Status                 | 60        | 43        | ⬆ -28% | 238         | 468         | ⬆ 97%   |
| Total Active Cases Pending (end of Month)       | 15,764    | 15,895    | ⬆ 1%   |             |             | ➡ 0%    |
| Fines Collected                                 | \$ 43,771 | \$ 37,465 | ⬆ -14% | \$ 171,012  | \$ 244,986  | ⬆ 43%   |
| Retained by City                                | \$ 28,068 | \$ 30,931 | ⬆ 10%  | \$ 101,842  | \$ 177,374  | ⬆ 74%   |
| <b>Development Services</b>                     |           |           |        |             |             |         |
| Construction Permits (all types)                | 38        | 59        | ⬆ 55%  | 157         | 231         | ⬆ 47%   |
| Revenue from Bldg. Permits                      | \$ 5,026  | \$ 10,006 | ⬆ 99%  | \$ 35,001   | \$ 53,551   | ⬆ 53%   |
| Inspections (all types)                         | 141       | 261       | ⬆ 362% | 746         | 910         | ⬆ 22%   |
| Revenue from Inspections                        | \$ 5,210  | \$ 24,075 | ➡ 0%   | \$ 18,110   | \$ 91,224   | ⬆ 404%  |
| Housing Plats approved (number of lots)         | -         | -         | ➡ 0%   | 2           | 254         | ➡ 0%    |
| <b>Community Services</b>                       |           |           |        |             |             |         |
| <b>Library-</b>                                 |           |           |        |             |             |         |
| Materials circulated                            | 5,997     | 5,179     | ⬆ -14% | 25,333      | 24,170      | ⬆ -5%   |
| # Visitors (incl. Progs)                        | 326       | 331       | ⬆ 2%   | 11,683      | 11,840      | ⬆ 1%    |
| Public Computer Use hrs.                        | 385       | 331       | ⬆ -14% | 1,431       | 1,415       | ⬆ -1%   |
| Public Computer Use Persons                     | 545       | 503       | ⬆ -8%  | 2,179       | 2,224       | ⬆ 2%    |
| Civic Center - Rentals (all)                    | 42        | 26        | ⬆ -38% | 160         | 125         | ⬆ -22%  |
| <b>Recreation Program -</b>                     |           |           |        |             |             |         |
| Annual Memberships                              | 33        | 6         | ⬆ -82% | 42          | 46          | ⬆ 10%   |
| Monthly Rec Memberships                         | 181       | 208       | ⬆ 15%  | 293         | 841         | ⬆ 187%  |
| Facility Rental Fleming Center                  | 17        | 7         | ⬆ -59% | 17          | 243         | ⬆ 1329% |
| Facility Rental Recreation Center               | 9         | 2         | ⬆ -78% | 9           | 121         | ⬆ 1244% |
| Sponsored Events                                | \$ 125    | \$ 260    | ⬆ 108% | 3,315       | 6,994       | ⬆ 111%  |
| <b>Public Works</b>                             |           |           |        |             |             |         |
| <b>Streets:</b>                                 |           |           |        |             |             |         |
| Lane miles Inventoried                          | 56.9      | 57.8      | ⬆ 2%   | 228         | 231         | ⬆ 2%    |
| Pot holes patched - Square Yards                | 44        | 44        | ➡ 0%   | 44          | 240         | ⬆ 443%  |
| Wide Area patching/renovation - SY              | 144       | 22        | ⬆ -85% | 213         | 180         | ⬆ -15%  |
| Crack Seal Lbs of Sealent                       | -         | -         | ➡ 0%   | -           | -           | ➡ 0%    |
| <b>Drainage:</b>                                |           |           |        |             |             |         |
| Linear feet of drains cleaned                   | 17,240    | 7,790     | ⬆ -55% | 84,222      | 83,280      | ⬆ -1%   |
| # Culverts Cleared                              | -         | -         | ➡ 0%   | 6           | -           | ⬆ -100% |
| <b>Parks:</b>                                   |           |           |        |             |             |         |
| Acres Mowed/maintained                          | -         | 260       | ➡ 0%   | N/A         | 728         | ➡ 0%    |
| Reserved Park Facilities                        | -         | -         | ➡ 0%   | N/A         | 44          | ➡ 0%    |
| # Organized Sports Events                       | -         | -         | ➡ 0%   | N/A         | 93          | ➡ 0%    |



# Monthly Report of Operations

As of Feb 29, 2020

| Utilities                            | Feb '19    | Feb '20    | %      | YTD 2-29-19  | YTD 2-29-20  | %      |
|--------------------------------------|------------|------------|--------|--------------|--------------|--------|
| <b>Water System:</b>                 |            |            |        |              |              |        |
| # Customers Total/Added by month *   |            | (4)        | ➡ 0%   | 3,374        | 11           |        |
| Amount Billed                        | \$216,426  | \$222,093  | ⬆ 3%   | \$ 1,114,180 | \$ 1,188,720 | ⬆ 7%   |
| Meters Replaced                      | -          | 15         | ➡ 0%   | 30           | 182          | ⬆ 507% |
| # Leaks Repaired                     | 15         | -          | ➡ 0%   | 85           | 8            | ⬆ -91% |
| Vol. water produced (x1,000 gallons) | 31,418     | 30,358     | ⬆ -3%  | 175,625      | 156,949      | ⬆ -11% |
| Main Line Breaks                     | 4          | -          | ➡ 0%   | 18           | 3            | ⬆ -83% |
| Service Line Breaks                  | 4          | 1          | ⬆ -75% | 18           | 16           | ⬆ -11% |
| <b>Wastewater System:</b>            |            |            |        |              |              |        |
| # Customers Total/Added by month *   |            | (4)        | ➡ 0%   | 3,067        | 13           |        |
| Amount Billed                        | \$ 157,188 | \$ 156,655 | ⬆ 0%   | \$ 1,054,942 | \$ 1,123,281 | ⬆ 6%   |
| Main Lines repaired                  | 1          | 3          | ⬆ 200% | 9            | 8            | ⬆ -11% |
| Lines replaced (Linear Feet.)        | 15         | 60         | ⬆ 300% | 55           | 132          | ⬆ 140% |
| Manholes Cleaned                     | -          | 4          | ➡ 0%   | -            | 12           | ➡ 0%   |
| Average Daily Flow (MGD)             | 0.8098     | 0.5598     | ⬆ -31% | 0.7225       | 0.5295       | ⬆ -27% |
| Total Monthly Flow (MGD)             | 25.1024    | 17.3524    | ⬆ -31% | 22.396       | 16.460       | ⬆ -27% |
| <b>Trash Collection:</b>             |            |            |        |              |              |        |
| # Customers Total/Added by month *   |            | (2)        | ➡ 0%   | 3,191        | 30           | ⬆ -99% |
| Amount Billed                        | \$ 92,395  | \$ 103,190 | ⬆ 12%  | \$ 572,340   | \$ 579,177   | ⬆ 1%   |

\* # Customers Total /Added by month - the purpose here is to track the increase or decrease of customers over the course of the year. **Current month** shows the number of customers added in the month. The amount in the first YTD column shows the current number of customers. The final column shows year to date additions.

| Police Department                   | Feb '19 | Feb '20 | %      | YTD 2-29-19 | YTD 2-29-20 | %       |
|-------------------------------------|---------|---------|--------|-------------|-------------|---------|
| <b>Part I Index Offenses</b>        |         |         |        |             |             |         |
| Murder ( # Victims)                 | -       | -       | ➡ 0%   | -           | -           | ➡ 0%    |
| Rape(# Victims)                     | 2       | -       | ➡ 0%   | 5           | 3           | ⬆ -40%  |
| Robbery ( # Victims)                | 2       | 1       | ⬆ -50% | 3           | 3           | ➡ 0%    |
| Aggravated Assault ( # Victims)     | 1       | 1       | ➡ 0%   | 2           | 5           | ⬆ 150%  |
| <b>Total Violent Index Crimes*</b>  | 5       | 2       | ⬆ -60% | 10          | 11          | ⬆ 10%   |
| Burglary ( # premises entered)      | 4       | -       | ➡ 0%   | 11          | 5           | ⬆ -55%  |
| Theft ( # offenses)                 | 13      | 7       | ⬆ -46% | 50          | 38          | ⬆ -24%  |
| Auto Theft ( #vehicles)             | -       | -       | ➡ 0%   | 2           | 1           | ⬆ -50%  |
| Arson ( # premises)                 | -       | 1       | ➡ 0%   | -           | 1           | ➡ 0%    |
| <b>Total Property Index Crimes*</b> | 17      | 8       | ⬆ -53% | 63          | 45          | ⬆ -29%  |
| <b>Total Part I Index Crimes*</b>   | 22      | 10      | ⬆ -55% | 73          | 56          | ⬆ -23%  |
| <b>Part II Index Offenses</b>       |         |         |        |             |             |         |
| Other Assaults                      | 3       | 13      | ⬆ 333% | 23          | 36          | ⬆ 57%   |
| Weapons                             | -       | -       | ➡ 0%   | 1           | -           | ⬆ -100% |
| Narcotics                           | 2       | 3       | ⬆ 50%  | 9           | 15          | ⬆ 67%   |
| DUI                                 | 5       | 8       | ⬆ 60%  | 17          | 20          | ⬆ 18%   |
| All Other Part II Offenses          | 47      | 34      | ⬆ -28% | 182         | 170         | ⬆ -7%   |
| <b>Total Part II Index Crimes*</b>  | 57      | 58      | ⬆ 2%   | 232         | 241         | ⬆ 4%    |
| <b>Total All Index Crimes*</b>      | 79      | 68      | ⬆ -14% | 305         | 297         | ⬆ -3%   |



## Elgin City Council Meeting Agenda Item Executive Summary

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**ITEM:**

**DEPARTMENT:** Community Services

**PROPOSED ACTION:** CONSIDER REQUEST TO CLOSE STREETS FOR THE WESTERN DAYS FESTIVAL PARADE ON SATURDAY JUNE 27 FROM 8:00AM TO NOON.

**BACKGROUND:** The Elgin Chamber of Commerce organizes the annual Western Days Festival and Parade June 22 to 27, 2020. Western Days is a free festival for the community that includes scholarship pageant, live music, softball, volleyball, washer and horseshoes tournaments, arts & crafts, food, kids activities, carnival, and class reunions. The parade lines up on 11th street from 2<sup>nd</sup> street to Main Street, and on 2<sup>nd</sup> street at Elgin Elementary School. the parade follows the route 11th street, turning south on Main Street, continuing through downtown, and ending at Brenham street, where floats return via Avenue C and Avenue A. The parade begins at 10:00 am. The chamber requests to close 11th street from 2<sup>nd</sup> street to Main Street, Main Street from 11<sup>th</sup> to Brenham Street on Saturday, June 27 from 8:00am to noon.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was {X} included { } not included in the current-year budget { } N/A

**RECOMMENDATION:** Take action on request to close 11th street from 2<sup>nd</sup> street to Main Street, Main Street from 11<sup>th</sup> to Brenham Street on Saturday, June 27 from 8:00am to noon.

**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.
- {X} 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:**

**DEPARTMENT:** Community Services

**PROPOSED ACTION:** CONSIDER REQUEST TO WAIVE FEES FOR THE WESTERN DAYS FESTIVAL AND PARADE JUNE 25 – 27, 2020.

**BACKGROUND:** The Elgin Chamber of Commerce organizes the annual Western Days Festival and Parade June 22 to 27, 2020. Western Days is a free festival for the community that includes scholarship pageant, live music, softball, volleyball, washer and horseshoes tournaments, arts & crafts, food, kids activities, carnival, and class reunions. Saturday June 27, the parade lines up on 11th street to Main Street, the parade follows the route 11th street, turning south on Main Street, continuing through downtown, and ending at Brenham street, where floats return via Avenue C and Avenue A. The parade begins at 10:00 am. The parade route requires 18 City of Elgin staff @ \$40 per hour for 4 hours and 6 police officers @ \$60 per hour with an approximate cost of \$3,600 for traffic control. 66 barricades are required for the street closures with a rental fee of \$330. Parade costs: \$3,930. The Festival requires 4 City of Elgin employees for litter removal etc. with an approximate cost of \$800. Elgin Memorial Park Rental Thursday pavilion rental \$100 Friday Park rental \$800 Saturday Park rental \$800 total \$1700 – community event is charged 20% of the rental fee making the park rental \$340.00. Special event permit application \$25 Refundable deposit \$500.00 Chamber requested waiver of fees associated with the parade which totals \$3,930.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was {X} included { } not included in the current-year budget { } N/A

**RECOMMENDATION:** This is an annual free community event. Staff assumes that fees would be waived as they have been in the past. Chamber of Commerce requested waiver of fees associated with the parade which totals approximately \$3,930.

**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.

{X } This is a routine procedural item and no presentation is planned for the meeting.

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CHAMBER OF COMMERCE  
& VISITOR'S CENTER

February 24, 2020

Mayor and City Council Members  
City of Elgin  
310 N. Main  
Elgin, TX 78621

RE: Item for Agenda

The Elgin Chamber of Commerce is excited to announce that Elgin's favorite summer tradition – Western Days will be celebrating 51 years this year. This year's event is sure to bring many people to Elgin and be a fun event for residents and visitors during the 4<sup>th</sup> weekend in June.

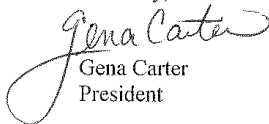
On Tuesday, June 23, the Miss Western Days & Tiny Tot Pageant starts off the week's activities. On Thursday, the carnival opens with family night. On Friday, there will be a free dance and other activities. The Grand Finale, Saturday June 27 is filled with events including a Parade, Carnival, Volleyball, Horseshoe, Washer and Softball Tournaments; Art, Crafts and Food Vendors; and Musical Entertainment throughout the day.

The Elgin Chamber of Commerce respectfully request the Elgin City Council consider the following items:

1. Use of Elgin Memorial Park from June 25, 2020 until June 27, 2020 at the discounted non-profit rate.
2. Waive the open container ordinance at Memorial Park for the following dates along with the stipulation that there will not be glass containers:
  - a. June 26, 2020 from 4:00p.m. - 12:15a.m.
  - b. June 27, 2020 from 8:00a.m. - 8:00p.m.
3. Request the use and closure of the following streets and related side streets for the parade with a start time of 8:00a.m. and completion by 12:00 noon. The Parade follows 11th street turning south onto Main and ending at Main and Alamo, with the floats returning on Avenue C to the Elementary School campus. .
4. Request the waiver of all fees that may be involved with closing of the streets for the parade.

We are looking forward to a great Western Days! We appreciate the City of Elgin's assistance to make this event our biggest and best ever. Should you have any questions please contact me at 512-285-4515.

Sincerely,

  
Gena Carter  
President

P.O. Box 408 • 114 Central Avenue • Elgin, Texas 78621 • 512-285-4515  
www.elgintxchamber.com • info@elgintxchamber.com





## Elgin City Council Meeting Agenda Item Executive Summary

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**ITEM:**

**DEPARTMENT:** Community Services

**PROPOSED ACTION:** CONSIDER REQUEST TO WAIVE THE OPEN CONTAINER ORDINANCE FOR THE WESTERN DAYS FESTIVAL JUNE 26, 2020 FROM 4:00PM TO MIDNIGHT AND SATURDAY JUNE 27 FROM 8:00AM TO 8:00PM IN ELGIN MEMORIAL PARK.

