

# **AGENDA**

**CITY COUNCIL WORK SESSION  
City of Garland  
Work Session Room, City Hall  
200 North Fifth Street, Garland, Texas  
January 7, 2013**

**Council will meet beginning at 6:00 p.m.**

## **Executive Session**

- 1. Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. [Sec. 551.074, TEX. GOV'T CODE.]**
  - a. Consideration of the terms of employment and duties of the City Auditor.**
  - b. Consideration of the terms of employment and duties of the Chief Presiding Judge, Garland Municipal Court.**
  - c. Consideration of the terms of employment and duties of the Municipal Court Judge, Garland Municipal Court.**
- 2. Deliberate the deployment, or specific occasions for implementation, of security personnel or devices. [Sec. 551.076, TEX. GOV'T CODE.]**
  - a. Security at City Hall, the Duckworth Building and other City owned buildings and facilities.**

## **DEFINITIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(6:45) 1. Written Briefings:**

**a. School-Related Traffic Control and Parking Regulations**

*The Transportation Department periodically reviews school-related traffic control and parking regulations. A recent review reveals that the following changes are needed: 1) install a school zone on Broadway Boulevard from Colonel Drive to 775 feet north of Colonel Drive for students attending South Garland High School and 2) extend the west end of the school zone on Buckingham Road in front of North Garland High School an additional 160 feet further west. If Council concurs, this item will be scheduled for formal consideration at the January 22, 2013 Regular Meeting.*

**b. Project Supplemental Agreement for the Miller Road Bridge**

*Council is requested to consider authorizing a Project Supplemental Agreement with Dallas County for the design and construction of the Miller Road Bridge from Centerville Road to Dexham Road in Rowlett. If Council concurs, this item will be scheduled for formal consideration at the January 22, 2013 Regular Meeting.*

Item	Key Person
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**(6:50) 2. Verbal Briefings:**

**a. Discuss Duties and Responsibilities of Members of the Garland Multicultural Commission** **Wilson**

*The Garland Multicultural Commission is a community multicultural commission appointed by City Council to maximize the potential, inclusion and quality of life of all citizen populations in the City by identifying issues and making recommendations to Council concerning the City's changing demographic composition and diverse needs. Council will discuss the duties and responsibilities of Commission members and the time commitment required of Commission members.*

**b. 2013 Capital Improvement Program**

**Bradford**

*Council will be briefed on the process for the 2013 Capital Improvement Program.*

**c. 2012 Capital Improvement Program Budget Amendment for Economic Development**

**Glenn**

*Council is requested to consider an amendment to the 2012 Capital Improvement Program Budget and approving the transfer of \$1 million to the Garland Foundation for Development, Inc., a nonprofit local government corporation created on behalf of the City of Garland, for the purpose of economic development at or near 1122 Centerville Road within the City of Garland, near the intersection of I-635 and Centerville Road.*

**3. Consider the Consent Agenda**

**Council**

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

**4 Announce Future Agenda Items**

**Council**

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

**(7:30) 5. Adjourn**

**Council**

**(Estimated time to consider)**



# Policy Report

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## SCHOOL-RELATED TRAFFIC CONTROL

The Transportation Department periodically reviews school-related traffic control and parking regulations. A recent review reveals that changes are needed on Broadway Boulevard for students attending South Garland High School and Buckingham Road for students attending North Garland High School.

### OPTIONS

- A. Install a school zone on Broadway Boulevard from Colonel Drive to 775 feet north of Colonel Drive.  
(Attachment A)
- B. Extend the west end of the school zone on Buckingham Road in front of North Garland High School an additional 160 feet further west.  
(Attachment B)
- C. Adopt some of the proposed changes
- D. Take no action.

### RECOMMENDATION

Staff recommends Options A and B. If Council concurs, this item will be scheduled for formal consideration at the January 22, 2013 Regular Meeting.

### COUNCIL GOAL

Safe, Family-Friendly Neighborhoods

### BACKGROUND

#### Broadway Boulevard from Colonel Drive to 775 feet north of Colonel Drive

1. The Transportation Department has conducted studies on Broadway Boulevard and found several students from South Garland High crossing Broadway Boulevard between Colonel Drive and Stonewall Street during the

school commute times. The school zone will encompass the proposed crosswalk at Broadway Boulevard and Fairfield Drive. This will enhance the safety of the students crossing Broadway Boulevard. The proposed crosswalk at Fairfield Drive will also be equipped with Rectangular Rapid Flashing Beacons (RRFB's)

Buckingham Road School Speed Zone

1. The Transportation Department has conducted studies on Buckingham Road and found that a large number of students from North Garland High School are crossing Buckingham Road at Clearview Drive. Extending the existing school speed zone on Buckingham will encompass the proposed crosswalk at Buckingham Road and Clearview Drive, therefore enhancing the safety of the high school students crossing Buckingham Road. The proposed crosswalk at Clearview Drive will also be equipped with Rectangular Rapid Flashing Beacons (RRFB's)

**CONSIDERATIONS**

Safety

- Adopting the proposed school traffic control changes will enhance the safety of school children, parents, and motorists in the vicinity of all schools involved.

Financial

- All material and equipment for the school speed zone and RRFB's are funded from the Capital Improvement Program.

