City of Frisco, Texas

Storm Water Utility Fee Development Report

December 2008

Freese and Nichols

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FRC07412

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1. INTRODUCTION

The City currently is experiencing a variety of storm water issues related to existing developed areas, new development, and new regulatory requirements. The City is exploring the feasibility of implementing a storm water utility fee as a means to finance storm water-related activities in an effort to meet the needs of its community.

1.1. Description of the City of Frisco

The City of Frisco encompasses approximately 69 square miles of the Texas Blackland Prairie Ecoregion northeast of Lake Lewisville. Incorporated in 1908, the City is situated near the historic St. Louis-San Francisco Pacific Railroad and the famous Shawnee Cattle Trail, which follows Preston Road. Land use in the City is dominated by residential, commercial, and agricultural uses.

Frisco's small farming population grew slowly for many decades until the 1990's ushered in a population explosion. According to the City's Planning department, the population has grown from slightly more than 33,714 in 2000 to 102,047 as of December 2008. Population growth from 2007 to 2008 alone is estimated at more than 10% in the City. Frisco remains one of the fastest growing cities in north central Texas.

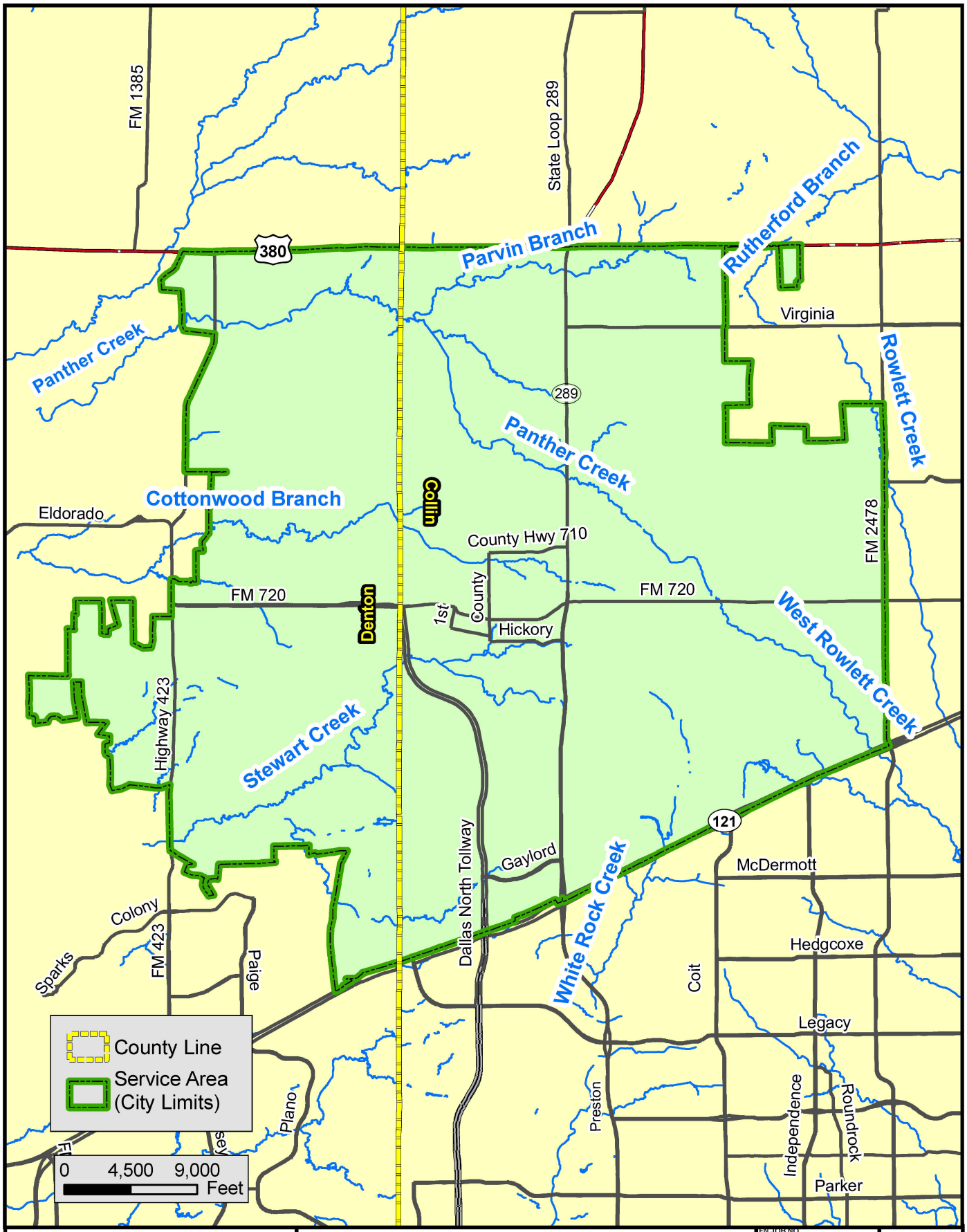
Storm Water System

The storm water system within the City limits is maintained by the Public Works Department. Existing maintenance activities are largely limited to minor maintenance and response to imminent flooding and/or safety issues. Routine storm water maintenance activities include storm water right-of-way mowing and clearing, creek debris clearing, culvert improvements, and other general maintenance activities.

Storm water in the City discharges into several creeks and their tributaries. In the west, Stewart Creek, Cottonwood Branch, and Panther Creek discharge to Lake Lewisville, while to the east, storm water flows enter West Rowlett Creek, a tributary of Lake Rowlett. Southern portions of the City drain to the headwaters of White Rock Creek, which ultimately discharges into White Rock Lake further south.

1.2. Legal Basis and Limitations of a Storm Water Utility