**BACKGROUND:** The Elgin Chamber of Commerce organizes the annual Western Days Festival and Parade June 22 to 27, 2020. Western Days is a free festival for the community that includes scholarship pageant, live music, softball, volleyball, washer and horseshoes tournaments, arts & crafts, food, kids activities, carnival, and class reunions. The chamber requests that the open container ordinance be waived for Friday June 27 from 4pm to midnight and on Saturday June 27 from 8am to 8pm in Elgin Memorial Park.

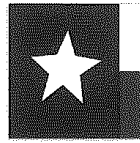
**BUDGET/FINANCIAL IMPACT:**  
Funding for this item was {X} included { } not included in the current-year budget { } N/A

**RECOMMENDATION:** Take action on request to request to waive the open container ordinance for the Western days festival June 26, 2020 from 4:00pm to midnight and Saturday June 27 from 8:00am to 8:00pm in Elgin Memorial park.

**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.
- {X } 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*

CHAMBER OF COMMERCE

& VISITOR'S CENTER

February 24, 2020

Mayor and City Council Members  
City of Elgin  
310 N. Main  
Elgin, TX 78621

RE: Item for Agenda

The Elgin Chamber of Commerce is excited to announce that Elgin's favorite summer tradition – Western Days will be celebrating 51 years this year. This year's event is sure to bring many people to Elgin and be a fun event for residents and visitors during the 4<sup>th</sup> weekend in June.

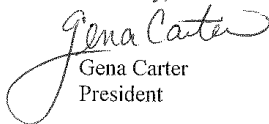
On Tuesday, June 23, the Miss Western Days & Tiny Tot Pageant starts off the week's activities. On Thursday, the carnival opens with family night. On Friday, there will be a free dance and other activities. The Grand Finale, Saturday June 27 is filled with events including a Parade, Carnival, Volleyball, Horseshoe, Washer and Softball Tournaments; Art, Crafts and Food Vendors; and Musical Entertainment throughout the day.

The Elgin Chamber of Commerce respectfully request the Elgin City Council consider the following items:

1. Use of Elgin Memorial Park from June 25, 2020 until June 27, 2020 at the discounted non-profit rate.
2. Waive the open container ordinance at Memorial Park for the following dates along with the stipulation that there will not be glass containers:
  - a. June 26, 2020 from 4:00p.m. - 12:15a.m.
  - b. June 27, 2020 from 8:00a.m. - 8:00p.m.
3. Request the use and closure of the following streets and related side streets for the parade with a start time of 8:00a.m. and completion by 12:00 noon. The Parade follows 11th street turning south onto Main and ending at Main and Alamo, with the floats returning on Avenue C to the Elementary School campus. .
4. Request the waiver of all fees that may be involved with closing of the streets for the parade.

We are looking forward to a great Western Days! We appreciate the City of Elgin's assistance to make this event our biggest and best ever. Should you have any questions please contact me at 512-285-4515.

Sincerely,

  
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## Elgin City Council Meeting Agenda Item Executive Summary

---

**ITEM:** City Council Regular Meeting Minutes –March 3, 2020.

**DEPARTMENT:** Administration

**PROPOSED ACTION:**

Review and approve the March 3, 2020 Meeting Minutes.

**BACKGROUND:**

N/A

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was { } included { } not included in the current-year budget {X} N/A

**RECOMMENDATION:**

Approval of the March 3, 2020 Meeting Minutes.

**ATTACHMENTS:** March 3, 2020 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.

{X} 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  
REGULAR MEETING  
CITY ANNEX COUNCIL CHAMBERS, 310 NORTH MAINSTREET  
TUESDAY, FEBRUARY 18, 2020**

**CALL TO ORDER**

Mayor Cannon called the meeting to order at 7:04 p.m.

**ROLL CALL**

Present: Chris Cannon, Mayor  
Jessica Bega, Mayor Pro Tem  
Mary Penson, Council Member  
Brad Jones, Council Member  
Forest Dennis, Council Member  
Sue Brashar, Council Member  
Juan Gonzalez, Council Member

Mayor Cannon certified there was a quorum and that Council Member Lopez and Council Member Arreaga were absent. Mayor Cannon stated that Council Member Arreaga had informed him she was feeling ill, and Council Member Lopez had a Fire Department meeting.

Council Member Dennis moved to excuse Council Member Arreaga and Council Member Lopez. Council Member Penson seconds the motion. Motion carried 7-0.

**Staff:** Thomas L. Mattis, City Manager  
Charles Cunningham, Finance Director  
Patrick South, Chief of Police  
Michael Gonzalez, Asst Public Works Director  
David Harrell, Planning Director  
Amy Miller, Director Community Development

**INVOCATION**

Council Member Brashar gave the invocation.

**PLEDGE OF ALLEGIANCE**

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

Mayor Cannon recessed the Regular Meeting and opened the Public Hearings at 7:06 p.m.

## CITY COUNCIL REGULAR MEETING

March 3, 2020 – Page 2

City Annex Council Chambers

### **PUBLIC HEARING**

1. Public Hearing on an Ordinance Amending the Official Zoning Map of the City of Elgin, Texas, Adopted in Chapter 46, Section 46-3, Revised Code Of Ordinances, City of Elgin, Texas, 2013 and making this Amendment a Part of said Official Zoning Map, To Wit: To Rezone as R-2 Single Family and Garage Apartment District on Property being approximately 0.34 acres of land and located in Martinson, Block 2, Lot 30 (FR) & Lot 31 and Providing for a Savings Clause and Repealing Conflicting Ordinances and Resolutions.

There were no speakers on this item.

2. Public Hearing on An Ordinance Of The City Council of the City of Elgin, Texas, Providing for the Dis-Annexation of certain territory consisting of 131.19 Acres in the Garretson Thomas Survey A178 and the Richard Young Survey A373 and Adjacent Roadways as Described in Exhibits “A” thru “J” Herein; Repealing Conflicting Ordinances And Resolutions; Including a Severability Clause; and Establishing an Effective Date.

There were no speakers on this item.

3. First Public Hearing - A RESOLUTION OF THE CITY OF ELGIN, TEXAS APPROVING A STRATEGIC PARTNERSHIP AGREEMENT WITH THE BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING CERTAIN FINDINGS RELATED THERETO.

City Manager Thomas Mattis spoke about a Strategic Partnership Agreement between the City of Elgin and Texas Bridle Trails LLC Brickston Municipal Utility District stating this was a new item, and by law must have two public hearings. He stated that this was a master-planned, mixed use community including residential, retail/commercial, amenity space and acreage devoted to public schools and public safety uses. He stated that the property was in the city’s ETJ but was in Travis County. He stated that with a project this size they had run into some issues specifically achieving the working relationship that we would like to have with Travis County, but he felt these issues could be addressed with this Strategic Partnership Agreement. Mr. Mattis provided some background on this project, stating that in July of 2018 a letter of intent was executed, followed by a public forum, and in January of 2019 Council approved a Development Agreement. He stated that in July 2019 a Preliminary Plat was submitted to the city and approved in September of 2019, and at the same time the Developer submitted a Preliminary Plat to Travis County and is still awaiting approval. He stated that typically developers have one review process they go through to get their developments approved, Travis County has taken the position that they are not willing to relinquish any review control to Elgin and that every development in this area would basically have to go through the same process twice. He stated that TLGC Title 2, Chapter 43 allows cities

## CITY COUNCIL REGULAR MEETING

March 3, 2020 – Page 3

City Annex Council Chambers

to enter into a Strategic Partnership Agreement to provide for a limited-purpose annexation on terms acceptable to the city and a MUD. He stated that the SPA provides for the city to annex the entire Brickston MUD for exclusively the purpose of collection sales tax and subjecting the MUD to the development standards of the city. He stated under the SPA the city agreed to provide certain services, such as development review and approvals, building inspections, wastewater services, library, police services and limited voting in the city elections. He stated that within the SPA the MUD consents on its behalf of all current and future owners of land included within the District, to the full purpose annexation of the development upon the expiration of the term of the agreement. Mr. Mattis stated that there would be two public hearings March 3<sup>rd</sup> and 17<sup>th</sup> with a Resolution for approval of the agreement on March 17<sup>th</sup>.

There were no speakers on this item. Mayor Canon closed the Public Hearings at 7:43 p.m. and reconvened the regular meeting.

### **PUBLIC COMMENT**

Sydney Mercer Director with the Boys and Girls Club at Elgin High School spoke and stated she was there with one of her members Deya Burns, and that Ms. Burns had recently won the Austin Youth of the Year competition for the Boys and Girls Club. She stated Ms. Burns got awarded a \$10,000 scholarship and that on top of schoolwork she had to write 3 essays, write a speech, a lengthy application process, and an interview in February where she wowed the judges. She stated Ms. Burns was here to practice her speech because on March 22<sup>nd</sup> she is going to compete in the state competition for the Boys and Girls Club, which would also provide additional opportunities to get more scholarship money, and could possible go on to Regionals and then Nationals in Washington D. C.

Deya Burns spoke and presented the speech she wrote as part of her application process for the Youth of the Year competition. She wrote about the Boys and Girls Club becoming her second home, the staff her family, and how she let issues from home affect her. She stated she dropped out of the Boys and Girls Club during Middle School when her family was forced to move multiple times and she felt no sense of stability, and she began to push away for everything and did not care about school or relationships. She felt like she no longer wanted to live and after a serious incident she was encouraged by her mother to attend the Boys and Girls Club again. She stated from the moment she met the staff they seemed so genuine and began spending time with her and listening when she had something to say. She believes she would not be standing here today without their support. She stated she is enrolled in courses at ACC and maintaining a 3.4 GPA and a member of a competitive dance team as well as applying to colleges.

## CITY COUNCIL REGULAR MEETING

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City Annex Council Chambers

### **PRESENTATION**

#### 1. 2020 CENSUS AND THE COMPLETE COUNT INITIATIVE FOR BASTROP COUNTY.

Amy Miller Director of Community Development provided a presentation on the Census and the importance of everyone participating and how it benefits the states, counties and communities in federal funds.

### **CITY MANAGER'S REPORT**

#### 1. ELGIN'S 2019 TRANSPORTATION ALTERNATIVE SET ASIDE (TA)/SAFE ROUTES TO SCHOOLS (SRTS) PROJECT

City Manager Thomas Mattis stated that the City got a major grant approved under the Safe Routes to School Program. He stated Council had approved the application a while back and had just now received notification this week that 264 projects that were submitted applications for this funding across the state and Elgin was one of 30 out of 264 to get approved with a max commitment of over \$400,000. to do several connect the dots projects of sidewalks that start and stop.

### **CONSENT AGENDA**

Council Member Brashar moved to approve the Consent Agenda. Council Member Penson seconds the motion. Motion carried 7-0.

1. City Council Meeting Minutes – February 18, 2020.

2. Open Container Waiver for the Music in the Park series Friday, April 3, 10, 17, and 24 from 6pm to 10pm in Veterans Memorial Park.

### **NEW BUSINESS**

1. AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ELGIN, TEXAS, ADOPTED IN CHAPTER 46, SECTION 46-3, REVISED CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, 2013 AND MAKING THIS AMENDMENT A PART OF SAID OFFICIAL ZONING MAP, TO WIT: TO REZONE AS R-2 SINGLE FAMILY AND GARAGE APARTMENT DISTRICT ON PROPERTY BEING APPROXIMATELY 0.34 ACRES OF LAND AND LOCATED IN MARTINSON, BLOCK 2, LOT 30 (FR) & LOT 31 AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

CITY COUNCIL REGULAR MEETING

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City Annex Council Chambers

Council Member Dennis moved to approve the Ordinance as presented. Council Member Brashar seconds the motion. Motion carried 7-0.

2. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS, PROVIDING FOR THE DISANNEXATION OF CERTAIN TERRITORY CONSISTING OF 131.19 ACRES IN THE GARRETSON THOMAS SURVEY A178 AND THE RICHARD YOUNG SURVEY A373 AND ADJACENT ROADWAYS AS DESCRIBED IN EXHIBITS “A” THRU “J” HEREIN; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

Council Member Penson moved to approve the Ordinance as presented. Mayor Pro Tem Bega seconds the motion. Motion carried 7-0.

3. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A LETTER OF AGREEMENT WITH TRC ENGINEERS INC. FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE FM1704 WASTEWATER EXTENSION PROJECT AND MAKING CERTAIN FINDINGS RELATED THERETO.

Council Member Brashar moved to approve the Resolution as presented. Council Member Penson seconds the motion. Motion carried 7-0.

4. A RESOLUTION OF THE CITY OF ELGIN, TEXAS, CONSENTING TO THE ANNEXATION OF CERTAIN PROPERTY INTO BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING CERTAIN FINDINGS RELATED THERETO.

Council Member Penson moved to approve the Resolution as presented. Council Member Dennis seconds the motion. Motion carried 7-0.

5. AN ORDINANCE OF THE CITY OF ELGIN, TEXAS, CREATING A YOUTH ADVISORY COUNCIL AND PROVIDING FOR THE COUNCIL'S ORGANIZATION, MEMBERSHIP, RESPONSIBILITIES, AND RESOURCES; AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT, EFFECTIVE DATE, REPEALER, SEVERABILITY, CODIFICATION, AND PROPER NOTICE AND MEETING.

Council Member Brashar moved to approve the Ordinance as presented. Council Member Gonzalez seconds the motion. Motion carried 7-0.

6. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELGIN, TEXAS, TO APPROVE AN AGREEMENT WITH COMPU-DATA INC. TO PROVIDE DOCUMENT IMAGING, DATA HOSTING AND RETRIEVAL SERVICES FOR CITY DOCUMENTS GENERATED IN THE CONDUCT OF DAY TO DAY ACTIVITIES; AND TO AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT.

CITY COUNCIL REGULAR MEETING

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City Annex Council Chambers

Council Member Penson moved to approve the Resolution as presented. Council Member Dennis seconds the motion. Motion carried 7-0.

**ANNOUNCEMENTS**

City Manager Thomas Mattis reminded everyone of the Chamber Banquet on Thursday.

**ADJOURNMENT**

Mayor Cannon adjourned the City Council Meeting at 8:31 p.m.

\_\_\_\_\_  
Chris Cannon, Mayor

**ATTEST:**

\_\_\_\_\_  
Amelia Sanchez, City Secretary



## Elgin City Council Meeting Agenda Item Executive Summary

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**ITEM:** A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE A BUILDING LEASE AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS AND THE ELGIN COMMUNITY CUPBOARD; AND PROVIDING FOR RELATED MATTERS

**DEPARTMENT:** City Manager

**PROPOSED ACTION:**

Consideration and approval of a Resolution authorizing the Mayor and City Manager to execute a building lease agreement with the Elgin Community Cupboard.

**BACKGROUND:**

Although the City and the Elgin Community Cupboard have long maintained a positive and mutually beneficial working relationship, documentation supporting the business aspects of that relationship have been lacking. As such, the agreement that is the subject matter of this agenda item was developed to document certain terms and conditions of said relationship.

For the most part, the proposed agreement simply documents existing practices and does not represent any significant changes related to current operational aspects of both the Cupboard and City. While a separate document, this agreement is proposed in conjunction with – and is specifically related to – the *Funding Agreement between the City of Elgin, Texas and the Elgin Community Cupboard*.

The Community Cupboard Board of Directors worked with city staff to negotiate and review the proposed agreement; and unanimously supports its approval.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was {X} included { } not included in the current-year budget { } N/A

**RECOMMENDATION:**

Approval of the Resolution authorizing the Mayor and City Manager to execute a building lease agreement with the Elgin Community Cupboard as described; and routine direction to staff, if any.