**ATTACHMENTS**

Attachment A: Broadway School Zone  
Attachment B: Buckingham School Zone

Submitted By:

Paul Luedtke  
Director of Transportation

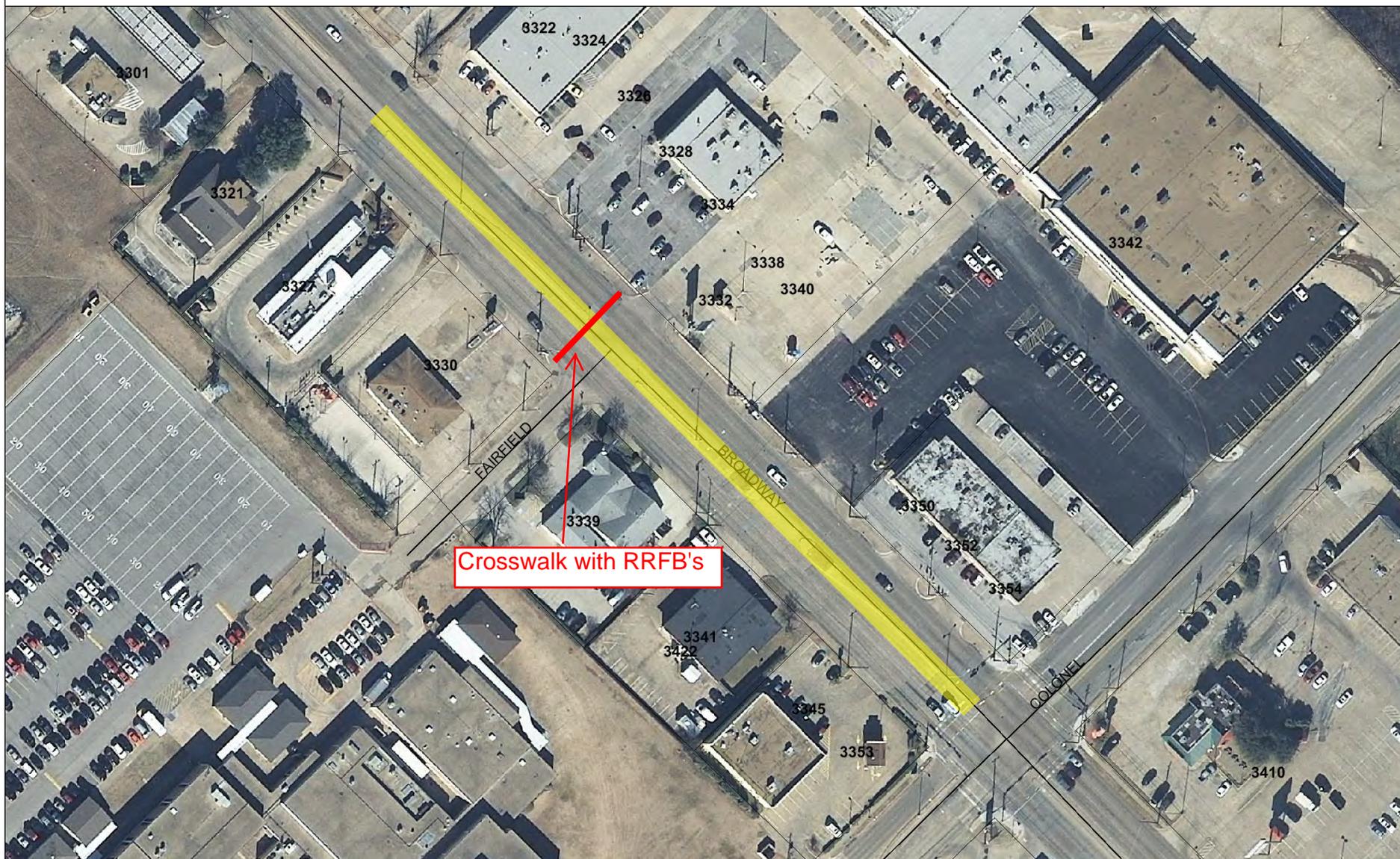
Date: December 28, 2012

Approved By:

William E. Dollar  
City Manager

Date: December 28, 2012

ATTACHMENT 'A'



0 90 180 ft.