A storm water utility is a legal mechanism provided to municipalities by the State of Texas to generate revenue to finance the City's cost of providing services related to the management of storm water in the City. The Texas Municipal Drainage Utility Systems Act (Local Government Code Section 402, Subchapter C) authorizes cities in Texas to establish a municipal storm water utility system to "protect the public health and safety in municipalities from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from non-point source runoff within the boundaries of the established service area…" [TXLGC 402.042(3)]. To provide these services, municipalities are authorized to assess fees to users of the storm water utility system.



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FRISCO

Service Area Map

Frisco SWU

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Figure 1

The storm water utility fee is considered a service fee and must be based on the projected cost of providing storm water service within the City's jurisdiction. Following are some storm water-related costs that are allowed by State law [LGC 402.044(2)] to be included in the development of the projected revenue needs for storm water service:

- Property acquisition
- Service fees (architectural, engineering, legal, surveys, etc.)
- Capital (equipment, machinery, furniture, facilities, etc.)
- Funding and finance costs for construction projects
- Debt service
- Administration

When developing the fee rate for users, classification of affected properties must be nondiscriminatory, equitable, and reasonable. Specific requirements and allowances to exempt certain property owners and property types, respectively, are established in the rules. The statute [LGC 402.053(c)] and recent amendments [LGC 430.003] specifically restrict the following types of property from paying a storm water utility fee:

- Property with a wholly contained storm water system
- Undeveloped properties that remain in their natural state
- Property owned by the State of Texas
- Public or private institutions of higher education

The City is also provided the ability to exempt certain properties from the storm water utility fee without regard to the properties' impacts to the storm water system. The following property types are allowed by law [LGC 402.053(a) and (b)] to be exempted from paying a storm water utility fee:

- County property
- City property
- School district property
- Property owned by a tax-exempt religious institution

Revisions to the Texas statutes [LGC 430.003] in June 2003 added State property to the list of required exemptions from the storm water utility fee. This revision overrides the previous optional exemption status of State property to mandatory. Developed property owned by State agencies and public institutions of higher education are considered to be State property.