**ATTACHMENTS:** (1) Resolution and (2) Building Lease Agreement - 114 Depot Street

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} 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 AND CITY MANAGER TO EXECUTE A BUILDING  
LEASE AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS  
AND THE ELGIN COMMUNITY CUPBOARD; AND PROVIDING  
FOR RELATED MATTERS.**

**WHEREAS**, the Elgin Community Cupboard is a Texas non-profit corporation dedicated to feeding the Elgin community and generally enhancing the quality of life for all citizens within the community; and,

**WHEREAS**, the Elgin Community Cupboard has requested occupancy and utilization of the city-owned building at 114 Depot Street, Elgin, to serve as a base of operations for achieving their goals and objectives: and,

**WHEREAS**, the Elgin Community Cupboard has agreed to certain terms and conditions for said occupancy, including obligations within the *Funding Agreement between the City of Elgin, Texas and the Elgin Community Cupboard*.

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

Section 1. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. The Mayor and City Manager are hereby authorized to execute the *Building Lease Agreement Between the City of Elgin, Texas and the Elgin Community Cupboard* as described therein; a copy of said agreement being attached hereto, marked Exhibit A, and made part of this Resolution as if copied verbatim herein.

Section 3. It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

Section 4. This Resolution shall take effect immediately upon passage.

**PASSED AND ADOPTED** this 17<sup>th</sup> day of March, 2020

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Egin, Texas

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary

**BUILDING LEASE AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS  
AND THE ELGIN COMMUNITY CUPBOARD**

THE STATE OF TEXAS                   §  
                                                  §                   KNOW ALL BY THESE PRESENTS:  
COUNTY OF BASTROP               §

**THIS LEASE AGREEMENT** (the “Agreement”) is entered into between the CITY OF ELGIN, TEXAS, a Texas home-rule city (“LESSOR”), and the ELGIN COMMUNITY CUPBOARD, a Texas non-profit corporation (“TENANT”). In this Agreement, the LESSOR and TENANT are sometimes individually referred to as a “Party” and collectively referred to as the “Parties”.

**WITNESSETH:**

**1. Leased Premises.** LESSOR hereby leases to TENANT and TENANT hereby leases from LESSOR the building and adjacent property located at **114 Depot Street, Elgin, Bastrop County, Texas** (herein called the "Building" and/or “Leased Premises”). The Leased Premises are to be used and occupied by the TENANT solely for the purposes of operating a nonprofit organization dedicated to feeding residents of Elgin (as required by association with Central Texas Food Bank and USDA) and related business office activities.

**2. Term.** Subject to and upon the terms and conditions set forth herein this Lease shall continue in full force for a term of Five (5) years, commencing the 1<sup>st</sup> day of January, 2020 (hereinafter the "Effective Date") and ending at midnight the 31<sup>st</sup> day of December, 2024.

**3. Conditional Waiver of Rental Payments.** Subject to the TENANT’s satisfactory overall performance as determined by the City Council and compliance with the terms of this Agreement, LESSOR agrees to waive rental payments associated with the Leased Premises.

**4. Use of the Premises.** TENANT shall use the Leased Premises only for the use or incidental uses as may be approved by the City Manager. In connection with its use of and activities in and about the Leased Premises and the Building, TENANT, at its expense, will comply and will cause its employees, agents and invitees to comply with all applicable laws and ordinances, with all applicable rules and regulations of governmental agencies; and TENANT will conduct itself and cause its employees, agents and invitees to conduct themselves, with full regard for the rights, convenience and welfare of all other tenants in the Building. TENANT shall peaceably and quietly hold and enjoy the premises for the term hereof, without hindrance from LESSOR, subject to the terms and conditions of this Agreement.

**5. Acceptance of Leased Premise.** The taking of possession of the Leased Premises by TENANT shall be conclusive evidence that TENANT accepts the Leased Premises as suitable for the purposes for which same are leased and that LESSOR has fully complied with its obligations contained in this Agreement. TENANT accepts the Leased Premises "AS IS." The Leased Premises is rented on an “AS IS”, “WHERE IS” basis. **There are no warranties expressed or implied.**

**6. Use of the Premises by LESSOR.** LESSOR and/or the City of Elgin reserves the right to utilize the Leased Premises for periodic city-related functions, events, and uses as may be approved by the City Manager. Such uses shall not include the Elgin Community Cupboard business office nor be in conflict with TENANT's customary uses of same. Any such use of the Leased Premises by LESSOR under this section shall require written notification of TENANT by LESSOR at least ten (10) working days prior to the first date of said use, unless otherwise agreed to by TENANT. Use by LESSOR under this section shall include, but not be limited to, use in support of multi-media productions that encourage growth of the local film industry, a positive impact on the local economy, and the promotion of the City of Elgin, Bastrop, and Travis Counties as a favorable venue in which to make motion pictures and television shows. All such uses of the Leased Premises by any multi-media production or the film industry shall be authorized and managed by the City Manager or his agent. TENANT specifically agrees to assist the LESSOR in accomplishing these public purposes. LESSOR agrees to indemnify and hold harmless the TENANT, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death) or property damage suffered by any person or persons, that may arise out of the LESSOR's use of the Leased Premises under this Section. LESSOR agrees at its own cost and expense to repair or replace any damage of any and all property of the TENANT caused by LESSOR's use of the Leased Premises under this Section.

**6. Building Alterations.** TENANT shall not construct and install any improvements to the Leased Premises without prior written approval by LESSOR. Plans for any proposed alterations to the Leased Premises shall be submitted to the LESSOR for approval. LESSOR shall notify TENANT of its approval or objections to such plans within fifteen (15) working days of receipt of same. When written approval is obtained, TENANT must obtain all applicable permits for construction from the City of Elgin prior to the start of construction. Once commenced, work on TENANT's improvements shall be continuous, to conclusion; and all work undertaken or materials ordered or purchased shall be paid for by TENANT timely and without the imposition of any claims of lien against the Building or Property. TENANT shall not use or permit the Leased Premises to be used for any purpose other than that stated herein or make or allow to be made any alterations or physical additions in or to the Leased Premises without first obtaining the written consent of LESSOR. In the event that the LESSOR gives its consent to any alterations, additions or improvements, any and all such alterations or improvements, when made to the Leased Premises by TENANT shall at once become the property of LESSOR and shall be surrendered to LESSOR upon the termination of the Lease; provided however, this clause shall not apply to moveable equipment or furniture owned by TENANT.

**7. Mechanic's and Materialmen's Liens.** TENANT will not create or permit to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, artisans or materialmen for work or materials alleged to be done or furnished in connection with the Leased Premises), encumbrance, or other charge upon the Leased Premises or any part thereof, upon LESSOR's interest therein, or upon TENANT's leasehold interest; provided that TENANT shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Leased Premises or the Building by the act of LESSOR.

**8. Signage.** No sign, symbol or identifying mark shall be put upon the Building or in any space or area viewable from the entrances, without the prior written consent of LESSOR. All signs or lettering shall conform in all respects to the sign and/or lettering criteria established by LESSOR and shall be at the expense of the TENANT.

**9. Keys.** Lessor agrees to furnish TENANT free of charge, with four (4) keys for the door entering the Leased Premises. All such keys shall remain the property of LESSOR. Upon termination of this Lease, TENANT shall surrender to LESSOR all keys to the Leased Premises and give to LESSOR the explanation or the combination of all locks for safes, safe cabinets and vault doors, if any, in the Leased Premises. LESSOR shall not be liable to TENANT for any loss due to theft, burglary, or for damages done by unauthorized persons on the Property.

**10. Rules and Regulations.** TENANT and TENANT's agents or employees will comply fully with all applicable rules, laws, and regulations. LESSOR shall at times have the right to change such rules and regulations or to amend them in such reasonable manner as may be deemed advisable for safety, protection, care and cleanliness of the Property and appurtenances and the preservation of good order therein and all of which rules and regulations, changes and amendments will be forwarded to TENANT in writing and shall be complied with and observed by TENANT.

**11. Services and Utilities.** LESSOR agrees to furnish TENANT, while occupying the Leased Premises, with electricity, natural gas, water, wastewater, and trash collection services associated with ordinary office uses and in keeping with the usual standard for municipal buildings in Elgin, Texas. In addition, LESSOR will provide quarterly pest control treatments and after each treatment the provider will leave notice of the treatment at the Cupboard. LESSOR shall not be liable for damages or otherwise for failure, stoppage or interruption of any such service.

**12. Entry for Inspection.** LESSOR, its officers, agents and representatives, shall have the right to enter all parts of the Leased Premises at all reasonable hours whenever it may deem necessary or desirable.

**13. Maintenance and Repairs by LESSOR.** LESSOR shall provide for the exterior and/or ground maintenance of the Leased Premises, including landscaping surrounding the Building, in keeping with the usual standard for municipal buildings in Elgin, Texas. Unless otherwise expressly stipulated herein, LESSOR shall not be required to make any improvements or repairs of any kind on the Leased Premises during the Term, except such repairs as may be required by normal maintenance operations.

**14. Repairs and Care of the Property by TENANT.** TENANT agrees at its own cost and expense to provide for all interior cleaning and/or maintenance of the Building, consistent with the usual standard for municipal buildings in Elgin, Texas. TENANT agrees at its own cost and expense to repair or replace any damage or injury done to the Building, or any part thereof, caused by TENANT, TENANT's agents, employees, licensees, invitees or visitors.

**15. LESSOR Insurance.** LESSOR, totally at its discretion, will procure, pay for and maintain during the term of this Agreement insurance limits and coverage written by companies licensed in the State of Texas. TENANT is encouraged to procure insurance for personal property to cover the loss or damage of same since LESSOR will not be responsible for the personal property of TENANT. All provisions of this Lease Agreement concerning liability, duty and standard of care

together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

**16. TENANT Insurance.** TENANT shall procure and maintain, at its own cost and expense, commercial general liability insurance coverage of \$500,000 combined single limit or a substitute providing equivalent coverage, and shall include coverage for bodily injury and death, property damage, and personal injury. LESSOR will be named an additional insured and will be given a minimum of ten (10) days' notice prior to any change in or cancellation of such coverage. In addition, insurance furnished by TENANT shall be in accordance with the following requirements:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by TENANT. LESSOR'S decision thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein shall be written with an "occurrence" basis coverage.

**17. No Assignment or Sublease by TENANT.** TENANT shall not assign or in any manner transfer this lease, permit any assignment of this Lease by operation of law or otherwise, or sublet the Leased Premises or any part thereof.

**18. Termination.** Either party hereby reserves the right to terminate this agreement with or without cause, for no reason or any reason, upon one hundred and eighty (180) days written notice. LESSOR may also terminate this Agreement for breach of any provision of this Agreement, upon written notice of the breach and the TENANT shall have ten (10) days after receipt of the written notice in which to cure the breach to the satisfaction of the LESSOR.

**19. Indemnification.** The TENANT agrees to defend, indemnify and hold harmless the LESSOR, City of Elgin, the Mayor and City Council, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the TENANT's breach of any of the terms or provisions of this Agreement, or by any negligent act or omission of the TENANT, its officers, agents, servants, employees, contractors, or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the LESSOR, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the TENANT and LESSOR under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Both parties expressly agree that this Agreement does not assign any responsibility for civil liability to the LESSOR that may arise by virtue of this Agreement.

**20. Approval.** This Agreement has been duly and properly approved by each Party's governing body and constitutes a binding obligation on each party herein. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement

**21. Governmental Powers.** It is understood and agreed that LESSOR, through the execution of this Lease Agreement, does not waive or surrender any of its governmental powers.

**22. 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 therein.

**23. Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

**24. Entire Agreement.** Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter hereof.

**25. Amendments.** Any amendment of this Agreement must be in writing and shall be effective if signed by the authorized representatives of both Parties.

**26. 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.

**27. Non-Waiver.** A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this Agreement does not preclude the exercise of another right or remedy. Rights and remedies under this Agreement are cumulative and are not exclusive of other rights or remedies provided by law.

**28. 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.

**29. Non-Appropriation of Funds.** All obligations of the City of Elgin/LESSOR under this Agreement are subject to the availability of annual legislative appropriations by the City Council and TENANT acknowledges that the ability of City of Elgin/LESSOR to perform under this Agreement is contingent upon the continued availability of funds. The amount of City of Elgin/LESSOR's obligation hereunder shall not at any time exceed the amount certified for the purpose stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City of Elgin/LESSOR at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City of Elgin/LESSOR has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City of Elgin/LESSOR budget decisions are within the exclusive discretion of the Elgin City Council. TENANT's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**30. 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:

LESSOR: City of Elgin  
Attn: City Manager  
310 N. Main St.  
Elgin, Texas 78621

TENANT: Elgin Community Cupboard  
Attn: Executive Director  
114 Depot Street  
Elgin, Texas 78621

**31. 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.

**CITY OF ELGIN:**

By: \_\_\_\_\_  
Chris Cannon, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas L. Mattis. City manager

Date: \_\_\_\_\_

**THE ELGIN COMMUNITY CUPBOARD:**

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF TEXAS** §  
§  
**COUNTY OF BASTROP** §

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 BASTROP** §

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared Thomas L. Mattis, City Manager 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 \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, 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



## Elgin City Council Meeting Agenda Item Executive Summary

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**ITEM:** A RESOLUTION OF THE CITY OF ELGIN, TEXAS AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE A FUNDING AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS AND THE ELGIN COMMUNITY CUPBOARD; AND PROVIDING FOR RELATED MATTERS

**DEPARTMENT:** City Manager

**PROPOSED ACTION:**

Consideration and approval of a Resolution authorizing the Mayor and City Manager to execute a funding agreement with the Elgin Community Cupboard.

**BACKGROUND:**

Although the City and the Elgin Community Cupboard have long maintained a positive and mutually beneficial working relationship, documentation supporting the business aspects of that relationship have been lacking. As such, the agreement that is the subject matter of this agenda item was developed to document certain terms and conditions of said relationship.

For the most part, the proposed agreement simply documents existing practices and does not represent any significant changes related to current operational aspects of both the Cupboard and City. While a separate document, this agreement is proposed in conjunction with – and is specifically related to – the *Building Lease Agreement between the City of Elgin, Texas and the Elgin Community Cupboard* and the Cupboard's occupancy of the city-owned building at 114 Depot Street.

The Community Cupboard Board of Directors worked with city staff to negotiate and review the proposed agreement; and unanimously supports its approval.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was {X} included { } not included in the current-year budget { } N/A

**RECOMMENDATION:**

Approval of the Resolution authorizing the Mayor and City Manager to execute a building lease agreement with the Elgin Community Cupboard as described; and routine direction to staff, if any.

**ATTACHMENTS:** (1) Resolution and (2) Funding Agreement

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} 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 AND CITY MANAGER TO EXECUTE A FUNDING  
AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS AND THE  
ELGIN COMMUNITY CUPBOARD; AND PROVIDING FOR  
RELATED MATTERS.**

**WHEREAS**, the Elgin Community Cupboard is a Texas non-profit corporation dedicated to feeding the Elgin community; and,

**WHEREAS**, the Elgin Community Cupboard has requested certain financial support to achieve its goals and objectives; and

**WHEREAS**, the City of Elgin has considered the request and considers the service provided by the Elgin Community Cupboard to directly enhance the overall quality of life for all citizens within the community.

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

Section 1. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. The Mayor and City Manager are hereby authorized to execute the *Funding Agreement between the City of Elgin, Texas and the Elgin Community Cupboard* as described therein; a copy of said agreement being attached hereto, marked Exhibit A, and made part of this Resolution as if copied verbatim herein.