Map center: 32° 52' 28.5" N, 96° 36' 59.5" W

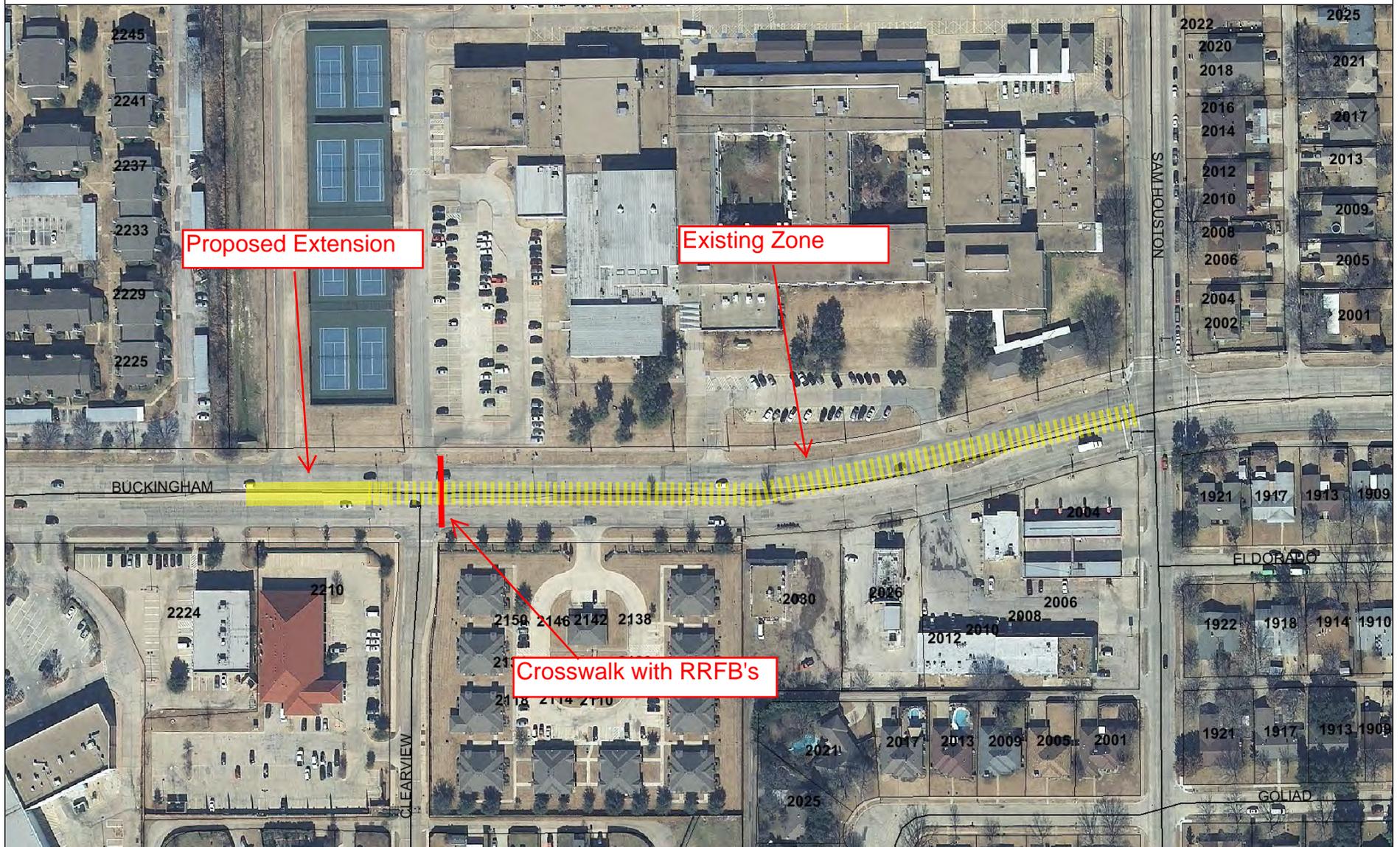


Scale: 1:1,524

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

**PROPOSED SCHOOL ZONE ON BROADWAY BLVD - 775 FEET**

ATTACHMENT 'B'



0 125 250 ft.

Map center: 32° 55' 50.2" N, 96° 39' 32.9" W



Scale: 1:2,159

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

**PROPOSED SCHOOL ZONE EXTENSION ON BUCKINGHAM ROAD - 160 FEET**



# Policy Report

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## PROJECT SUPPLEMENTAL AGREEMENT FOR MILLER ROAD BRIDGE FROM CENTERVILLE ROAD TO DEXHAM ROAD (ROWLETT)

### ISSUE

Consider whether to enter into a Project Supplemental Agreement (PSA) with Dallas County for the design and construction of the Miller Road Bridge from Centerville Road to Dexham Road in Rowlett.

### OPTIONS

- A. Adopt a Resolution which authorizes the City Manger to execute the attached PSA with Dallas County for the design and construction of the Miller Road Bridge Improvements project.
- B. Take no action.

### RECOMMENDATION

Option A. If Council concurs, this item will be scheduled for formal consideration at the January 22, 2013 Regular Meeting.

### COUNCIL GOAL

Quality Development and Redevelopment throughout Garland

### BACKGROUND

1. In 2012 the City executed a Master Agreement with Dallas County that provides general terms regarding funding availability, agency responsibilities, etc., for "partnering" on eligible future roadway projects. According to this model, a PSA is then required to finalize specific costs and project management issues. Generally, the County provides a 50% share of all eligible paving and drainage costs. The City must pay for all City utility improvements or relocations.

PROJECT SUPPLEMENTAL AGREEMENT FOR PLEASANT VALLEY ROAD BRIDGE  
FROM RICHFIELD DRIVE TO MILES ROAD

Page 2

2. Dallas County applied for Regional Toll Revenue (RTR) funding for the Miller Road Bridge from TxDOT thru the North Central Texas Council of Governments call for projects. The application was approved.
3. By securing the RTR Funding, TxDOT will fund 80% of the bridge costs and the remaining 20% local funds. Dallas County approached the City of Garland and the City of Rowlett requesting to share the local costs of the bridge. The estimated cost of the project is \$12,436,871.00 with following cost share by each Agency:

Texas Department of Transportation (80%)	\$9,949,496.00
Dallas County (10%)	\$1,243,689.00
City of Garland (5%)	\$ 621,843.00
City of Rowlett (5%)	\$ 621,843.00

4. The approved 2012 CIP included funds to cover the Paving and Drainage amounts and the utility costs will be funded through CIP and utility funds.

### CONSIDERATIONS

1. Council action is required to authorize the City Manager to sign the Project Supplemental Agreement with Dallas County.
2. The PSA and Contract have been reviewed by the City Attorney's Office.

### ATTACHMENTS

- A. Location Map
- B. Proposed Project Supplemental Agreement

Submitted By:

Approved By:

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

William E. Dollar  
City Manager

Date: December 19, 2012

Date: December 31, 2012

**DALLAS COUNTY CAPITAL IMPROVEMENT PROGRAM  
PROJECT SPECIFIC AGREEMENT  
TO THE MASTER AGREEMENT GOVERNING  
MAJOR CAPITAL TRANSPORTATION IMPROVEMENT PROJECTS**

This Project Specific Agreement hereinafter called "PSA" to the Master Agreement Governing Transportation Major Capital Improvement Projects ("Master Agreement") is made by and between the City of Garland, Texas, hereinafter "City", and the County of Dallas, Texas, hereinafter "County", acting by and through its duly authorized officials, for the purpose of Transportation Improvements on the Miller Road MCIP Project 27501 from Garland East City Limits to Rowlett West City Limits, hereinafter called "Project".

**WHEREAS**, the Project is located within the City of Garland, the City of Rowlett, and the City of Dallas; and

**WHEREAS**, the County shall enter into separate agreements with the City of Rowlett and the City of Dallas; and

**WHEREAS**, the County has requested that it be designated as the Lead Agency for the project and will provide the Project Manager; and

**WHEREAS**, the County has entered into an Advance Funding Agreement ("AFA") with the State of Texas by and through the Texas Department of Transportation ("TxDOT") to provide funding for the Miller Road Project; and

**WHEREAS**, Chapter 791 of The Texas Government Code and Texas Transportation Code Section 472.001 provides authorization for local governments to contract with each other for the performance of governmental functions and services, as well as joint funding of road construction or improvements of road or street projects.