The storm water utility service area is comprised of land that contributes overland flow into the watersheds in the municipality. The service area can not extend farther than the boundaries of the City's extra-territorial jurisdiction (ETJ).

1.3. Storm Water Utility Policy

This storm water utility report was developed to assess the feasibility of the City financing its storm water-related activities, possibly including major capital improvements, through revenues from the storm water utility fee. Under the present system, necessary storm water-related activities are either financed through the General Fund or are unfunded. Currently, the City is unable to adequately perform routine maintenance such as creek debris clearing, bar ditch cleanouts, and other limited storm water activities that help to maintain the storm water flow capacity needed to minimize flooding hazards. In addition, significant capital and management improvements to the overall storm water system are needed to protect existing and expected development and to meet new regulatory requirements.

The City is one of many municipalities subject to new federal storm water quality regulations that require the City to further protect and enhance water quality in creeks and lakes through the development of a storm water quality management program. As an operator of a municipal separate storm water system (MS4) as defined by the U.S. Environmental Protection Agency, the City is required to develop a multi-faceted program to protect storm water quality before it enters creeks, rivers, and lakes. The program includes a number of measures to protect storm water quality, such as the following:

- Storm water system mapping and inspections
- Public education and involvement
- City ordinances regulating construction activity, illicit discharges, and post-construction runoff
- City staff training and operations improvements
- Structural and non-structural storm water quality protection measures

The approach of this study is to develop a mechanism to finance each of these activities and improvements, as well as associated administration, service, equipment and other storm water-related costs, except for major capital improvements, with revenues from the storm water utility fee. The City strives to develop a fair and equitable fee based on the projected cost of providing storm water services in the City. A means to appeal the rates for any property will be established, and exempted properties will not be required to pay storm water utility fees.

The following general goals and policies have been established for the City's storm water utility. The goals provide a basis for the purpose and intended benefit of the utility for the community in Frisco.

1. Serve as the primary stable source of new storm water-related funding.
2. Finance the following specific activities:
    - Development of the Storm Water Utility District
    - Update to the Storm Water Management, Erosion Control Ordinance, and Design Criteria

- Development, implementation, and maintenance of a Storm Water Quality Management Program to comply with new Federal and State regulations
- Activities to address localized flooding issues
- Upgrades to the storm water system infrastructure, where financially feasible
- Proactive maintenance for existing infrastructure
- Drainage crew staff and affiliated equipment
- Storm water related staffing, including water quality specialists, Storm Water Engineers, and erosion control inspectors

3. Finance other new storm water-related activities, except for major capital projects.
4. Provide a mechanism to benefit the quality of life in Frisco by improving and integrating the management of water resources with other aspects of the City such as park systems.
5. Encourage development in the City that minimizes adverse storm water impacts through better site design and proper management of the City's storm water resources.
6. Provide a fair and equitable method to assess fees for developed properties' impacts to the City's storm water system.
7. Allow for the issuance of bonds to finance storm water capital improvement projects.

2. COST OF STORM WATER SERVICES

The storm water utility fee is a common and valid method to relieve the General Fund of a significant portion of the financial burden of storm water management. Existing and projected storm water activities have been identified for the City over the next five fiscal years (FY). The costs for these services serve as the basis for the fee or fees to be assessed to affected properties in the City's limits or ETJ. Discussion of the projected cost of each service follows.

2.1. Cost of Service Development Considerations

The City evaluated options to determine an appropriate methodology for identifying the projected cost of providing storm water service in the City. Historical costs were reviewed, but no specific budget had previously been given to storm water services. The City determined that the following considerations would be incorporated into the assessment of the cost of storm water services for the purpose of determining the revenues necessary for the storm water utility:

- Identify expected drainage-related costs over the next five years. This includes prorated costs for administration, equipment, and other expenses not dedicated to drainage activities.
- Evaluate a five-year period for projecting cost of service needs. Cost projections beyond five years are inherently less reliable and may not provide the City the quality information desired for planning purposes.
- Establish and maintain at least three-month operating balance in the storm water utility fund to account for contingencies.
- Identify potential storm water system maintenance needs and capital improvement projects from the City's staff input.
- Consider prorated costs for items not solely associated with storm water but that have an application for storm water management. Examples include geographic information systems (GIS) and public involvement.
- Plan for storm water utility revenues to be self-sustaining for all direct operating costs, debt obligations and administrative costs for storm water-related activities.
- Consider the impact of debt obligations to the utility fee.
- Address as much of the City's storm water-related costs as practicable through the storm water utility fund.