Section 3. It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

Section 4. This Resolution shall take effect immediately upon passage.

**PASSED AND ADOPTED** this 17<sup>th</sup> day of March, 2020

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Egin, Texas

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary

**FUNDING AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS AND THE  
ELGIN COMMUNITY CUPBOARD**

|                    |   |                             |
|--------------------|---|-----------------------------|
| THE STATE OF TEXAS | § |                             |
|                    | § | KNOW ALL BY THESE PRESENTS: |
| COUNTY OF BASTROP  | § |                             |

**THIS FUNDING AGREEMENT** (the “Agreement”) is entered into between the CITY OF ELGIN, TEXAS, a Texas home-rule city (“City”), and the **ELGIN COMMUNITY CUPBOARD**, a Texas non-profit corporation (“Cupboard”). In this Agreement, the City and Cupboard are sometimes individually referred to as a “Party” and collectively referred to as the “Parties”.

**RECITALS**

**WHEREAS**, the Elgin Community Cupboard has requested financial support from the City of Elgin to operate a nonprofit dedicated to feeding residents of Elgin (as required by association with Central Texas Food Bank and USDA); and

**WHEREAS**, the City of Elgin has considered the request and has determined that the Elgin Community Cupboard provides services that generally promote the health safety, and welfare of the Elgin community at large; and

**WHEREAS**, the goal of this Agreement is to define certain financial support by the City of the endeavors of the Elgin Community Cupboard in their service to the citizens of Elgin.

**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:

**GENERAL PROVISIONS**

**Section 1. Purpose.** The purpose of this Agreement is for the Elgin Community Cupboard to define conditions for certain financial support provided by the City of Elgin through the occupancy and utilization of city-owned property at 114 Depot Street to operate a nonprofit organization dedicated to feeding the Elgin community. Such property shall only be used for operating a nonprofit organization dedicated to feeding residents of Elgin (as required by association with Central Texas Food Bank and USDA) and related business office activities.

**Section 2. Financial Support by the City.** Subject to the satisfactory overall performance of the Elgin Community Cupboard as determined by the City Council and compliance with the terms of the *Building Lease Agreement between the City of Elgin, Texas and the Elgin Community Cupboard* dated \_\_\_\_\_, 2020, the City agrees to waive all rental payments, utility costs, and building maintenance costs associated with the building located at 114 Depot Street; and as specifically described within said *Agreement*.

**Section 3. Cupboard Reporting Requirements.** The Cupboard shall provide, on a quarterly basis, within thirty (30) days after the end of each quarter, a General Activity Report that includes the following information:

- (a) The number of clients assisted during normal business hours segregated into two categories (1) within the City of Elgin zip code, and (2) outside the City of Elgin zip code; and
- (b) The total amount of food distributed during the quarter; (1) food purchased from Central Texas Food Bank; (2) food donated by local individuals and businesses; (3) food purchased from local businesses; and
- (c) The number of new families who received food; the number of returning families who received food; the recorded headcount of total families served; and,
- (d) The number of volunteers utilized to support the Cupboard and its programs; and
- (e) actual hours of operation of the Cupboard.

**Section 4. Cupboard Operating Hours.** The Cupboard shall maintain operating hours whereby the Cupboard is open for business a minimum of two hours each normal (non-holiday) Tuesday. Unless otherwise agreed to by the City Manager, the average or normal operating hours of the Cupboard shall be every Tuesday 10:00 AM to 12:00 PM. The Cupboard shall not be open for operations on Sunday unless so authorized by the City Manager.

**Section 5. Non-Appropriation of Funds.** All obligations of the City under this Agreement are subject to the availability of annual legislative appropriations by the City Council and the Cupboard acknowledges that the ability of the City to perform under this Agreement is contingent upon the continued availability of funds. The amount of City obligation hereunder shall not at any time exceed the amount certified for the purpose stated in such advance authorization. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are within the exclusive discretion of the Elgin City Council.

**Section 6. Rights.** The City of Elgin has the right, at any time, to inspect the books or records of the Cupboard that may relate to the performance of this Agreement. The City, at its sole expense, has the right to conduct an audit of the Cupboard.

**Section 7. Term.** This Agreement shall become effective as of January 1, 2020 shall continue in effect until December 31, 2024, with subsequent automatic renewals for a period of one year unless terminated by either party in accordance with Section 10 below.

**Section 8. Indemnification.** The Cupboard agrees to defend, indemnify and hold harmless the City of Elgin, the Mayor and City Council, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the Cupboard's breach of any of the

terms or provisions of this Agreement, or by any negligent act or omission of the Cupboard, its officers, agents, servants, employees, contractors, or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the Cupboard and City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Both parties expressly agree that this Agreement does not assign any responsibility for civil liability to the City that may arise by virtue of this Agreement.

**Section 9. Termination.** Either party hereby reserves the right to terminate this agreement without cause upon sixty (60) days written notice. The City may also terminate this Agreement for breach of any provision of this Agreement, upon written notice of the breach and the Cupboard shall have thirty (30) days after receipt of the written notice in which to cure the breach to the satisfaction of the City.

### **MISCELLANEOUS**

**Section 10. Approval.** This Agreement has been duly and properly approved by each Party's governing body and constitutes a binding obligation on each party herein. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement

**Section 11. 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 therein.

**Section 12. Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

**Section 13. Entire Agreement.** Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations regarding the subject matter hereof.

**Section 14. Amendments.** Any amendment of this Agreement must be in writing and shall be effective if signed by the authorized representatives of both Parties.

**Section 15. 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.

**Section 16. Assignment.** Except as otherwise provided in this Agreement, the Chamber may not assign this Agreement or subcontract the performance of services without first obtaining the written consent of the City.

**Section 17. Non-Waiver.** A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this Agreement does not preclude the exercise of another right or remedy. Rights and remedies under this Agreement are cumulative and are not exclusive of other rights or remedies provided by law.

**Section 18. 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.

**Section 19. 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

CHAMBER: Elgin Community Cupboard  
Attn: Executive Director  
114 Depot Street  
Elgin, Texas 78621

**Section 20. 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.

**CITY OF ELGIN:**

By: \_\_\_\_\_  
Chris Cannon, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas L. Mattis, City Manager

Date: \_\_\_\_\_

**THE ELGIN COMMUNITY CUPBOARD:**

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF TEXAS** §  
§  
**COUNTY OF BASTROP** §

On this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 BASTROP** §

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared Thomas L. Mattis, City Manager 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 \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, 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



## Elgin City Council Meeting Agenda Item Executive Summary

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**ITEM:** A RESOLUTION OF THE CITY OF ELGIN, TEXAS APPROVING A STRATEGIC PARTNERSHIP AGREEMENT WITH THE BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING CERTAIN FINDINGS RELATED THERETO

**DEPARTMENT:** City Council

**PROPOSED ACTION:**

Consideration and approval of a Resolution authorizing a Strategic Partnership Agreement (SPA) with the Brickston Municipal Utility District (MUD).

**BACKGROUND:**

Discussed at previous meetings; Texas Bridle Trails (“TBT”) intends to develop 650 +/- acres of land within City’s ETJ as “Brickston”, a master-planned, mixed-use community with park and recreational facilities to serve the community. Brickston will include commercial sites, as well as land sites for public safety and public-school facilities.

The Council previously approved a Development and Consent Agreement, that is binding upon TBT and the associated Brickston MUD. Said Agreement included a commitment on the part of the City to consent to the creation of the MUD in exchange for various commitments made by the developers.

As part of said agreement, the developers also agreed to a “Limited Purpose Annexation” in conformity with state law. Through this action, the City will annex all land within the MUD for limited purposes, including (a) imposing and collecting sales tax within the MUD and (b) subjecting the MUD to the development standards of the City (or as otherwise stipulated in our Development Agreement).

Included as part of this annexation, the City will provide “limited” city services to the MUD (namely Police and Library services), for which the MUD will pay for at a rate comparable to city residents.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was { } included { } not included in the current-year budget {X} N/A

**RECOMMENDATION:** Approval of a Resolution authorizing a Strategic Partnership Agreement with the Brickston Municipal Utility District as described; and routine direction to staff, if any.

**ATTACHMENTS:** (a) Resolution, (b) Strategic Partnership Agreement

{ } Staff will be making a detailed presentation on this agenda item at the meeting.

{X} 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 APPROVING  
A STRATEGIC PARTNERSHIP AGREEMENT WITH THE  
BRICKSTON MUNICIPAL UTILITY DISTRICT AND MAKING  
CERTAIN FINDINGS RELATED THERETO**

**WHEREAS**, the City Council has approved and authorized a Development and Consent Agreement with Texas Bridle Trails LLC and Brickston Municipal Utility District (MUD) to construct a master-planned, mixed-use residential project that will also include commercial uses, parks, and recreational facilities to serve the community; and,

**WHEREAS**, the Texas Local Government Code, Section 43.0751 authorizes the City and certain utility districts, such as the Brickston MUD, to negotiate and enter into a strategic partnership agreement by mutual consent; and,

**WHEREAS**, the proposed Strategic Partnership Agreement provides for annexation of all land within the MUD for limited purposes, including, but not limited to, imposing and collecting sales and use taxes within the MUD and subjecting the MUD to the development standards of the City; and,

**WHEREAS**, the Mayor and City Council have found and determined that the proposed Strategic Partnership Agreement with the Brickston Municipal Utility District will further the public interest and welfare.

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

**Section 1. Findings.** The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Authorization.** The Mayor is hereby authorized to execute the *Strategic Partnership Agreement between the City of Elgin, Texas and Brickston Municipal Utility District*, a copy of said agreement being attached hereto and marked Exhibit A; and made part of this Resolution as if copied verbatim herein.

**Section 3. Open Meetings.** The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**Section 4. Effective Date.** This Resolution shall take effect immediately upon passage.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Egin, Texas

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary

**STRATEGIC PARTNERSHIP AGREEMENT BETWEEN**  
**THE CITY OF ELGIN, TEXAS AND**  
**BRICKSTON MUNICIPAL UTILITY DISTRICT**

STATE OF TEXAS                   §  
                                             §  
COUNTY OF TRAVIS           §

This Strategic Partnership Agreement (this “Agreement”) is entered into by and between the City of Elgin, Texas (the “City”) and Brickston Municipal Utility District (the “District”).

**RECITALS**

**WHEREAS**, the City is a home-rule municipal corporation created and existing under the laws of the State of Texas and situated in Travis and Bastrop Counties, Texas; and

**WHEREAS**, the District is a municipal utility district created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59 of the Texas Constitution; Chapter 8038 of the Texas Special District Local Laws Code (the “Enabling Legislation”); and Chapters 49 and 54 of the Texas Water Code, all as amended; and

**WHEREAS**, the City and the District are individually referred to as a “Party” and collectively as the “Parties”; and

**WHEREAS**, Chapter 43 of the Texas Local Government Code (the “Act”) and, specifically, Section 43.0751 of the Act authorize the City and the District to negotiate and enter this Agreement; and

**WHEREAS**, the District encompasses approximately \_\_\_\_\_ acres, more or less, located within the extraterritorial jurisdiction of the City as depicted on **Exhibit A** and more fully described on **Exhibit B** attached to this Agreement (the “Development”); and

**WHEREAS**, Texas Bridle Trails, LLC (the “Owner”) is the current owner of the Development, as reflected in the current tax rolls of the appraisal district of Travis County; and

**WHEREAS**, pursuant to Section 43.0751 of the Act, the City desires to annex the all the land in the Development for limited purposes, including, but not limited to, imposing and collecting sales and use taxes within the Development and subjecting the Development to the development standards of the City, subject to the limitations set forth in Section 2.4 hereof; and

**WHEREAS**, subject to the terms and conditions of this Agreement and for the health, safety, and welfare of the residents within the District, the District is willing to allow the City to annex the Development for the limited purposes set forth herein; and

**WHEREAS**, to facilitate the limited purpose annexation by the City of the Development, and for the health, safety, and welfare of the residents of the District, the Owner has submitted to

the City a petition requesting and consenting to the limited purpose annexation of the Development; and

**WHEREAS**, pursuant to the Act and the Owner's petition for limited purpose annexation, the Parties desire to enter into this Agreement to accomplish the annexation by the City of the Development for the limited purposes set forth herein; and

**WHEREAS**, the District provided notice of two public hearings in accordance with all applicable laws; and

**WHEREAS**, the board of directors of the District (the "Board") conducted two public hearings in accordance with all applicable laws at which members of the public who wished to present testimony or evidence regarding this Agreement were given the opportunity to do so; and

**WHEREAS**, the Board approved and adopted this Agreement on \_\_\_\_\_, 2020, in open session at a meeting held in accordance with all applicable laws; and

**WHEREAS**, the City provided notice of two public hearings in accordance with all applicable laws; and

**WHEREAS**, the City Council of the City (the "City Council") conducted two public hearings in accordance with all applicable laws at which members of the public who wished to present testimony or evidence were given the opportunity to do so; and

**WHEREAS**, the City Council approved and adopted this Agreement on \_\_\_\_\_, 2020, in open session in accordance with all applicable laws, which approval and adoption occurred after the Board approved and adopted this Agreement; and

**WHEREAS**, all notices, hearings and other procedural requirements imposed by law for the adoption of this Agreement have been met; and

**WHEREAS**, in accordance with the requirements of Subsection (p)(1) of the Act, this Agreement does not require the District to provide revenue to the City solely for the purpose of obtaining an agreement with the City to forego annexation of the District; and

**WHEREAS**, in accordance with the requirements of Subsection (p)(2) of the Act, this Agreement provides benefits for the City and the District that are reasonable and equitable; and

**WHEREAS**, the Parties agree and acknowledge that this Agreement is not intended to and does not void, modify or impact in any manner the Development Agreement dated February 6, 2019 between the Owner and the City (the "Development Agreement") and

**WHEREAS**, it is the intention of the Parties that the District shall continue in existence during the period of limited purpose annexation and, if applicable, after any dis-annexation of the Development, should the City determine not to annex the Development for full purposes as provided for herein.

**NOW THEREFORE**, for and in consideration of the mutual agreements contained in this Agreement, and for the good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the District and the City agree as follows:

## **ARTICLE I. RECITALS**

Section 1.1 The recitals set forth above are true and correct and are incorporated herein and made a part hereof as findings for all purposes.

## **ARTICLE II. ADOPTION OF AGREEMENT AND LIMITED PURPOSE ANNEXATION OF PROPERTY**

Section 2.1 Public Hearings. The Parties acknowledge and agree that prior to the execution of this Agreement, the Board and the City Council conducted public hearings to consider the adoption of this Agreement and that such hearings were noticed and conducted in accordance with all applicable laws.

Section 2.2 Effective Date. The effective date of this Agreement (the “Effective Date”) is the date it is approved and adopted by the City Council.

Section 2.3 Filing in Property Records. This Agreement shall be filed in the Real Property Records of Travis County, Texas.

Section 2.4 Limited Purpose Annexation of the Development. For the health, safety, and welfare of the residents of the District, the Parties agree that the City may annex the Development for the limited purposes of the following:

(a) Sales and Use Tax. Subject to the provisions set forth in this Agreement and to the extent permitted by applicable law, the City may impose and collect sales and use taxes authorized by Chapter 321 of the Texas Tax Code (the “Tax Code”) on sales consummated within the Development.