**NOW THEREFORE THIS PSA** is made by and entered into by the City and the County, for the mutual consideration stated herein.

**Witnesseth**

**Article I.**

**Project Specific Agreement**

This PSA is to specifically identify the project, changes in the rights and responsibilities of each of the parties as set forth in the Master Agreement and additions thereto as incorporated herein. This PSA will be an addition to the Master Agreement and incorporate each of its terms and conditions. All terms of the Master Agreement remain in full force and effect except as modified herein. In the event of any conflict between the Master Agreement and this PSA, this PSA shall control.

**Article II**

**Incorporated Documents**

This PSA incorporates, as if fully reproduced herein word for word and number for number,

the following items:

1. Master Agreement authorized by County Commissioners Court Order; 2012-1795 dated October 23, 2012, and additions thereto as incorporated herein.
2. TxDOT Advance Funding Agreement as shown in Attachment "A".
3. Current Cost Estimates and Funding Sources, as shown in Attachment "B".
4. Proposed Project Schedule, as shown in Attachment "C".
5. PSA between the County and City of Dallas.
6. PSA between the County and City of Rowlett.

### **Article III**

#### **Term of Agreement**

This PSA becomes effective when signed by the last party whose signature makes the respective agreement fully executed and shall terminate upon the completion and acceptance of the Project by Dallas County Commissioners Court or upon the terms and conditions in the Master Agreement, Article IV.

### **Article IV**

#### **Project Description**

This PSA is entered into by the parties for public transportation improvements within the City of Garland, Texas. The project is defined as the public transportation improvements to Miller Road from Garland East City Limits to Rowlett West City Limits, including MCIP Project 27501, and hereinafter referred to as the "Project" and as more fully described in Attachment "A". The Project is within the city of Garland, Rowlett and Dallas. This project will facilitate the movement of public transportation to benefit both the City and County.

### **Article V.**

#### **Fiscal Funding**

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

Notwithstanding anything to the contrary herein, this **PSA** is expressly contingent upon the availability of City funding for each item and obligation contained herein. County shall have no right of action against the City as regards this **PSA**, specifically including any funding by City of the Project in the event that the City is unable to fulfill its obligations under this **PSA** as a result of the

lack of sufficient funding for any item or obligation from any source utilized to fund this **PSA** or failure of any funding party to budget or authorize funding for this **PSA** during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City, at its sole discretion, may provide funds from a separate source or terminate this **PSA**. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

## **Article VI** **Agreements**

### **I. County and City Responsibilities:**

1. County will be the Lead Agency for the Project.
2. City and County have mutually agreed that the Project limits are Miller Road from Garland East City Limits to Rowlett West City Limits.
3. The agreed upon Standard Basic Project Design for the project is as defined in the Project Scoping Sheets, Attachment "A". Such design shall be the Standard Basic Project Design for the Project and specifically does not include Paving and Drainage Amenities or Utility Betterments as defined in the Master Agreement. If the City adds relocation or adjustment of City Utilities or Utility Betterments, the City agrees that it will pay 100% of the costs of these additions.
4. The Project will require the acquisition of road right-of-way which is specifically all real property needed or convenient for roadway and/or drainage purposes as shown in the Project design or right-of-way plans and specifically includes all real property outside of the designed right-of-way needed, if applicable, or convenient to the construction, drainage, interface with adjoining streets or alleys, driveways or other access ways or other Project permanent or temporary easements which is approved by City and County. Such right-of-way acquisition shall be the responsibility of the County as Lead Agency.
5. In order to certify compliance with the expenditure of the Project funding for this Agreement, the City agrees to furnish to the County, its Auditor, or its designated representative(s) the unrestricted right to audit any and all accounting and other records regarding any funds paid or claimed under this agreement, including, but not limited to all books, records, reports, tickets, deposits, expenditure, budget or any item therein, supporting data, computer records and programs, and all items of hardware, software or firmware, or any other item utilized by the City regarding this Agreement (records). City contracts and agrees that all records shall be kept and maintained for a period of time not less than four (4) years from the date of the termination of this Agreement. Such records shall be provided to the County in Dallas County, Texas and available for any audit at any time upon request.
6. The results of any audit may be furnished to City for comment. In the event that any audit shall determine that moneys are owed to County such sums are deemed to be due and payable to Dallas County, Texas, within thirty (30) days of the date of an

invoice for such cost being deposited in the US Mail, certified mail, return receipt requested.

II. City Responsibilities:

1. City shall execute the necessary agreements for the implementation design and construction of the Project mutually agreed upon and incorporated herein by this PSA.
2. City shall provide City Council Resolution commitment to meet the Project funding.
3. City will retain right to review plans and amendments during preparation of the deliverables under the contract. City shall review plans and amendments within thirty (30) days of receipt thereof from County.
4. City shall coordinate any necessary City-owned utility adjustments for construction of the Project.
5. City shall be responsible for maintaining the roadway after the Project is complete.

III. County Responsibilities:

1. County shall be the Lead Agency for the Project. County will provide project management of the Project from commencement of planning to completion of construction.
2. County shall advertise the Project with City funded items as optional bid items.
3. County shall execute Advance Funding Agreement with TxDOT to utilize RTR funds for the project along with required local matching funds.