2.2. Cost of Service Assumptions

For the purposes of the five year plan, several assumptions were identified and incorporated in to the planning process. Specifically, anticipated annual cost increases were identified and developed into cost factors, as shown in Table 1.

Table 1. Annual Cost Factors

Factor	2009	2010	2011	2012	2013
Expense Inflation Rate	6.0%	5.0%	5.0%	4.0%	4.0%
General and Administrative Reimbursement Rate	6.0%	6.0%	6.0%	6.0%	6.0%

Expense rate increases account for the increasing cost of personnel (labor and benefits), equipment, and materials. Administrative reimbursement and interest rates on financed capital or earnings on debt are constant rate factors. At this time, no financed capital or debt is projected over the next five years.

The general and administrative reimbursement is intended to reimburse overhead costs such as utility billing administration, as well as other drainage related activities not identified by line items in the storm water utility budget.

The general and administrative reimbursement rate is the percentage of annual storm water utility revenues that will be reimbursed to the General Fund. The general and administrative reimbursement is intended to reimburse overhead costs such as utility billing administration, as well as other drainage related activities no identified by line item in the storm water utility budget.

2.3. Phase II MS4 Storm Water Management Program

The U.S. Environmental Protection Agency (EPA) developed new storm water quality management requirements for many smaller cities throughout the country, including the City of Frisco. The requirements, commonly called Phase II municipal separate storm water system (MS4) storm water regulations, are administered in Texas by the Texas Commission on Environmental Quality (TCEQ) and require cities that operate an MS4 to develop a plan for a storm water quality management program. The program must be fully implemented within the first five-year permit term (August 2007 – August 2012).

The Phase II MS4 storm water regulations require best management practices (BMPs) to be developed for six minimum control measures identified by EPA as effective methods to improve storm water quality. The six minimum control measures are as follows:

- Public education
- Public involvement
- Illicit discharge detection and elimination
- Construction site runoff controls
- Post-construction runoff controls
- Municipal operations/good housekeeping

The specific BMPs necessary to meet the requirements of the six minimum control measures are left to the discretion of the City, but the BMPs will typically include ordinance requirements, public education and involvement activities, reviews of erosion control plans for development, construction site inspections, storm water system mapping and inspection, as well as various operational and structural improvements to municipal facilities to protect storm water quality.

Freese and Nichols, Inc. assisted the City in the development of the plan for the Phase II MS4 storm water quality management program. During this process, meetings were held with affected City departments to select those BMPs, existing and new, which comply with Phase II MS4 requirements and provide an overall storm water quality management approach for the City of Frisco and its citizens. In February 2008, the storm water quality management plan for the City of Frisco was finalized and submitted to the TCEQ.

The City's approach to complying with the Phase II MS4 requirements involves integrating storm water quality management activities into the normal operations of the City. As a result Phase II MS4 costs are not itemized in the five-year plan as a separate storm water utility cost. During the first year of the program, the City focused on identifying budget requirements and educating the public about storm water management.

The Phase II MS4 storm water quality management plan study cost a total of $44,417. This amount was funded initially by the General Fund and will be reimbursed entirely by the storm water utility through annual payments ending in FY 13. Additionally, those costs required to implement and maintain the City's storm water quality program will also be funded by the storm water utility.