(b) Imposition of Development Standards. The limited purpose annexation contemplated in this Agreement shall specifically subject the Development to the City’s jurisdiction in regards to development standards and land use regulations. From and after the date of the limited purpose annexation *and except as modified by the Development Agreement*, the Development shall be subject to all in-City development regulations, including zoning and subdivision regulations, as if the Development were completely within the municipal limits and had been annexed for full purposes. To the extent of a conflict between the Development Agreement and any development standards, land use or zoning regulations, or subdivision regulations of the City, the terms of the Development Agreement shall apply. It is understood by the Parties that except as modified in the Development Agreement, the Development shall be considered zoned MF4 from and after the date of the limited purpose annexation.

The District acknowledges and agrees that the City Council may adopt a limited purpose annexation ordinance applicable to the Development at a meeting conducted in accordance with Chapter 551 of the Texas Government Code and that no further notices, hearings, or other procedures shall be required to adopt such limited purpose annexation

ordinance. The City may commence limited purpose annexation of the Development upon the Effective Date. The Parties further agree and acknowledge that this Agreement does not void, modify or otherwise impact the Development Agreement.

(c) Library and Police Services. From and after the date of the limited purpose annexation, the City shall provide library and police services to the Development to the same extent it provides such services to in-City properties. The Parties shall enter into an agreement for the provision of such services and for the payment of such services at a cost comparable to the costs incurred by the City for the provision of such services.

(d) Public Infrastructure. Subject to the subsections (a)-(c) above, from and after the date of the limited purpose annexation and except as modified by the Development Agreement, the District shall be fully responsible for all design, construction, funding, maintenance, and ownership of any and all infrastructure improvements within the boundaries of the District, including but not limited to streets, roadways, alleys, sidewalks, street lighting, public and private parkland facilities (unless conveyed to Home Owners Association {HOA} whereupon HOA is responsible), stormwater drainage facilities, retention walls, public landscaping/irrigation (unless conveyed to HOA whereupon HOA is responsible), and related engineering and design during the term of this Agreement or upon full annexation whichever occurs first. Upon the expiration of this Agreement resulting in full purpose annexation of the District, the City agrees to acquire, operate and maintain the Public Infrastructure.

Section 2.5 Limited Purpose Property and Sales and Use Tax Revenues. For purposes of this Agreement, all property within the Development may sometimes be referred to as “Limited Purpose Property”; and the sales and use taxes collected within the Limited Purpose Property shall be referred to as the “Sales and Use Tax Revenues”.

Section 2.6 Consent to Limited Purpose Annexation. The District on behalf of itself and all present and future owners of land within the District, hereby requests that the City annex the Limited Purpose Property solely for the purposes provided in this agreement. The District consents to such limited purpose annexation and to the collection of sales and use tax revenues by the City within the Limited Purpose Property. Such consent shall bind the District and, upon recording of this Agreement in the appropriate county records, each Owner and future Owner of land within the District.

Section 2.7 Limited District. The District is not a limited district as defined in Subsection 43.0751(a)(2) of the Act and shall not be a limited district after the date of the limited purpose annexation. After the limited purpose annexation, the District shall continue in full force and effect under Subsection 43.0751(f)(2) of the Act, with all the powers and duties of the District surviving.

Section 2.8 Property Taxes and District Liability for Debts of the City. During the term of this Agreement, (i) neither the District, nor any owners of taxable property within the District, are liable for any present or future debts of the City; and (ii) the City’s current and future ad valorem taxes will not be levied on any taxable property in the Development. The City acknowledges that pursuant to Subsection 43.130(c) of the Act and other applicable law, the City is not permitted to impose a tax on any property annexed for limited purposes, including the Development.

Section 2.9 Powers and Functions Retained by the District. The District is authorized to exercise all powers and functions of a municipal utility district provided by existing law or any amendments or additions thereto, including the District's Enabling Legislation. Nothing in this Agreement or the limited purpose annexation shall affect, modify or alter the District's power to finance and/or develop, own, operate or maintain a water, wastewater, drainage or roadway system to serve the District or to contract with entities to develop, own, operate or maintain water, wastewater, drainage and road systems to serve the District.

### **ARTICLE III. TAXATION**

Section 3.1 Collection of Sales and Use Tax Revenues. The City may impose a sales and use tax within the Limited Purpose Property pursuant to Subsection 43.0751(k) of the Act. The sales and use tax may be imposed on all eligible commercial activities at the rate allowed under the Tax Code. Collection of Sales and Use Tax Revenues shall take effect on the date described in Section 321.102 of the Tax Code.

Section 3.2 Payment of Sales and Use Tax. The Parties agree and acknowledge that the District will not share directly in the revenue derived from the City's Sales and Use Tax on the Commercial Property.

### **ARTICLE IV. FULL PURPOSE ANNEXATION**

Section 4.1 Subsection C-1 Full Purpose Annexation. The Development is exempt from the municipal annexation plan requirements pursuant to Section 43.052 of the Act. Consequently, the District consents, on its behalf and on behalf of all current and future owners of land included within the District, to the full purpose annexation of the Development in accordance with the procedures set forth in Chapter 43, Subchapter C-1, of the Texas Local Government Code upon the expiration of the term of this Agreement and on the Full Purpose Annexation Conversion Date, as defined in Section 4.2 of this Agreement.

Section 4.2 Full Purpose Annexation Conversion Date. Pursuant to Subsection (h) of the Act, the Limited Purpose Property shall be deemed to be within the full-purpose boundary limits of the City upon the Full Purpose Annexation Conversion Date without any further action by the City Council. The "Full Purpose Annexation Conversion Date" is the date upon which the City Council adopts an ordinance that includes the Development within the full-purpose boundary limits of the City, which date shall in no event occur prior to the expiration of the term of this Agreement. The Full Purpose Annexation Conversion Date may be altered only by mutual written agreement of the District and the City.

Section 4.3 No Full-Purpose Annexation During Term of Agreement. On the thirty-ninth anniversary date of the Effective Date, the City Manager shall evaluate whether the City should negotiate a new strategic partnership agreement with the District, annex the District for full purposes upon the termination of this Agreement, or allow this Agreement to expire. Within six (6) months following the thirty-ninth anniversary date, the City Manager shall make a recommendation to the City Council regarding the negotiation of a new strategic partnership agreement, the full purpose annexation of the District, or the expiration of this Agreement. If the City Manager recommends that the City negotiate a new strategic partnership agreement or annex the District and the City Council approves the recommendation, the City shall begin negotiations

to enter into a new strategic partnership agreement or commence annexation of the District for full purposes at the expiration of this Agreement, as applicable. If the City Manager recommends that the City neither negotiate a new strategic partnership agreement nor annex the District for full purposes, and the City Council agrees, or if the City Council rejects the City Manager's recommendation to negotiate a new strategic partnership agreement or to annex the District for full purposes, the City may begin proceeding to dis-annex the Limited Purpose Property, if authorized under the applicable provisions of the Local Government Code. If the City decides to dis-annex the Limited Purpose Property and has the authority to dis-annex, the City may institute proceedings to accomplish such dis-annexation to be effective upon the expiration of the term of this Agreement. Such dis-annexation of the Limited Purpose Property shall not affect the existence, powers, or duties of the District, which shall remain in full force and effect.

## **ARTICLE V. TERM**

Section 5.1 This Agreement commences on the Effective Date and continues for forty (40) years.

## **ARTICLE VI. BREACH, NOTICE AND REMEDIES**

Section 6.1 Notification of Breach. If either Party commits a breach of this Agreement, the non-breaching Party shall give Notice, as defined in Section 7.2 herein, to the breaching Party that describes the breach in reasonable detail.

Section 6.2 Cure of Breach. The breaching Party shall commence curing the breach within fifteen (15) calendar days after receipt of the Notice of the breach and shall complete the cure within thirty (30) days from the date of commencement of the cure; however, if the breach is not reasonably susceptible to cure within such thirty (30)-day period, the non-breaching Party shall not bring any action so long as the breaching Party has commenced to cure within such thirty (30)-day period and diligently completes the work within a reasonable time without unreasonable cessation.

Section 6.3 Remedies for Breach. If the breaching Party does not substantially cure the breach within the stated period of time, the non-breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus and injunctive relief; provided, however, that the non-breaching Party shall not be entitled to terminate this Agreement. The Parties specifically waive any right that they have or in the future may have to terminate this Agreement. Damages, if any, to which any non-breaching Party may be entitled shall be limited to actual damages and shall not include special or consequential damages. In addition, the prevailing party in any such action shall be entitled to reasonable attorney's fees and costs of litigation as determined in a final, non-appealable order in a court of competent jurisdiction.

## **ARTICLE VII. ADDITIONAL PROVISIONS**

Section 7.1 Voting; Municipal Office. Pursuant to Section 43.130(a) of the Act, the qualified voters of an area annexed for limited purposes are entitled to vote in municipal elections regarding the election or recall of members of the governing body of the municipality, the election

or recall of the controller, if the office of controller is an elective position of the municipality, and the amendment of the municipal charter. The voters may not vote in any municipal bond election. Pursuant to Section 43.130(b) of the Act, residents of the Property will not be eligible to be a candidate for or to be elected to a municipal office until and unless the Development is annexed into the City for full purposes.

Section 7.2 Notices. Any notices, certifications, approvals, or other communications (a “Notice”) required to be given by one Party to another under this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (i) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (ii) 10 business days after the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid or; (iii) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such change to the other Party as provided in this Section 7.2.

**CITY:**

City of Elgin  
PO Box 591  
Elgin, Texas 78621  
Attn: City Manager

With Required Copy to:

Charlie Crossfield  
Sheets & Crossfield  
309 E. Main Street  
Elgin, Texas 78664-5264

**DEVELOPER:**

Texas Bridle Trails LLC  
c/o Garrett Rajkovich  
6475 Camden Ave #202  
San Jose, California 95120

With Required Copy to:

Ranch Road Development  
c/o Scott Miller  
3951 Hwy 71 Bldg. A  
Bastrop, Texas 78602

With Required Copy to:

Winstead PC  
Attn: Ross Martin  
2728 N. Harwood St., Ste. 500  
Dallas, Texas 75201

Section 7.3 No Waiver. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Parties. Any waiver shall be limited to the specific purpose for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

Section 7.4 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties hereby submit to the jurisdiction of the courts of Bastrop County, Texas and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

Section 7.5 Authority to Execute. The City represents and warrants to the District that the execution of this Agreement has been duly authorized by the City Council and that the person executing this Agreement on behalf of the City has been duly authorized to do so by the City Council. The District represents and warrants to the City that the execution of this Agreement has been duly authorized by the Board and that the person executing this Agreement on behalf of the District has been duly authorized to do so by the Board.

Section 7.6 Severability. The provisions of this Agreement are severable and, in the event any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the provision so severed.

Section 7.7 Changes in State or Federal Laws. If any state or federal law changes so as to make it impossible for the City or the District to perform its obligations under this Agreement, the Parties will cooperate to amend this Agreement in such a manner that is most consistent with the original intent of this Agreement as legally possible.

Section 7.8 Additional Documents and Acts. The Parties agree that at any time after execution of this Agreement, they will, upon request of the other Party, execute and/or exchange any other documents necessary to effectuate the terms of this Agreement and perform any further acts or things as the other Party may reasonably request to effectuate the terms of this Agreement.

Section 7.9 Assignment. This Agreement shall not be assignable without the other Party's written consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns as permitted by this Agreement.

Section 7.10 Amendment. This Agreement may be amended only with the written consent of the Parties and with approval of the City and the District.

Section 7.11 Interpretation. This Agreement has been negotiated by the Parties, each of which has been represented by counsel; consequently, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Section 7.12 No Third Party Beneficiaries. This Agreement is solely for the benefit of the City and the District, and neither the City nor the District intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone other than the City and the District.

Section 7.13 Governmental Powers. Neither Party waives or surrenders any of its respective governmental powers, immunities or rights, except as specifically waived pursuant in this Section 7.13. Each Party waives its respective governmental immunity from suit and liability only as to any action brought by the other Party to pursue the remedies available under this Agreement. Nothing in this Section 7.13 shall waive any claims, defenses or immunities that either Party has with respect to suits against them by persons or entities not a party to this Agreement.

Section 7.14 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

|           |                                      |
|-----------|--------------------------------------|
| Exhibit A | Depiction of the Development         |
| Exhibit B | Legal Description of the Development |

Section 7.15 Counterpart Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

**APPROVED AND ADOPTED BY THE CITY COUNCIL  
OF THE CITY OF ELGIN ON \_\_\_\_\_, 20\_\_.**

**CITY OF ELGIN**

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Egin, Texas

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
CHARLES CROSSFIELD, City Attorney

STATE OF TEXAS           §  
                                          §  
COUNTY OF \_\_\_\_\_ §

      This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of the City of \_\_\_\_\_, Texas on behalf of the  
city.

\_\_\_\_\_  
Notary Public, State of Texas

**APPROVED AND ADOPTED BY THE BRICKSTON MUNICIPAL  
UTILITY DISTRICT ON \_\_\_\_\_, 20\_\_.**

**BRICKSTON MUNICIPAL UTILITY  
DISTRICT**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title:           President, Board of Directors

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, the President, Board of Directors of the Brickston Municipal Utility District on  
behalf of the district.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit A - Depiction of the Development**

**Exhibit B - Legal Description of the Development**



## Elgin City Council Meeting Agenda Item Executive Summary

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**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 THAT REPLACES RESOLUTION 2017-03-07-10, THAT AUTHORIZED A PREVIOUS AGREEMENT BETWEEN THE TWO PARTIES, WITH TERMS AND CONDITIONS FOR THE PROVISION OF WHOLESALE WATER SERVICE TO AQUA WATER SUPPLY CORPORATION AND MAKING CERTAIN FINDINGS RELATED THERETO**

**DEPARTMENTS:** Utility

**PROPOSED ACTION:** Adopt Resolution as presented

**BACKGROUND:** Aqua desires to replace a previously adopted Agreement with the City for the purchase of Wholesale Water Services to be provided by Elgin at a mutually agreed upon location. Aqua and Elgin previously executed a "Wholesale Service Agreement" effective April 1, 2017 and wish to amend the Prior Agreement to address the term of the Agreement and the drawdown schedules of several residential developments near Elgin, namely Altessa and Homestead.

The City has determined that it has sufficient water supplies available to provide Aqua with Wholesale Service. 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.

**BUDGET/FINANCIAL IMPACT:**

Funding for this item was { } included { } not included in the current-year budget {X} N/A

**RECOMMENDATION:** Adopt Resolution as presented to be effective April 1, 2020.

**ATTACHMENTS:** Resolution with copy of Amended Agreement attached.

**{X} Staff will be making a detailed presentation on this agenda item at 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 THAT REPLACES RESOLUTION 2017-03-07-10, THAT AUTHORIZED A PREVIOUS AGREEMENT BETWEEN THE TWO PARTIES, 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 replace a previously adopted Agreement with the City for the purchase of Wholesale Water Services 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 new 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 17<sup>th</sup> day of March, 2020.