IV. Funding:

County and City mutually agree to proportionately fund the Direct Project and Program cost as follows:

1. Notwithstanding any provision in the Master Agreement, this PSA, any amendment thereto, or any other agreement between the parties regarding this Project, the total Project cost is estimated at Twelve Million Four Hundred Thirty Six Thousand Eight Hundred Seventy One dollars (\$12,436,871.00). The County's total obligation to this Project is to provide funding in the amount not to exceed One Million, Two Hundred Forty-Three Thousand Six Hundred Eighty-Nine dollars and no cents (\$1,243,689.00), reduced by County share of in-house project delivery costs. Project costs may include all County project delivery costs including but not limited to preliminary scoping and research, preliminary design services, special services, primary design services, inspection, laboratory services and construction.
2. The City agrees to provide funding for the Project as indicated in the amount of Six Hundred Twenty-One Thousand Eight Hundred Forty-Three Dollars and no cents (\$621,843.00).
3. City agrees to encumber an amount adequate for total estimated project costs as determined prior to the commencement of each Project milestone as determined by County within 30 days of notification by County. The City will pay Project costs as invoiced by the County.

4. TxDOT total obligation for the Project is Nine Million Nine Hundred Forty Nine Thousand Four Hundred Nine Six dollars and no cents (\$9,949,496.00).
5. If the total Project costs excluding paving and drainage amenities or utility betterments should exceed the total Project cost, the City and County agree to amend the project's scope to remain within the current estimated total Project Cost.

**Article VII**  
**Miscellaneous:**

- I. No Third Party Beneficiaries, The terms and provisions of this PSA are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of City and County that any entity other than City or County receiving services or benefits under this PSA shall be deemed an incidental beneficiary only. This PSA is intended only to set forth the contractual right and responsibilities of the parties hereto.
- II. Applicable Law. This PSA is and shall be expressly subject to the Sovereign Immunity of County and Governmental Immunity of City, Title 5 of the Texas Civil Practice and Remedies Code, as amended, and all applicable Federal and State Law. This PSA shall be governed by and construed in accordance with the laws and case decisions of the State of Texas. Exclusive venue for any legal action regarding this PSA filed by either City or County shall be in Dallas County, Texas.
- III. Notice. Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or two (2) business days after being deposited in the United States Mail, postage prepaid, certified, returned receipt requested, or registered addressed as follows:

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

To City: City of Garland  
Michael Polocek, P.E.  
Engineering Administrator  
Capital Improvements  
PO Box 469002  
Garland, Texas 75046-9002

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

- IV. Assignment. This PSA may not be assigned or transferred by either party without the prior written consent of the other party.

- V. **Binding Agreement; Parties Bound.** This PSA has been duly executed and delivered by both parties and constitutes a legal, valid and binding obligation of the parties, their successors and permitted assigns.
- VI. **Amendment.** This PSA may not be amended except in a written instrument specifically referring to this PSA and signed by the parties hereto.
- VII. **Number and Gender.** Words of any gender used in this PSA shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.
- VIII. **Counterparts.** This PSA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- IX. **Severability.** If one or more of the provisions in this PSA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not cause this PSA to be invalid, illegal or unenforceable, but this PSA shall be construed as if such provision had never been contained herein, and shall not affect the remaining provisions of this PSA, which shall remain in full force and effect.
- X. **Entire Agreement.** This PSA embodies the complete agreement of the parties, supersedes all oral or written previous and contemporary agreements between the parties and relating to matters in the PSA.
- XI. **Contingent.** This Agreement is expressly subject to and contingent upon formal approval by the Dallas County Commissioners Court and by resolution of the City Council. This PSA is also contingent upon executed Agreements between Dallas County and TxDOT, city of Dallas as well as the city of Rowlett. If either Agreement terminates, this PSA shall terminate as well.

The City of Garland, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_. Dated the \_\_\_\_ day of \_\_\_\_\_, 2012.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number \_\_\_\_\_ and passed on the \_\_\_\_ day of \_\_\_\_\_, 2012.

County of Dallas

City of Garland

\_\_\_\_\_  
Clay Lewis Jenkins, County Judge

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form\*:  
Craig Watkins  
District Attorney

Attest:

By: \_\_\_\_\_  
Sherri Turner  
Assistant District Attorney

\_\_\_\_\_  
City Secretary / Attorney

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

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT  
FOR PROJECT USING FUNDS HELD IN THE  
STATE HIGHWAY 121 SUBACCOUNT—  
City Street Improvements  
Off-System Project**

**THIS AGREEMENT** (the Agreement) is between the State of Texas, acting by and through the Texas Department of Transportation (the State), and Dallas County (Local Government), collectively, the "Parties."

**WITNESSETH**

**WHEREAS**, the State has received money from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County ("SH 121 payments"); and

**WHEREAS**, pursuant to Transportation Code, 228.006 the State shall authorize the use of surplus revenue of a toll project for a transportation project, highway project, or air quality project within the district of the Texas Department of Transportation in which any part of the toll project is located; pursuant to Transportation Code, §228.012 the State has created a separate subaccount in the state highway fund to hold such money (SH 121 Subaccount), and the State shall hold such money in trust for the benefit of the region in which a project is located, and may assign the responsibility for allocating money in the subaccount to a metropolitan planning organization (MPO); and

**WHEREAS**, in Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (the "Commission") approved a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), which is the transportation policy council of the North Central Texas Council of Governments (NCTCOG) and a federally designated MPO, concerning in part the administration, sharing, and use of surplus toll revenue in the region; under the MOU the RTC shall select projects to be financed using surplus revenue from a toll project, subject to Commission concurrence; and

**WHEREAS**, the Local Government has requested money from the SH 121 Subaccount for: Miller Road from Garland East City Limits to Rowlett West City Limits (0918-47-004) (Project); the RTC has selected the Project to be funded from the SH 121 Subaccount; and the Commission concurred in the selection and authorized the expenditure of money Minute Order No. 111854, dated June 25, 2009;

**WHEREAS**, the Local Government is a political subdivision and governmental entity by statutory definition; and

**WHEREAS**, Government Code, Chapter 791, and Transportation Code, §201.209 authorize the State to contract with municipalities and political subdivisions to perform governmental functions and services; and

**WHEREAS**, NCTCOG and the RTC should have authority to assist the Local Government's implementation of financial reporting and environmental review related to a transportation project funded by the State using money from the SH 121 Subaccount.