2.4. Storm Water Engineer

An experienced Storm Water Engineer is budgeted to be hired to implement and oversee the storm water management program. The engineer's responsibilities will include coordinating with the floodplain administrator, city engineer, drainage crew supervisor, and overseeing the City drainage plan reviews for developments.

In addition, the engineer will be responsible for the City's compliance with the federally mandated storm water quality requirements (Phase II MS4), which will include recordkeeping and reporting of activities and progress toward the implementation of the City's storm water quality protection program. The engineer will be responsible for coordinating the City's program, communicating the requirements to other affected City departments and personnel, and compiling and reporting compliance documentation to the regulatory authorities.

The engineer will evaluate drainage plans for compliance with City ordinances and drainage design requirements to prevent adverse impacts to the storm water system and downstream properties. The engineer will work with the city engineer to identify proposed actions that are likely to impact the City's cost of maintaining the storm water system and/or impact storm water quality. The engineer's budgeted annual salary in FY 2009 is $95,000 with an additional $33,250 for benefits. An equipment cost of $5,000 is budgeted to maintain an appropriate work environment, including a computer, software, field equipment, and training. Transportation for the Storm Water Engineer will be provided from the City's existing vehicle inventory. Table 2

shows the anticipated expenses for the Storm Water Engineer. The expenses are increased on an annual basis according to the expense inflation rate shown in Table 1.

Table 2. Storm Water Engineer Expenses

Description	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Base Salary	$95,000	$99,750	$104,738	$106,862	$111,137
Benefits	$33,250	$34,913	$36,658	$37,402	$38,898
Equipment & Training	$5,000	$5,250	$5,513	$5,624	$5,849
Total	**$133,250**	**$139,913**	**$146,909**	**$149,888**	**$155,884**

2.5. Storm Water System Inspector

The City plans to hire a storm water system inspector to inspect ongoing developments and existing industries for compliance with City ordinance requirements and Texas Pollutant Discharge Elimination System (TPDES) storm water regulations.

As part of the implementation of the Phase II MS4 storm water quality program, the inspector will be responsible for responding to and investigating reports of storm water violations, such as illegal dumping and improper protection of storm water from construction site activity. The inspector's annual salary in FY 09 is estimated at $49,000 with an additional $17,150 budgeted for benefits. An equipment cost of $16,557 is budgeted in FY 09 to provide for the purchase of a new vehicle and materials. Table 3 lists the anticipated expenses for this position.

Table 3. Storm Water System Inspector Expenses

Description	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Salary	$49,000	$51,450	$54,023	$55,118	$57,323
Benefits	$17,150	$18,008	$18,908	$19,291	$20,063
Equipment & Training	$16,557	$17,232	$17,941	$18,242	$18,850
Total	**$82,707**	**$86,690**	**$90,872**	**$92,651**	**$96,236**

2.6. Water Education Specialist

Public education is one of the most important day-to-day activities of the storm water quality management program. The City intends to hire a water education specialist to provide ongoing education to City employees, youth, the business community, and citizens about the importance of and methods for storm water quality protection.

The Specialist's annual salary in FY 09 is $50,000 with an additional $17,500 estimated for benefits. An equipment cost of $5,000 is budgeted for a computer, software, other equipment, and training needed for this position. Table 4 shows the anticipated expenses for the water education specialist. In addition to standard equipment expenses, the specialist has been budgeted an additional $50,000 for materials to conduct public education and outreach activities.

Table 4. Water Education Specialist Expenses

Description	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Salary	$50,000	$52,500	$55,125	$56,243	$58,493
Benefits	$17,500	$18,375	$19,294	$19,685	$20,473
Equipment & Training	$5,000	$5,250	$5,513	$5,624	$5,849
Materials	$50,000	$52,500	$55,125	$56,243	$58,493
Total	**$122,500**	**$128,625**	**$135,057**	**$138,882**	**$144,438**

2.7. Drainage Crew Supervisor

A Drainage Crew Supervisor is intended to be hired in FYE 2012 to administer the daily activities of the drainage crew. The supervisor will prioritize and schedule drainage-related maintenance activities throughout the City. Drainage crew responsibilities are discussed in more detail below. The annual salary for this position in FY 11 is budgeted for $51,000 plus $17,850 for benefits. Equipment and materials costs for the supervisor will begin to be accumulated in FY 11 and are estimated at $5,513. These costs increase the following year to provide for the purchase of a vehicle for the supervisor's transportation. The anticipated expenses for this position are provided in Table 5 below.