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Elgin

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary

**AMENDED AND RESTATED WHOLESALE SERVICE AGREEMENT**

BETWEEN

CITY OF ELGIN, TEXAS

AND

AQUA WATER SUPPLY CORPORATION

EFFECTIVE APRIL 1, 2017

AMENDED \_\_\_\_\_

# WHOLESALE SERVICE AGREEMENT

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**AMENDED AND RESTATED WHOLESALE SERVICE AGREEMENT**

**THIS AMENDED AND RESTATED WHOLESALE SERVICE AGREEMENT**

(“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 and Elgin previously executed that certain “Wholesale Service Agreement” effective April 1, 2017 (the “Prior Agreement”) and wish to amended the Prior Agreement to address the term of the Agreement and the drawdown schedules of several residential developments near the Elgin

**WHEREAS**, this Agreement supercedes and replaces the Prior Agreement; and

**WHEREAS**, two (2) new subdivisions, the Homestead Subdivision (“Homestead”) and the Altessa Subdivision (“Altessa”) are currently being developed near the City of Elgin and Aqua plans to provide retail water service to those subdivisions and any other subdivisions

deemed necessary by the Parties with the water provided by the City of Elgin under this Agreement; 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 has documented such findings by a Resolution adopted by its City Council

**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 (Exhibit A). 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 Yearly Delivery Rate” means the maximum amount at which Elgin is obligated to deliver water to Aqua in accordance with the Schedule for Water Needs for Homestead and Altessa Subdivisions, attached hereto as Exhibit “DE” which may be amended from time to time to address additional subdivisions.

(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 only after water has been delivered by Elgin. 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, including, but not limited to, the Altessa Subdivision, the Homestead Subdivision, and any other subdivisions deemed necessary by the Parties. The Parties shall update Exhibit "DE" to reflect the schedule for water needs for any additional subdivisions.

(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 Yearly Delivery Rate of water to be treated and delivered under this Agreement in any Water Year shall be the amounts listed in Schedule for Water Needs for Homestead and Altessa Subdivisions, attached hereto as Exhibit "DE" but the Parties may amend Exhibit "DE" to reflect the provision of water service to additional subdivisions.

### **2.3 Rate of Delivery and Pressure.**

(a) Elgin shall deliver water to the Point of Delivery at the Maximum Yearly Delivery Rate. Elgin may install devices to insure compliance with this section.

(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.** A backflow prevention device approved by Elgin to prevent flow reversal shall always be maintained between Elgin's System and Aqua's system at the Point of Delivery. Aqua shall be responsible for installing and maintaining the backflow prevention device at Aqua's cost.

### **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.** Aqua shall furnish and install, or caused to be furnished and installed, operate, and maintain a Master Meter at the Point of Delivery at Aqua's sole expense, as provided by Elgin's current specifications and standards. The Master Meter shall remain the property of Aqua 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. Aqua shall purchase any required Master Meters that meets Elgin's specifications with Elgin's AMR on the Master Meter.

**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. If additional testing of the Master Meter is requested, the Party requesting the additional testing shall pay the costs of the test. 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 and such additional Points of Delivery will be added to Exhibit B.

## **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 Effects of Force Majeure.**

(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 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 thirty (30) Days prior written notice to Aqua, in the event that:

- (i) Elgin loses any Permit or other authorization from a Governmental Authority that is required by Elgin to perform its obligations under this Agreement;
- (ii) Elgin is unable to obtain any necessary Permit, Permit amendment, or other necessary authorization from a Governmental Authority to perform its respective duties under this Agreement; or
- (iii) Elgin loses its ability to transport water to the Point(s) of Delivery.

**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 Mutual Termination by Parties.** This Agreement may be terminated at any time upon agreement of Aqua and Elgin as evidenced in writing. The termination shall take effect upon the date agreed to in writing by Aqua and Elgin.

**10.6 Termination by One Party.** Both Aqua and Elgin have the unilateral authority to terminate this Agreement immediately by written notice no later than twelve (12) months in advance of the expiration of the Agreement.

**10.7 Effective Date of Termination.** Upon receipt of any notice of termination delivered pursuant to this Article X, this Agreement shall terminate, effective immediately unless otherwise agreed to in writing by the parties, 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; (ii) the ability of Elgin to recover Elgin's stranded investment incurred in anticipation of providing the services to Aqua throughout the term of this Agreement in the case of termination under Sections 10.5 and 10.6; and (iii) 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 shall enter into non-binding mediation in an attempt to resolve the dispute prior to commencing litigation. Elgin and Aqua shall 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; (Bi) 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 board members, officers, 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 six (6) years from the Effective Date hereof. However, this Agreement may be terminated by either Party in accordance with Article X 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:

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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**

**CITY OF ELGIN**

By: \_\_\_\_\_  
\_\_\_\_\_,

By: \_\_\_\_\_  
\_\_\_\_\_,

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Secretary, Board of Directors

By: \_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBITS**

**Exhibit A – Elgin’s Terms and Conditions for wholesale water service outside CCN No. 10311**

**Exhibit B - Description of Point of Delivery**

**Exhibit C – Name and Address for Notice to Aqua**

**~~Exhibit D – Elgin’s Retail Water CCN (CCN No. 10311) as of Effective Date~~**

**Exhibit DE – Schedule for Water Needs for the Homestead Subdivision, the Altessa Subdivision, and any other subdivisions as deemed necessary by the Parties**

**Exhibit A**

**Elgin's Terms and Conditions for Wholesale Service Outside CCN No. 10311**

**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 Base Charge is a fixed charge assessed against the number of residential customers in the amount of \$28.00 per customer. 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.

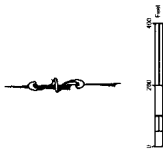
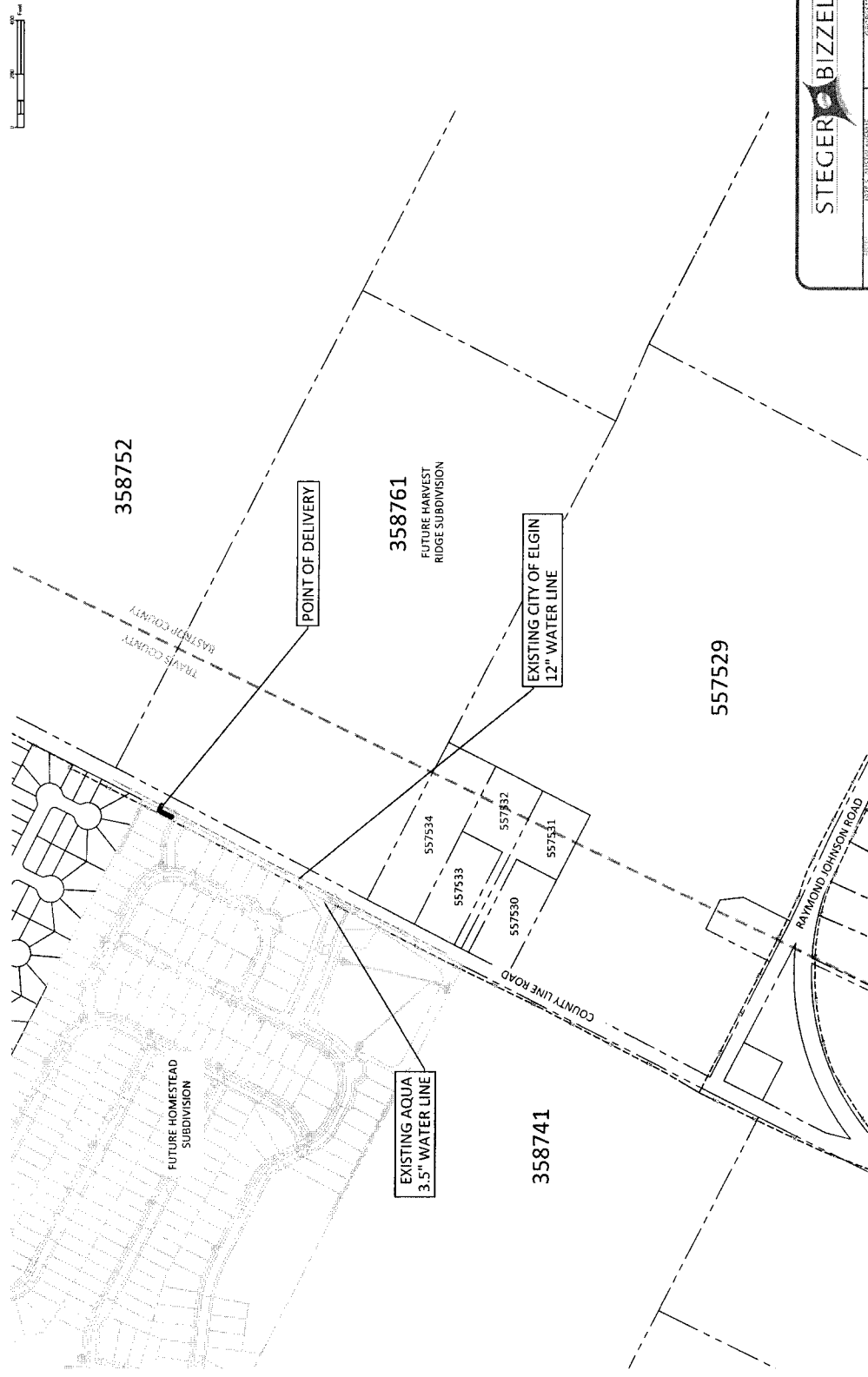
**Exhibit B**

**Description of Point of Delivery**

Point(s) of delivery to be determined on an as needed basis.

# EXHIBIT B

## DESCRIPTION OF POINT OF DELIVERY



|                                  |                 |                       |                 |
|----------------------------------|-----------------|-----------------------|-----------------|
| <br><b>STEEGER &amp; BIZZELL</b> |                 | PROJECT NO. 19970.281 |                 |
|                                  |                 | DATE 02/12/2020       |                 |
| JOB NO. 19970.281                | PROJECT NAME    | CLIENT NAME           | PROJECT ADDRESS |
| PROJECT ADDRESS                  | PROJECT ADDRESS | PROJECT ADDRESS       | PROJECT ADDRESS |

DATE 02/12/2020 JOB NO. 19970.281

**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

**Exhibit D**

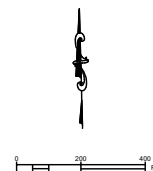
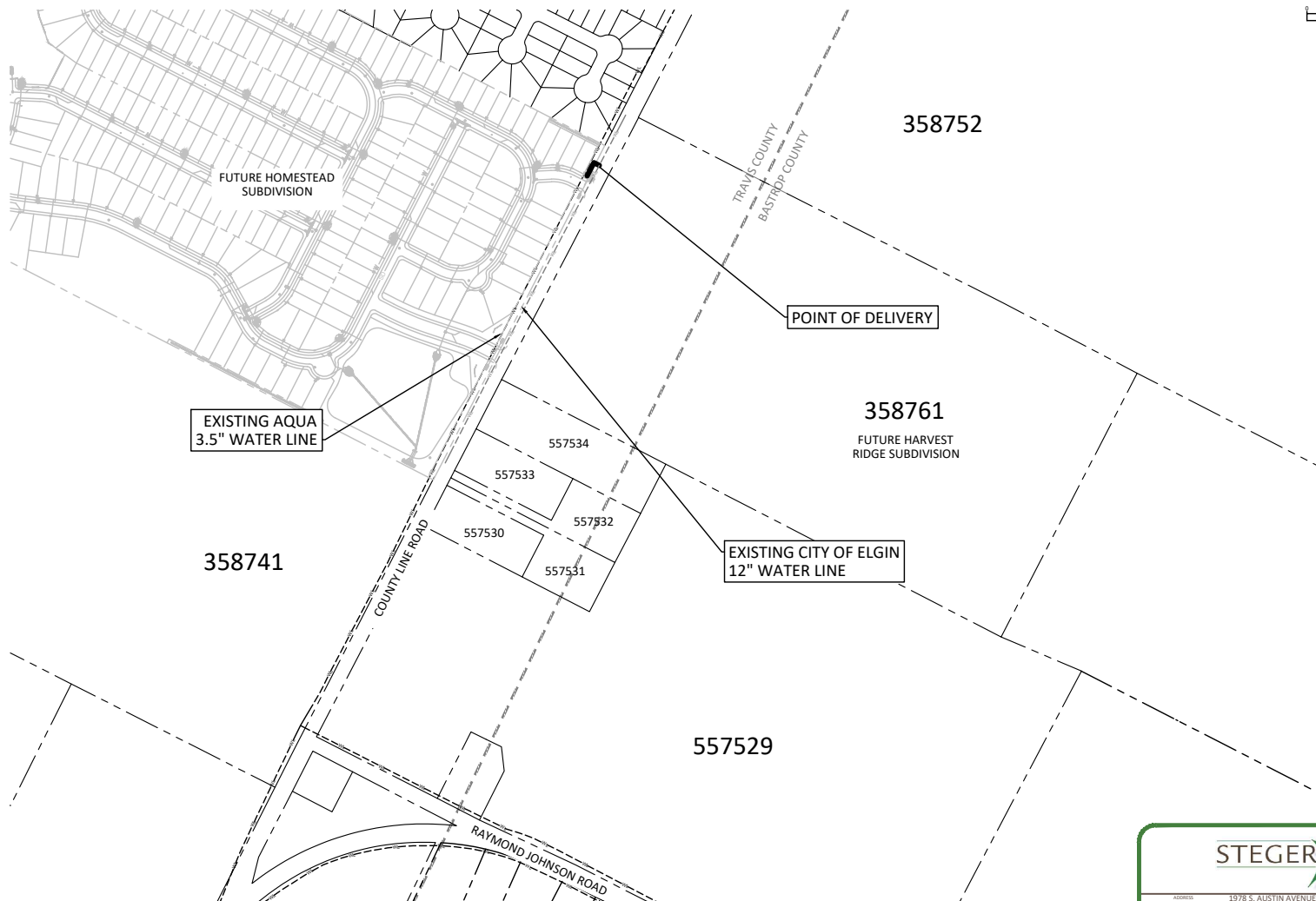
~~ELGIN'S RETAIL WATER CCN (CCN NO. 10311) AS OF EFFECTIVE DATE~~

**Exhibit D**

**Schedule for Water Needs for the Homestead Subdivision, the Altessa Subdivision, and any other subdivisions as deemed necessary by the Parties**

# EXHIBIT B

## DESCRIPTION OF POINT OF DELIVERY



**STEGER BIZZELL**

|          |                                    |                      |
|----------|------------------------------------|----------------------|
| ADDRESS  | 1978 S. AUSTIN AVENUE              | GEORGETOWN, TX 78626 |
| PHONE    | 512.930.9412                       | TELEFAX 512.930.9412 |
| SERVICES | >>ENGINEERS >>PLANNERS >>SURVEYORS |                      |

DATE 02/12/2020 JOB NO. 19970.281



## **Elgin City Council Meeting Agenda Item Executive Summary**

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**ITEM: AN ORDINANCE AMENDING CHAPTER 30, SECTION 30-2, CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, BY DELETING THIS SECTION IN ITS ENTIRETY AND REPLACING IT WITH A NEW PERSONNEL POLICY, PROVIDING A SAVINGS CLAUSE; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

**DEPARTMENTS:** Administration

**PROPOSED ACTION:** Review, revise if necessary and adopt Ordinance

**BACKGROUND:** The last revision to the City of Elgin's Personnel Policies and Procedures were adopted on March 15, 2005. Over the past several years, attempts have been made to recast existing policies in the form of a revised document that took into consideration the growth and size of the City and changes in federal and state laws and proscriptions that impact administration of HR functions.

The proposed Personnel Policy document referenced in the Ordinance provides a comprehensive and updated version of said policies that will guide administration of HR practices and procedures into the future. Actual day to day administrative procedures will be defined in the City of Elgin HR Procedures Manual as established by the City Manager which is designed to implement Council approved Policies at the operational level.

A draft copy of the HR Policies was provided to the City Council for review and comment at its first meeting in January. Revisions made since then will be presented and reviewed for consideration at this current meeting.