**NOW, THEREFORE**, the Parties agree as follows:

## **AGREEMENT**

### **Article 1. Time Period Covered**

This Agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

### **Article 2. Project Funding**

The State will pay money to the Local Government from the SH 121 Subaccount in the amounts specified in Attachment A, Payment Provision and Work Responsibilities. Except as provided in the next succeeding sentence, the payments will begin no later than upon the later of the following: (1) fifteen days after the Legislative Budget Board and the Governor each approve the expenditure, in accordance with Rider 25 of the Texas Department of Transportation bill pattern in Senate Bill 1, 80<sup>th</sup> Legislature; and (2) thirty days after execution of this Agreement. If Attachment A shows that the RTC has allocated payments to the Local Government for a certain expenditure (e.g. construction) for the Project in a certain fiscal year, then the State will make the payment from the SH 121 Subaccount to the Local Government for such expenditure no later than 30 days after the beginning of the designated Fiscal Year. A Fiscal Year begins on September 1 (for example, the 2009 Fiscal Year began September 1, 2008).

### **Article 3. Separate Account; Interest**

All funds paid to the Local Government shall be deposited into a separate account, and interest earned on the funds shall be kept in the account. Interest earned may be used only for the purposes specified in Attachment A, Payment Provision and Work Responsibilities, and only after obtaining the written approval of the RTC. The Local Government's use of interest earned will not count towards the 20 percent local match requirement set forth in this Agreement.

### **Article 4. Shortfalls in Funding**

The Local Government shall apply all funds to the scope of work of the Projects described in Attachment A, Payment Provisions and Work Responsibilities, and to none other. All cost overruns are the responsibility of the Local Government. However, should the funds

be insufficient to complete the work contemplated by the Project, the Local Government may make further request to the RTC and the State for additional funds from the SH 121 Subaccount. Funds may be increased only through an amendment of this Agreement. If the SH 121 Subaccount does not contain sufficient funds to cover the balance necessary to complete the Project, or if the RTC or the Commission decline the request for any other reason, then the Local Government shall be responsible for any shortfall.

#### **Article 5. Return of Project Funding**

The Local Government shall reimburse the State for any funds paid under this Agreement that are not expended in accordance with the requirements of this Agreement. Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State acknowledging the Project's completion. If at Project's end, or upon termination of this Agreement, excess SH 121 Subaccount funds exist, including interest earned, such funds shall be returned to the State within 30 days. Except for funds the Local Government has already expended in accordance with the Agreement, the Local Government shall return to the State the funds paid under this Agreement together with any interest earned on the funds if the Project is not completed within 10 years of execution of the Agreement.

#### **Article 6. Local Match**

The Local Government shall be responsible for the required 20 percent local match as described in Attachment A, Payment Provisions and Work Responsibilities. The costs incurred by the Local Government prior to the execution of this Agreement will count towards the 20 percent local match requirement provided such costs are for RTC-approved phases as shown in Attachment A. At the end of each Fiscal Year the Local Government's cumulative expenditures of local match funds must be no less than 20 percent of the cumulative SH 121 Funds received by the Local Government up to that date under the Agreement, and must be for the uses approved for payments of SH 121 Funds up to that date as specified in Attachment A, Payment Provision and Work Responsibilities.

#### **Article 7. Procurement and Contracting Process**

The State may review the Local Government's procurement of professional services for engineering, surveying, and right of way acquisition, letting of construction contracts, and conduct of construction management and inspection. The Local Government shall certify compliance with state law and regulations, and with local laws, regulations, rules, policies, and procedures. The Local Government shall maintain a copy of the certification in the Project's files.

#### **Article 8. Design Standards and Construction Specifications**

The Local Government shall implement the Project using the Local Government's established design standards, construction specifications, procurement processes, and construction management and inspection procedures.

## **Article 9. Right of Way**

Except for right of way owned by the State or to be acquired by the State according to the plans of the Project as approved by the State, the Local Government shall acquire all necessary right of way needed for the Project. Right of way acquisition is an eligible cost for reimbursement provided such cost is an RTC-approved phase as shown in Attachment A.

## **Article 10. Utilities**

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with State laws and regulations and local laws, regulations, rules, policies, and procedures applicable to the Local Government. The Local Government must obtain advance approval for any variance from established procedures. The RTC-approved costs for utilities as shown in Attachment A, if any, shall be used to adjust, remove, or relocate utility facilities only to the extent the utility has a property right as shown in a recorded deed or easement.

## **Article 11. Compliance with Laws; Environmental Review and Public Involvement**

Each Party shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative bodies or tribunals affecting the performance of this Agreement as applicable to it. When required, the Local Government shall furnish the State with satisfactory proof of compliance. As provided in 43 T.A.C. Section 2.1(b)(3), the department's environmental review requirements do not apply to the Project because the department is funding the Project solely with money held in a project subaccount created under Transportation Code, Section 228.012. However, the local government shall ensure that the Project complies with all environmental review and public involvement requirements applicable to the Local Government under state and federal law in connection with the Project. The Local Government shall obtain the opinion of legal counsel showing the Local Government's environmental review and public involvement for the Project to comply with state law and regulations, and with local laws, regulations, rules, policies, and procedures applicable to the Local Government. The Local Government shall maintain a copy of the certification in the project files.

## **Article 12. Compliance with Texas Accessibility Standards and ADA**

The Local Government shall ensure that the plans for and the construction of the Project is in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336).

## **Article 13. Work Outside the Project Site**

The Local Government shall provide both the necessary right of way and any other property interests needed for the Project.

#### **Article 14. Insurance**

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

#### **Article 15. Audit**

Within 120 days of completion of the Project, the Local Government shall perform an audit of the costs of the Project. Any funds due to the State will be promptly paid by the Local Government.

#### **Article 16. Maintenance**

The Local Government shall be responsible for maintenance of the Project and be allowed to assign those duties and responsibilities to the municipality where the Project is located.