Table 5. Drainage Crew Supervisor Expenses

Description	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Salary	--	--	$51,000	$53,040	$55,162
Benefits	--	--	$17,850	$18,564	$19,307
Equipment & Training	--	--	$5,513	$18,624	$19,232
Total	**--**	**--**	**$74,363**	**$90,228**	**$93,701**

2.8. Drainage Crew

The City plans to establish a program to conduct routine operation and maintenance (O&M) activities throughout the storm water system to minimize flooding potential, reduce creek erosion, and protect storm water quality. The storm water utility is budgeted to fund two four-person drainage crews to conduct full-time storm water operation and maintenance activities throughout the City. A list of the crew positions, including salary and benefits for FY 09, is provided in Table 6.

Table 6. Drainage Crew Positions

Position	Salary	Benefits	Total Compensation
Equipment Operator 1 (EO1)	$35,000	$12,250	$47,250
Equipment Operator 1 (EO1)	$35,000	$12,250	$47,250
Equipment Operator 2 (EO2)	$39,000	$13,650	$52,650
Crew Leader	$43,000	$15,050	$58,050
Single Crew Subtotal	**$152,000**	**$53,200**	**$205,200**
Total (Two Crews)	**$304,000**	**$106,400**	**$410,400**

Funding for the two drainage crews is budgeted to occur on a staggered basis. The funds used to pay for the new personnel will begin accumulating in advance of when the actual positions are filled. The storm water utility is currently budgeted to begin accruing funds for the first crew in FY 09 and the second crew in FY 11. The crew positions would then be staffed in FY 10 and FY 12, respectively.

Drainage crews will assume responsibility for storm water system maintenance activities, including cleaning culverts, drainage swale reshaping, creek maintenance, headwall repairs, and other storm water system maintenance activities. In order to adequately perform their work, the drainage crews will need new equipment dedicated to maintaining the City's storm water system. The storm water utility is budgeted to purchase the following equipment:

- Drainage Crew Cab Pickups (2)
- Wheel Loader
- Backhoe and Trailer
- Dump Truck
- Crew Equipment and Materials
- Compact Track Loader and Trailer
- Grade-All
- Dragline
- Vacuum Truck

Funds for equipment costs are shown in the year drainage crew personnel are scheduled to begin and include fees for operation and maintenance associated with the equipment. A summary of anticipated expenses for the drainage crews is provided in Table 7.

Table 7. Drainage Crew Expenses

Description	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Salary	$152,000	$159,600	$319,580	$329,059	$342,222
Benefits	$53,200	$55,860	$111,853	$115,171	$119,778
Equipment		$122,672	$126,712	$278,857	$285,629
Total	**$205,200**	**$338,132**	**$558,145**	**$723,087**	**$747,629**

2.9. Storm Water Set Fees

The consulting costs of the studies for the development of the storm water utility were initially funded through the General Fund. The consulting fees are scheduled to be reimbursed to the General Fund by revenues from the storm water utility once implemented. The total cost of the study was $88,020. Annual payments of $17,604 are scheduled to fully reimburse the General Fund by FY 13.

2.10 GIS Management

The City is developing a geographic information system (GIS) for the storm water system to facilitate the activities of City staff involved in storm water management. Storm water system operations and maintenance will directly benefit from the development of a GIS storm water

system map. Furthermore, Phase II MS4 storm water quality requirements require the development of this map for use in identifying problem areas for storm water pollution.