**BUDGET/FINANCIAL IMPACT:**

**Funding for this item was { } included { } not included in the current-year budget {x} N/A**

**RECOMMENDATION:** Adopt Ordinance as presented to be effective July 1, 2020.

**ATTACHMENTS:** Ordinance with copy of Revised Personnel Policies.

**{X} Staff will be making a detailed presentation on this agenda item at 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 AMENDING CHAPTER 30, SECTION 30-2, CODE OF ORDINANCES, CITY OF ELGIN, TEXAS, BY DELETING THIS SECTION IN ITS ENTIRETY AND REPLACING IT WITH A NEW PERSONNEL POLICY, PROVIDING A SAVINGS CLAUSE; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

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

**I.**

**WHEREAS**, Chapter 30, Section 30-2, Code of Ordinances, City of Elgin, Texas, Personnel Policy, dated April 19, 2005 is hereby deleted in its entirety and replaced with a new Personnel Policy dated March 17, 2020 to be effective July 1, 2020.

**WHEREAS**, a copy of said Personnel Policy is on file in the office of the City Secretary and is hereby adopted by reference as though it was copied fully herein.

**II.**

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.

C. The effective date of the Ordinance to be July 1, 2020.

READ, PASSED, and ADOPTED on this 17th day of March, 2020.

\_\_\_\_\_  
CHRIS CANNON, Mayor  
City of Elgin, Texas

ATTEST:

\_\_\_\_\_  
AMELIA SANCHEZ, City Secretary



## **Elgin City Council Meeting Agenda Item Executive Summary**

---

### **ITEM:**

Consideration, discussion and possible action to award a contract to the low bidder Royal Vista Inc., in the amount of \$826,214.00 for the Central Wastewater Lift Station Project and authorize the City Manager to fund the project from proceeds from sale of 2016 Certificates of Obligation.

**DEPARTMENT:** Wastewater Operations

### **PROPOSED ACTION:**

Award contract for Central Wastewater Lift Station to lowest bidder and authorize City Manager to fund the project from 2016 Certificates of Obligation Bonds.

### **BACKGROUND:**

A total of eight (8) sealed bids were received at Elgin City Hall on March 10, 2020 at 11:00 am for the Central Wastewater Lift Station Project. Bids ranged from \$1,577,870 from Austin Engineering of Austin, Texas to \$826,214.00 from Royal Vista Inc. of Liberty Hill, Texas. TRC Solutions prepared a bid tabulation and prepared a recommendation for awarding the contract.

### **BUDGET/FINANCIAL IMPACT:**

**Funding for this item was {X} included { } not included in the current-year budget { } N/A**

### **RECOMMENDATION:**

Staff recommends that Royal Vista Inc. of Liberty Hill, Texas be awarded the construction project in the amount of \$826,214.00 and authorize the City Manager to fund and pay for the project from Proceeds of the 2016 CO Bonds. The bid amount is \$76,214 above the original budgeted amount. The overage is to be covered from a surplus between the budgeted and actual costs of the Well # 16 project.

### **ATTACHMENTS:**

Excerpt from 2017 Five Year CIP Plan- Central Wastewater Lift Station  
Recommendation Letter and Bid Tabulation

**{ } Staff will be making a detailed presentation on this agenda item at the meeting.**

**{X} 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.*



505 East Huntland Drive  
Suite 250  
Austin, Texas 78752

T 512.454.8716  
TRCcompanies.com  
T.B.P.E. #F-8632

March 11, 2020

Honorable Chris Cannon, Mayor and City Council  
City of Elgin  
310 North Main  
Elgin, Texas 78621

Attn: Mr. Thomas Mattis, City Manager

**RE: Elgin Central Lift Station  
Bid Recommendation**

Dear Mayor Cannon and Council Members:

Eight (8) sealed bids were received at Elgin City Hall on March 10, 2020 at 11:00 A.M. for the above-referenced project. The bids ranged from \$826,214.00 from Royal Vista, Inc. of Liberty Hill, Texas to \$1,577,870.00 from Austin Engineering Co., Inc. of Austin, Texas. A detailed bid tabulation is attached for your reference. The construction completion period is one hundred eighty (180) consecutive calendar days.

The project consists of the installation of a new duplex lift station, replacement of approximately 1322 lineal feet of sewer line along Central Avenue and the demolition of the existing lift station. This lift station services the commercial properties around HEB.

It is recommended that Royal Vista, Inc. be awarded the construction project in the amount of \$826,214.00. TRC conducted reference checks on projects supplied by the contractor and found that Royal Vista, Inc. completed these projects to the satisfaction of the Owners and Engineers. Royal Vista, Inc. has completed work for the City of Elgin in the past. The Contractor has a bid bond and will be required to furnish a Standard Form of Agreement, Performance Bond and Payment Bond to the City.

If you have any other questions or comments, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Beau Perry'.

K. Beau Perry, P.E.  
Vice President

cc: Doug Prinz, City of Elgin

Attachment: Bid Tabulation

City of Elgin  
Central Lift Station  
Bid Tabulation  
March 10, 2020 - 11:00 AM



|                          |                                                              |       |      | Royal Vista, Inc.<br>350 County Road 260<br>Liberty Hill, TX 78642 |              | JKB Construction Company, LLC<br>P.O. Box 1001<br>Liberty Hill, TX 78642 |              | Atlas Construction, Corp<br>316 Sunset Drive<br>Granite Shouls, TX 78654 |              | Lupe Rubio Construction Co., Inc.<br>P.O. Box 1838<br>Kingsland, TX 78639 |              |
|--------------------------|--------------------------------------------------------------|-------|------|--------------------------------------------------------------------|--------------|--------------------------------------------------------------------------|--------------|--------------------------------------------------------------------------|--------------|---------------------------------------------------------------------------|--------------|
| Item                     | Item Description                                             | Qty.  | Unit | Unit Price                                                         | Total        | Unit Price                                                               | Total        | Unit Price                                                               | Total        | Unit Price                                                                | Total        |
| <b>BASE BID PROPOSAL</b> |                                                              |       |      |                                                                    |              |                                                                          |              |                                                                          |              |                                                                           |              |
| P.1                      | Central Lift Station                                         | 1     | LS   | \$395,000.00                                                       | \$395,000.00 | \$458,000.00                                                             | \$458,000.00 | \$350,000.00                                                             | \$350,000.00 | \$474,706.49                                                              | \$474,706.49 |
| P.2                      | Demolition of existing Central Lift Station                  | 1     | LS   | \$35,000.00                                                        | \$35,000.00  | \$19,000.00                                                              | \$19,000.00  | \$16,850.00                                                              | \$16,850.00  | \$20,520.00                                                               | \$20,520.00  |
| P.3                      | 8" C-900 PVC Wastewater Force Main                           | 191   | LF   | \$65.00                                                            | \$12,415.00  | \$43.00                                                                  | \$8,213.00   | \$32.00                                                                  | \$6,112.00   | \$40.39                                                                   | \$7,714.49   |
| P.4                      | 8" SDR 26 PVC pipe (6'-10')                                  | 7     | LF   | \$150.00                                                           | \$1,050.00   | \$47.00                                                                  | \$329.00     | \$90.00                                                                  | \$630.00     | \$63.03                                                                   | \$441.21     |
| P.5                      | 8" SDR 26 PVC pipe (10'-14')                                 | 15    | LF   | \$180.00                                                           | \$2,700.00   | \$55.00                                                                  | \$825.00     | \$130.00                                                                 | \$1,950.00   | \$66.45                                                                   | \$996.75     |
| P.6                      | 12" SDR 26 PVC pipe (0'-6')                                  | 10    | LF   | \$150.00                                                           | \$1,500.00   | \$50.35                                                                  | \$503.50     | \$95.00                                                                  | \$950.00     | \$64.92                                                                   | \$649.20     |
| P.7                      | 12" SDR 26 PVC pipe (6'-10')                                 | 163   | LF   | \$180.00                                                           | \$29,340.00  | \$58.00                                                                  | \$9,454.00   | \$140.00                                                                 | \$22,820.00  | \$69.48                                                                   | \$11,325.24  |
| P.8                      | Remove 6" sewer line - Install 12" SDR 26 PVC Pipe (0'-6')   | 73    | LF   | \$85.00                                                            | \$6,205.00   | \$61.00                                                                  | \$4,453.00   | \$50.00                                                                  | \$3,650.00   | \$58.18                                                                   | \$4,247.14   |
| P.9                      | Remove 6" sewer line - Install 12" SDR 26 PVC Pipe (6'-10')  | 256   | LF   | \$95.00                                                            | \$24,320.00  | \$68.00                                                                  | \$17,408.00  | \$105.00                                                                 | \$26,880.00  | \$63.88                                                                   | \$16,353.28  |
| P.10                     | Remove 6" sewer line - Install 12" SDR 26 PVC Pipe (10'-14') | 375   | LF   | \$115.00                                                           | \$43,125.00  | \$78.00                                                                  | \$29,250.00  | \$160.00                                                                 | \$60,000.00  | \$75.28                                                                   | \$28,230.00  |
| P.11                     | Remove 6" sewer line - install 12" C-900 PVC Pipe (0'-6')    | 16    | LF   | \$95.00                                                            | \$1,520.00   | \$61.00                                                                  | \$976.00     | \$50.00                                                                  | \$800.00     | \$69.43                                                                   | \$1,110.88   |
| P.12                     | Remove 6" sewer line - install 12" C-900 PVC Pipe (6'-10')   | 522   | LF   | \$105.00                                                           | \$54,810.00  | \$68.00                                                                  | \$35,496.00  | \$105.00                                                                 | \$54,810.00  | \$80.83                                                                   | \$42,193.26  |
| P.13                     | Remove 6" sewer line - install 12" C-900 PVC Pipe (10'-14')  | 80    | LF   | \$125.00                                                           | \$10,000.00  | \$78.00                                                                  | \$6,240.00   | \$160.00                                                                 | \$12,800.00  | \$103.63                                                                  | \$8,290.40   |
| P.14                     | Ductile iron compact main line fittings                      | 0.21  | TON  | \$25,000.00                                                        | \$5,250.00   | \$8,500.00                                                               | \$1,785.00   | \$3,500.00                                                               | \$735.00     | \$14,792.86                                                               | \$3,106.50   |
| P.15                     | Inductive tracer detection wire                              | 191   | LF   | \$2.00                                                             | \$382.00     | \$0.25                                                                   | \$47.75      | \$1.00                                                                   | \$191.00     | \$1.50                                                                    | \$286.50     |
| P.16                     | Remove existing Manholes                                     | 2     | EA   | \$2,500.00                                                         | \$5,000.00   | \$1,100.00                                                               | \$2,200.00   | \$1,500.00                                                               | \$3,000.00   | \$1,140.00                                                                | \$2,280.00   |
| P.17                     | 4' Diameter Standard 6' Depth Manholes                       | 4     | EA   | \$4,100.00                                                         | \$16,400.00  | \$4,100.00                                                               | \$16,400.00  | \$5,500.00                                                               | \$22,000.00  | \$5,319.90                                                                | \$21,279.60  |
| P.18                     | 4' Diameter Standard 6' Depth Drop Manholes                  | 2     | EA   | \$5,200.00                                                         | \$10,400.00  | \$5,000.00                                                               | \$10,000.00  | \$6,500.00                                                               | \$13,000.00  | \$7,176.96                                                                | \$14,353.92  |
| P.19                     | Extra depth to 4' Diameter Standard 6' Depth Manholes        | 10    | VF   | \$150.00                                                           | \$1,500.00   | \$330.00                                                                 | \$3,300.00   | \$325.00                                                                 | \$3,250.00   | \$287.28                                                                  | \$2,872.80   |
| P.20                     | Extra depth to 4' Diameter Standard 6' Depth Drop Manholes   | 9     | VF   | \$150.00                                                           | \$1,350.00   | \$330.00                                                                 | \$2,970.00   | \$325.00                                                                 | \$2,925.00   | \$321.48                                                                  | \$2,893.32   |
| P.21                     | Raven Series 405 Lining on all manholes                      | 83    | VF   | \$120.00                                                           | \$9,960.00   | \$145.00                                                                 | \$12,035.00  | \$200.00                                                                 | \$16,600.00  | \$144.78                                                                  | \$12,016.74  |
| P.22                     | Connection to existing manholes                              | 3     | EA   | \$1,800.00                                                         | \$5,400.00   | \$3,000.00                                                               | \$9,000.00   | \$750.00                                                                 | \$2,250.00   | \$2,850.00                                                                | \$8,550.00   |
| P.23                     | 8' tall concrete fence including 16' vehicular gate          | 140   | LF   | \$350.00                                                           | \$49,000.00  | \$225.00                                                                 | \$31,500.00  | \$375.00                                                                 | \$52,500.00  | \$285.00                                                                  | \$39,900.00  |
| P.24                     | Gravel surface 3"                                            | 50    | SY   | \$80.00                                                            | \$4,000.00   | \$40.00                                                                  | \$2,000.00   | \$25.00                                                                  | \$1,250.00   | \$34.20                                                                   | \$1,710.00   |
| P.25                     | 12' access road                                              | 109   | SY   | \$50.00                                                            | \$5,450.00   | \$37.00                                                                  | \$4,033.00   | \$15.00                                                                  | \$1,635.00   | \$45.60                                                                   | \$4,970.40   |
| P.26                     | Connection of existing force main                            | 1     | EA   | \$1,800.00                                                         | \$1,800.00   | \$1,150.00                                                               | \$1,150.00   | \$750.00                                                                 | \$750.00     | \$5,700.00                                                                | \$5,700.00   |
| P.27                     | Video the proposed wastewater lines                          | 1,517 | LF   | \$3.00                                                             | \$4,551.00   | \$2.50                                                                   | \$3,792.50   | \$2.00                                                                   | \$3,034.00   | \$2.85                                                                    | \$4,323.45   |
| P.28                     | Removal of an existing 3/4" water service line               | 176   | LF   | \$10.00                                                            | \$1,760.00   | \$13.00                                                                  | \$2,288.00   | \$10.00                                                                  | \$1,760.00   | \$5.70                                                                    | \$1,003.20   |
| P.29                     | 2" schedule 40 PVC water line                                | 320   | LF   | \$18.00                                                            | \$5,760.00   | \$41.00                                                                  | \$13,120.00  | \$10.00                                                                  | \$3,200.00   | \$25.25                                                                   | \$8,080.00   |
| P.30                     | Relocation of existing water meter                           | 2     | EA   | \$2,500.00                                                         | \$5,000.00   | \$575.00                                                                 | \$1,150.00   | \$1,250.00                                                               | \$2,500.00   | \$2,827.20                                                                | \$5,654.40   |
| P.31                     | Seeding                                                      | 558   | SY   | \$2.00                                                             | \$1,116.00   | \$4.00                                                                   | \$2,232.00   | \$5.00                                                                   | \$2,790.00   | \$2.28                                                                    | \$1,272.24   |
| P.32                     | Rock berm                                                    | 40    | LF   | \$30.00                                                            | \$1,200.00   | \$42.00                                                                  | \$1,680.00   | \$45.00                                                                  | \$1,800.00   | \$45.60                                                                   | \$1,824.00   |
| P.33                     | Silt fence                                                   | 164   | LF   | \$3.00                                                             | \$492.00     | \$5.00                                                                   | \$820.00     | \$5.00                                                                   | \$820.00     | \$3.42                                                                    | \$560.88     |
| P.34                     | Traffic control plan                                         | 1     | LS   | \$15,000.00                                                        | \$15,000.00  | \$9,000.00                                                               | \$9,000.00   | \$8,000.00                                                               | \$8,000.00   | \$9,120.00                                                                | \$9,120.00   |
| P.35                     | Tree removal                                                 | 1     | LS   | \$12,000.00                                                        | \$12,000.00  | \$6,000.00                                                               | \$6,000.00   | \$10,000.00                                                              | \$10,000.00  | \$7,980.00                                                                | \$7,980.00   |
| P.36                     | Trench and/or excavation safety                              | 1,708 | LF   | \$1.00                                                             | \$1,708.00   | \$1.25                                                                   | \$2,135.00   | \$5.00                                                                   | \$8,540.00   | \$4.56                                                                    | \$7,788.48   |
| P.37                     | Pavement repair                                              | 325   | LF   | \$30.00                                                            | \$9,750.00   | \$130.00                                                                 | \$42,250.00  | \$25.00                                                                  | \$8,125.00   | \$45.60                                                                   | \$14,820.00  |
| P.38                     | Asbestos abatement                                           | 1     | LS   | \$10,000.00                                                        | \$10,000.00  | \$5,000.00                                                               | \$5,000.00   | \$25,000.00                                                              | \$25,000.00  | \$28,500.00                                                               | \$28,500.00  |
| P.39                     | Site Mobilization/Demobilization                             | 1     | LS   | \$25,000.00                                                        | \$25,000.00  | \$57,000.00                                                              | \$57,000.00  | \$100,000.00                                                             | \$100,000.00 | \$45,600.00                                                               | \$45,600.00  |
| <b>TOTAL BASE BID</b>    |                                                              |       |      | <b>\$826,214.00</b>                                                |              | <b>\$833,035.75</b>                                                      |              | <b>\$853,907.00</b>                                                      |              | <b>\$873,224.77</b>                                                       |              |