#### **Article 17. Responsibilities of the Parties**

- a. The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.
- b. To the extent permitted by law, the Local Government agrees to indemnify and save harmless the State, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the Project by the Local Government, its contractor(s), subcontractor(s), agents and employees, and from any claims or amounts arising or recovered under the "Workers' Compensation laws"; the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.
- c. The Parties expressly agree that the Project is not a joint venture or enterprise. However, if a court should find that the Parties are engaged in a joint venture or enterprise, then the Local Government, to the extent provided by law, agrees to pay any liability adjudicated against the State for acts and deeds of the Local Government, its employees or agents during the performance of the Project.
- d. To the extent provided by law, the Local Government shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney's fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Local Government, its agents, or employees.

**Article 18. Notices**

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<b>Local Government:</b>	<b>State:</b>
Dallas County Attn: Director of Public Works 411 Elm Street Dallas, Texas 75202-3301	Texas Department of Transportation Attn: District Engineer 4777 E. Highway 80 Mesquite, Texas 75150

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

**Article 19. Right of Access**

If the Local Government is the owner or otherwise controls access to any part of site of the Project, the Local Government shall permit the State or its authorized representative access to the site to perform any activities authorized in this Agreement.

**Article 20. Project Documents**

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

**Article 21. Inspection of Books and Records**

The Local Government shall keep a complete and accurate record to document the performance of the work on the Project and to expedite any audit that might be conducted. The Local Government shall maintain records sufficient to document that funds provided under the Agreement were expended only for eligible costs that were incurred in accordance with all applicable state and local laws, rules, policies, and procedures, and in accordance with all applicable provisions of this Agreement. The Local Government shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State for review and inspection during the contract period and for four (4) years from

the date of completion of work defined under this Agreement or until any pending litigation or claims are resolved, whichever is later. Additionally, the State shall have access to all governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

## **Article 22. NCTCOG**

Acceptance of funds directly under the Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of NCTCOG and RTC to assist the Local Government's implementation of financial reporting and environmental review concerning the Project. The Local Government shall provide to NCTCOG on a monthly basis a report of expenses, including the Local Government's expenditure of local match funds. The report shall list separately the expenditures by Project's phase as shown in Attachment A, including but not limited to engineering, environmental review, right of way acquisition, and construction. The report shall also describe interest earned on money from the SH 121 Subaccount, including the interest rate, interest earned during the month, and cumulative interest earned. The report shall further describe the status of developing the Project. Not less than 60 days before the environmental review document is submitted to the governing body of the Local Government for final approval, the Local Government shall submit the document to NCTCOG for review and comment. NCTCOG may provide the Local Government technical assistance on the environmental review of the Project as mutually agreed between NCTCOG and the Local Government.

## **Article 23. State Auditor**

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

## **Article 24. Amendments**

By mutual written consent of the Parties, this contract may be amended prior to its expiration.

## **Article 25. Termination**

The Agreement may be terminated in the following manner:

- by mutual written agreement and consent of both parties;
- by either party upon the failure of the other party to fulfill the obligations set forth herein, after a 45 day period to cure after receiving written notice of non-compliance;
- by the State if the Local Government does not let the construction contract for the Project within one year after the State first provides 121 Funds for construction as shown in Attachment A, Payment Provision and Work Responsibilities;
- by the State if the Local Government does not complete the Project within ten years after the effective date of the Agreement;

**Article 26. Work by Debarred Person**

The Local Government shall not contract with any person that is suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State.

**Article 27. Sole Agreement**

The Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**Article 28. Successors and Assigns**

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement. The Local Government may assign its interests under the Agreement only with the written approval of the State.

**Article 29. Remedies**

The Agreement shall not be considered as specifying an exclusive remedy for a breach of the Agreement. All remedies existing at law or in equity are available to either Party and are cumulative.

**Article 30. Legal Construction**

If a provision of the Agreement shall be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision, and the Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

**Article 31. Signatory Warranty**

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

CSJ: .0918-47-004, Miller Road from Garland East City Limits to Rowlett West City Limits  
District #18 - Dallas; Code Chart 64# 50057  
Funding Category: RTR (SH 121 Subaccount Funds)

**IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT** have executed duplicate counterparts to effectuate this Agreement.

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By Janice Mullenix Date January 22, 2010  
Janice Mullenix  
Director, Contract Services Section, General Services Division

**THE LOCAL GOVERNMENT**

Dallas County

By Jim Foster Date December 1, 2009  
[NAME] Jim Foster  
[TITLE] County Judge

ATTACHMENT A

**Payment Provision and Work Responsibilities**

For CSJ# 0918-47-004, the State will pay **\$9,949,496.00** from the SH 121 Subaccount for Miller Road from Garland East City Limits to Rowlett West City Limits to widen a two (2) lane asphalt section to a four (4) lane divided concrete section.

In accordance with the allocation of funds approved by the RTC, and concurred with by the Texas Transportation Commission, the State will make the payments for the following work in the following Fiscal Years:

Fiscal Year	Expenditure				
	Preliminary Engineering	Right of Way Acquisition	Utilities	Construction	
2009	\$0.00	\$0.00	\$0.00	\$0.00	
2010	\$1,573,010.00	\$0.00	\$0.00	\$0.00	
2011	\$0.00	\$46,794.00	\$0.00	\$0.00	
2012	\$0.00	\$0.00	\$0.00	\$8,329,692.00	
2013	\$0.00	\$0.00	\$0.00	\$0.00	

The Local Government shall pay a required local match of **\$2,487,375.00**.

Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State. The notice shall certify that the Project has been completed, all necessary inspections have been conducted, and the Project is open to traffic.

## ATTACHMENT "B"

# Current Cost Estimates and Funding Sources

• Paving & Drainage Construction	\$9,837,115
• ROW	\$58,494
• Design & Project Delivery	\$1,766,262
• Wetlands Mitigation	\$200,000
• Materials Testing	\$75,000
• Contingencies	\$500,000
• City Requested Construction	\$+
• <b>Project Cost</b>	<b>\$12,436,871</b>
• State (RTR Funds)	\$9,949,496
• Dallas County	\$1,243,689
• City of Rowlett	\$621,843
• City of Garland	\$621,843
• <b>Project Funding</b>	<b>\$12,436,871</b>

## ATTACHMENT "C"

# Proposed Project Schedule

- |  |            |             |
|--|------------|-------------|
| • <b>TxDOT/City Project Specific Agreements</b>  | <b>OCT</b> | <b>2009</b> |
| • <b>Preliminary Design Contract</b>             | <b>JUN</b> | <b>2010</b> |
| • <b>Schematic Design/Environmental Complete</b> | <b>OCT</b> | <b>2010</b> |
| • <b>Pre-Design Charrette</b>                    | <b>NOV</b> | <b>2010</b> |
| • <b>Preliminary Design Complete</b>             | <b>DEC</b> | <b>2010</b> |
| • <b>Primary Design Contract</b>                 | <b>JAN</b> | <b>2011</b> |
| • <b>ROW Documents Complete</b>                  | <b>NOV</b> | <b>2012</b> |
| • <b>Final Plans Complete</b>                    | <b>DEC</b> | <b>2012</b> |
| • <b>ROW Acquisition Complete</b>                | <b>MAR</b> | <b>2013</b> |
| • <b>Utility Relocations Complete</b>            | <b>JUL</b> | <b>2013</b> |
| • <b>Open Bids</b>                               | <b>APR</b> | <b>2013</b> |
| • <b>Award Contract</b>                          | <b>JUL</b> | <b>2013</b> |
| • <b>Construction Complete</b>                   | <b>DEC</b> | <b>2014</b> |



# City Council Item Summary Sheet

Work Session

Date: January 7, 2013

Agenda Item

## Discuss Duties and Responsibilities of Members of the Garland Multicultural Commission

### Summary of Request/Problem

The Garland Multicultural Commission is a community multicultural commission appointed by City Council to maximize the potential, inclusion and quality of life of all citizen populations in the City by identifying issues and making recommendations to Council concerning the City's changing demographic composition and diverse needs. Council will discuss the duties and responsibilities of Commission members and the time commitment required of Commission members.

### Recommendation/Action Requested and Justification

Council discussion.

Submitted By:

**Priscilla Wilson**  
Senior Managing Director

Approved By:

**William E. Dollar**  
City Manager

## What is needed to be an effective member of the Community Multi-Cultural Commission:

- **Community Liaison:**
  - Known and respected in the community
  - Interface and gather data from the community
  - Market CMC in the community and social groups
  - Have an established presence in community
  - Serve in an advisory capacity for the community and the council
  - Cultural Sensitivity
- **Prior Leadership Experience (roles they have served):**
  - Willingness to attend monthly meetings
  - Willingness to assume sub-committee appointments
  - Ability to complete tasks with limited direction
  - See tasks through fruition
  - Prepared to report on completed tasks at each meeting
  - Comfort in speaking at gatherings, events, etc.
  - Encourage, implore, and engage individuals to be involved (network)
- **Significant Time Commitment:**
  - Willingness to participate in community outreach

### Community events to include:

#### To Attend

1. Boards & Commissions Appreciation Dinner – 2 hours
2. Chamber of Commerce Luncheon(s) – 2 hours
3. DFW AACC Banquet – 3 hours
4. DFW International Dinner with the Mayors – 2 hours
5. Fair Housing Month Luncheon – 1 hour
6. GAFHA Hispanic Heritage Banquet – 2 hours
7. Garland Police Awards Banquet
8. Leadership Garland Prayer Breakfast – 2 hours
9. LULAC District III Convention
10. Mayor's State of the City Address – 1 hour
11. NAACP Annual Winter Ball
12. NAACP Freedom Fund Brunch – 3 hours
13. Neighborhood Summit – 5-6 hours
14. Organization of Chinese America (New Year Celebration)-DFW AACC
15. Philippine Independence Republic Celebration Gala Night VIP Fiesta
16. The Asian-American Festival

#### To Coordinate or Participate in

1. Baylor Diversity Fair – 2-4 hours
2. Census Block Parties
3. Code Cares Projects – 6 hours
4. Elected Officials Dinner / Open Dialogue Dinner – 3-4 hours
5. Healthy Living Expo – 2-6 hours
6. Mosaic Festival – 6-8 hours
7. NAACP Back to School Health Fair – 2-4 hours
8. NAACP Martin Luther King, Jr. Parade – 3-4 hours
9. Senior Awareness Day – 4-6 hours
10. Speakers Bureau – 2 hours
11. Summer Nutrition Program – 2-4 hours
12. We The People Conference - (City Staff contributed 500+ hours for the 2012 Conference)



# City Council Item Summary Sheet

Work Session

Agenda Item

Date: January 7, 2013

## 2013 Capital Improvement Program

### Summary of Request/Problem

Council will be briefed on the process for the 2013 Capital Improvement Program..

### Recommendation/Action Requested and Justification

Council discussion.

**Submitted By:**

**Bryan L. Bradford**  
Assistant City Manager

**Approved By:**

**William E. Dollar**  
City Manager



# City Council Item Summary Sheet

**Work Session**

Date: January 7, 2013

**Agenda Item**

## 2012 Budget Amendment for Economic Development

### Summary of Request/Problem

Council is requested to consider an amendment to the 2012 Capital Improvement Program Budget and approving the transfer of \$1 million to the Garland Foundation for Development, Inc., a nonprofit local government corporation created on behalf of the City of Garland, for the purpose of economic development at or near 1122 Centerville Road within the City of Garland, near the intersection of 635 and Centerville Road.

### Recommendation/Action Requested and Justification

Council discussion.

**Submitted By:**

**Martin E. Glenn**  
Deputy City Manager

**Approved By:**

**William E. Dollar**  
City Manager