**City of Elgin  
Central Lift Station  
Bid Tabulation  
March 10, 2020 - 11:00 AM**



Patin Construction, LLC  
3800 W. 2<sup>nd</sup> Street  
Taylor, TX 76574

Qro Mex Construction Company, Inc.  
2801 Prairie Creek Road  
Granite Shoals, TX 78654

Legion Development, LLC  
2522 Shell Road  
Georgetown, TX 78628

Austin Engineering Co., Inc.  
P.O. Box 342349  
Austin, TX 78734

| Item                     | Item Description                                             | Qty.  | Unit | Unit Price   | Total               | Unit Price   | Total                 | Unit Price   | Total                 | Unit Price   | Total                 |
|--------------------------|--------------------------------------------------------------|-------|------|--------------|---------------------|--------------|-----------------------|--------------|-----------------------|--------------|-----------------------|
| <b>BASE BID PROPOSAL</b> |                                                              |       |      |              |                     |              |                       |              |                       |              |                       |
| P.1                      | Central Lift Station                                         | 1     | LS   | \$500,000.00 | \$500,000.00        | \$498,000.00 | \$498,000.00          | \$571,571.00 | \$571,571.00          | \$950,000.00 | \$950,000.00          |
| P.2                      | Demolition of existing Central Lift Station                  | 1     | LS   | \$38,000.00  | \$38,000.00         | \$55,000.00  | \$55,000.00           | \$40,200.00  | \$40,200.00           | \$30,000.00  | \$30,000.00           |
| P.3                      | 8" C-900 PVC Wastewater Force Main                           | 191   | LF   | \$80.00      | \$15,280.00         | \$66.00      | \$12,606.00           | \$53.00      | \$10,123.00           | \$110.00     | \$21,010.00           |
| P.4                      | 8" SDR 26 PVC pipe (6'-10')                                  | 7     | LF   | \$90.00      | \$630.00            | \$66.00      | \$462.00              | \$55.00      | \$385.00              | \$600.00     | \$4,200.00            |
| P.5                      | 8" SDR 26 PVC pipe (10'-14')                                 | 15    | LF   | \$100.00     | \$1,500.00          | \$78.00      | \$1,170.00            | \$57.00      | \$855.00              | \$1,000.00   | \$15,000.00           |
| P.6                      | 12" SDR 26 PVC pipe (0'-6')                                  | 10    | LF   | \$80.00      | \$800.00            | \$66.00      | \$660.00              | \$60.00      | \$600.00              | \$600.00     | \$6,000.00            |
| P.7                      | 12" SDR 26 PVC pipe (6'-10')                                 | 163   | LF   | \$90.00      | \$14,670.00         | \$76.00      | \$12,388.00           | \$68.00      | \$11,084.00           | \$100.00     | \$16,300.00           |
| P.8                      | Remove 6" sewer line - Install 12" SDR 26 PVC Pipe (0'-6')   | 73    | LF   | \$80.00      | \$5,840.00          | \$88.00      | \$6,424.00            | \$100.00     | \$7,300.00            | \$115.00     | \$8,395.00            |
| P.9                      | Remove 6" sewer line - Install 12" SDR 26 PVC Pipe (6'-10')  | 256   | LF   | \$90.00      | \$23,040.00         | \$98.00      | \$25,088.00           | \$110.00     | \$28,160.00           | \$130.00     | \$33,280.00           |
| P.10                     | Remove 6" sewer line - Install 12" SDR 26 PVC Pipe (10'-14') | 375   | LF   | \$100.00     | \$37,500.00         | \$66.00      | \$24,750.00           | \$130.00     | \$48,750.00           | \$150.00     | \$56,250.00           |
| P.11                     | Remove 6" sewer line - install 12" C-900 PVC Pipe (0'-6')    | 16    | LF   | \$80.00      | \$1,280.00          | \$108.00     | \$1,728.00            | \$90.00      | \$1,440.00            | \$130.00     | \$2,080.00            |
| P.12                     | Remove 6" sewer line - install 12" C-900 PVC Pipe (6'-10')   | 522   | LF   | \$90.00      | \$46,980.00         | \$108.00     | \$56,376.00           | \$93.00      | \$48,546.00           | \$150.00     | \$78,300.00           |
| P.13                     | Remove 6" sewer line - install 12" C-900 PVC Pipe (10'-14')  | 80    | LF   | \$100.00     | \$8,000.00          | \$115.00     | \$9,200.00            | \$150.00     | \$12,000.00           | \$175.00     | \$14,000.00           |
| P.14                     | Ductile iron compact main line fittings                      | 0.21  | TON  | \$7,500.00   | \$1,575.00          | \$5,600.00   | \$1,176.00            | \$45,442.00  | \$9,542.82            | \$20,000.00  | \$4,200.00            |
| P.15                     | Inductive tracer detection wire                              | 191   | LF   | \$2.00       | \$382.00            | \$0.90       | \$171.90              | \$4.00       | \$764.00              | \$1.00       | \$191.00              |
| P.16                     | Remove existing Manholes                                     | 2     | EA   | \$2,500.00   | \$5,000.00          | \$670.00     | \$1,340.00            | \$3,750.00   | \$7,500.00            | \$2,000.00   | \$4,000.00            |
| P.17                     | 4' Diameter Standard 6' Depth Manholes                       | 4     | EA   | \$5,000.00   | \$20,000.00         | \$6,700.00   | \$26,800.00           | \$10,258.00  | \$41,032.00           | \$6,000.00   | \$24,000.00           |
| P.18                     | 4' Diameter Standard 6' Depth Drop Manholes                  | 2     | EA   | \$6,500.00   | \$13,000.00         | \$6,700.00   | \$13,400.00           | \$11,786.00  | \$23,572.00           | \$9,000.00   | \$18,000.00           |
| P.19                     | Extra depth to 4' Diameter Standard 6' Depth Manholes        | 10    | VF   | \$500.00     | \$5,000.00          | \$400.00     | \$4,000.00            | \$288.50     | \$2,885.00            | \$500.00     | \$5,000.00            |
| P.20                     | Extra depth to 4' Diameter Standard 6' Depth Drop Manholes   | 9     | VF   | \$500.00     | \$4,500.00          | \$400.00     | \$3,600.00            | \$294.00     | \$2,646.00            | \$650.00     | \$5,850.00            |
| P.21                     | Raven Series 405 Lining on all manholes                      | 83    | VF   | \$150.00     | \$12,450.00         | \$320.00     | \$26,560.00           | \$250.00     | \$20,750.00           | \$500.00     | \$41,500.00           |
| P.22                     | Connection to existing manholes                              | 3     | EA   | \$5,000.00   | \$15,000.00         | \$3,800.00   | \$11,400.00           | \$7,474.00   | \$22,422.00           | \$2,000.00   | \$6,000.00            |
| P.23                     | 8' tall concrete fence including 16' vehicular gate          | 140   | LF   | \$250.00     | \$35,000.00         | \$280.00     | \$39,200.00           | \$110.00     | \$15,400.00           | \$275.00     | \$38,500.00           |
| P.24                     | Gravel surface 3"                                            | 50    | SY   | \$50.00      | \$2,500.00          | \$25.00      | \$1,250.00            | \$185.00     | \$9,250.00            | \$30.00      | \$1,500.00            |
| P.25                     | 12' access road                                              | 109   | SY   | \$50.00      | \$5,450.00          | \$88.00      | \$9,592.00            | \$72.00      | \$7,848.00            | \$50.00      | \$5,450.00            |
| P.26                     | Connection of existing force main                            | 1     | EA   | \$5,000.00   | \$5,000.00          | \$3,800.00   | \$3,800.00            | \$22,476.00  | \$22,476.00           | \$2,000.00   | \$2,000.00            |
| P.27                     | Video the proposed wastewater lines                          | 1,517 | LF   | \$2.00       | \$3,034.00          | \$6.00       | \$9,102.00            | \$2.50       | \$3,792.50            | \$3.00       | \$4,551.00            |
| P.28                     | Removal of an existing 3/4" water service line               | 176   | LF   | \$25.00      | \$4,400.00          | \$12.00      | \$2,112.00            | \$10.00      | \$1,760.00            | \$5.00       | \$880.00              |
| P.29                     | 2" schedule 40 PVC water line                                | 320   | LF   | \$75.00      | \$24,000.00         | \$20.00      | \$6,400.00            | \$10.00      | \$3,200.00            | \$60.00      | \$19,200.00           |
| P.30                     | Relocation of existing water meter                           | 2     | EA   | \$5,000.00   | \$10,000.00         | \$980.00     | \$1,960.00            | \$4,340.00   | \$8,680.00            | \$1,500.00   | \$3,000.00            |
| P.31                     | Seeding                                                      | 558   | SY   | \$2.00       | \$1,116.00          | \$2.90       | \$1,618.20            | \$9.00       | \$5,022.00            | \$8.00       | \$4,464.00            |
| P.32                     | Rock berm                                                    | 40    | LF   | \$100.00     | \$4,000.00          | \$56.00      | \$2,240.00            | \$20.00      | \$800.00              | \$30.00      | \$1,200.00            |
| P.33                     | Silt fence                                                   | 164   | LF   | \$2.50       | \$410.00            | \$4.00       | \$656.00              | \$5.00       | \$820.00              | \$5.00       | \$820.00              |
| P.34                     | Traffic control plan                                         | 1     | LS   | \$5,000.00   | \$5,000.00          | \$8,000.00   | \$8,000.00            | \$9,375.00   | \$9,375.00            | \$5,000.00   | \$5,000.00            |
| P.35                     | Tree removal                                                 | 1     | LS   | \$12,000.00  | \$12,000.00         | \$5,900.00   | \$5,900.00            | \$2,500.00   | \$2,500.00            | \$15,000.00  | \$15,000.00           |
| P.36                     | Trench and/or excavation safety                              | 1,708 | LF   | \$3.00       | \$5,124.00          | \$4.00       | \$6,832.00            | \$15.00      | \$25,620.00           | \$3.00       | \$5,124.00            |
| P.37                     | Pavement repair                                              | 325   | LF   | \$50.00      | \$16,250.00         | \$64.00      | \$20,800.00           | \$50.00      | \$16,250.00           | \$125.00     | \$40,625.00           |
| P.38                     | Asbestos abatement                                           | 1     | LS   | \$15,000.00  | \$15,000.00         | \$22,000.00  | \$22,000.00           | \$22,000.00  | \$22,000.00           | \$10,000.00  | \$10,000.00           |
| P.39                     | Site Mobilization/Demobilization                             | 1     | LS   | \$30,000.00  | \$30,000.00         | \$75,000.00  | \$75,000.00           | \$50,000.00  | \$50,000.00           | \$77,000.00  | \$77,000.00           |
| <b>TOTAL BASE BID</b>    |                                                              |       |      |              | <b>\$948,711.00</b> |              | <b>\$1,008,762.10</b> |              | <b>\$1,116,921.32</b> |              | <b>\$1,577,870.00</b> |

**City of Elgin**  
**2017 Five-Year Capital Improvement Plan - Capital Projects**

**Project:** **Central Wastewater Lift Station**

**Budget:**  
**\$749,346**

**Department:**  
**Utility Fund**  
 (2016 Certificates of Obligation)

**Funding Source:**

**Project Manager:**  
**Director of Utilities**



**Project Description:**

Replacement and upgrade of main wastewater lift station south of US290 that is critical to over wastewater collection system; existing lift station is outdated and beyond useful life; upgrade of integral part of system that provides sanitary sewer collection services to a large portion of the city; upgrade critical to effectively support anticipated new development in areas south of US290; project includes construction of approximately 4,000 linear feet of new sewer line; project funding to come from 2016 Certificates of Obligation/debt proceeds; further city investment in enterprise system replacing aging infrastructure

**City Council Goal(s) Met:**

N/A

| <b>Budget</b>             | <b>Year 1</b>    | <b>Year 2</b>    | <b>Year 3</b>    | <b>Year 4</b>    | <b>Year 5</b>    | <b>Total</b>     |
|---------------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Land Acquisition/ROW      | 10,000           |                  |                  |                  |                  | \$10,000         |
| Design/Administration     | 89,346           |                  |                  |                  |                  | \$89,346         |
| Construction              |                  | 600,000          |                  |                  |                  | \$600,000        |
| Miscellaneous             |                  | 50,000           |                  |                  |                  | \$50,000         |
| <b>Total Project Cost</b> | <b>\$99,346</b>  | <b>\$650,000</b> | <b>\$0</b>       | <b>\$0</b>       | <b>\$0</b>       | <b>\$749,346</b> |
| <b>Annual Cost</b>        | <b>FY2016-17</b> | <b>FY2017-18</b> | <b>FY2018-19</b> | <b>FY2019-20</b> | <b>FY2020-21</b> | <b>Total</b>     |
| Utility Fund              |                  |                  |                  |                  |                  | \$0              |
| - Capital Outlay          | 99,346           | 650,000          |                  |                  |                  | \$749,346        |
| <b>Total Expense</b>      | <b>\$99,346</b>  | <b>\$650,000</b> | <b>\$0</b>       | <b>\$0</b>       | <b>\$0</b>       | <b>\$749,346</b> |

| <b>Funding Source(s)</b> | <b>FY2016-17</b> | <b>FY2017-18</b> | <b>FY2018-19</b> | <b>FY2019-20</b> | <b>FY2020-21</b> | <b>Total</b>     |
|--------------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| Utility Fund             |                  |                  |                  |                  |                  | \$0              |
| - Debt Proceeds          | 99,346           | 650,000          |                  |                  |                  | \$749,346        |
| - Other                  |                  |                  |                  |                  |                  | \$0              |
| <b>Total Revenue</b>     | <b>\$99,346</b>  | <b>\$650,000</b> | <b>\$0</b>       | <b>\$0</b>       | <b>\$0</b>       | <b>\$749,346</b> |