The City's Information Technology (IT) Department handles all GIS services and will be responsible for the development and maintenance of the storm water system GIS. Existing data for the storm water system is integrated with the larger City infrastructure GIS, which includes planning, public works, and utilities. Therefore, at this time no additional funds have been budgeted in the storm water utility to finance the completion of the storm water system map for the City.

2.11 Routine Maintenance and Storm Water Planning

An annual maintenance and planning budget of $500,000, adjusted annually for inflation, has been recommended to fund routine storm water system maintenance and storm water planning throughout the City. Continuous maintenance of the storm water system is necessary to minimize localized flooding events and protect the property and welfare of current residents. A regular maintenance schedule will be conducted by the drainage crews.

In the future, urbanization and population growth will increase storm water runoff and the potential impacts to the storm water system. Proactive storm water planning to target major maintenance needs and important capital projects will help ensure that the storm water system has the adequate capacity to minimize future flooding, protect streambanks from degrading, and maintain water quality.

2.12 Major Maintenance and Capital Improvements

In support of determining the cost of service for storm water system maintenance and capital improvements for the development of a storm water utility fee, Freese and Nichols engineers and City staff conducted a site visit on June 3, 2008 to various areas within the City to observe several locations that staff have identified as regularly experiencing drainage problems. These localized drainage concerns are identified in Table 8. Figure 2 shows the relative location of each problem area within the City.

A preliminary conceptual analysis was performed for each area. From discussions with the City, the nature of each problem was determined. A conceptual solution to each problem was developed and then used to estimate a cost for each area. This cost is based on a feasibility level analysis and should not be used outside the realm of the present storm water utility development. The costs are given in terms of the following ranges:

- < $100,000
- $100,000 - $500,000
- $500,000 - $1 million
- $1 million - $2 million
- $2 million - $3 million

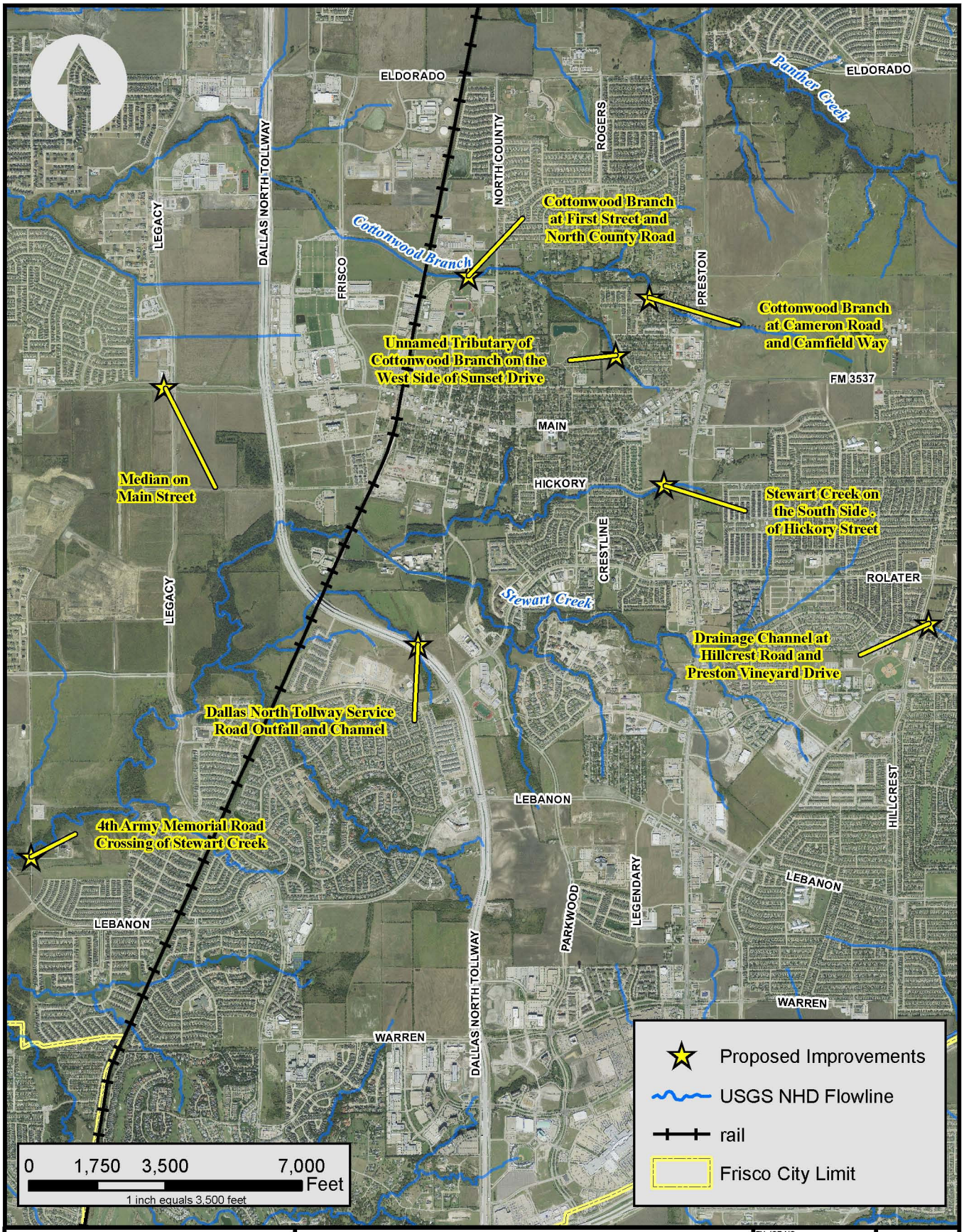
To varying degrees, each of these projects serves to:

- improve public safety,
- minimize property damage,
- protect water quality,
- maintain natural settings, and
- maintain and improve property values within the City

All solutions presented in this report are conceptual and were only used to provide a range of estimated construction costs for comparison purposes. Each location will require a detailed study by a licensed engineer that should consider other alternatives before a final solution can be determined. The detailed study would also include an updated cost estimate. A brief discussion of each problem area follows. Detailed figures for each area are included for reference.

Table 8. Major Maintenance Needs and Capital Projects

Figure	Location	Activity	Estimated Projected Cost
5	Cottonwood Branch (First Street and North County Road)	1. Drainage system maintenance to clear out overgrowth.	$100,000 to $250,000
7	Median on Main Street (from Majestic Gardens Drive to Dallas North Tollway)	2. Installation of pilot channel	$500,000 to $1 million
10	Dallas North Tollway Service Road Outfall and Channel (between Stonebrook Parkway and railroad crossing)	3a. New concrete headwall 3b. Increased channel capacity	< $100,000
12	4th Army Memorial Road Crossing of Stewart Creek	4. Resize culvert crossings and roadway reconstruction	$100,000 to $500,000
15	Stewart Creek (South Side of Hickory Street)	5a. Extend pilot channel 5b. Regrade existing channel 5c. Installation of riprap lining	$2 million to $3 million
17	Drainage Channel (Hillcrest Road and Preston Vineyard Drive)	6a. Regrade existing channel 6b. Installation of riprap lining	$100,000 to $500,000
19	Cottonwood Branch (Cameron Road and Camfield Way)	7. Drainage system maintenance to clear out overgrowth and remove trees at risk of falling.	$100,000 to $250,000
21	Unnamed Tributary of Cottonwood Branch (West Side of Sunset Drive)	8. Drainage system maintenance to clear out overgrowth and remove trees at risk of falling.	$100,000 to $250,000



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FRISCO

Problem Area Location Map

Frisco Storm Water Utility

FN JOB NO	FRC07412
FILE	H:/.mxd
DATE	June 12, 2008
SCALE	1 : 42,000
DESIGNED	LMB
DRAFTED	AJP

Figure 2

Cottonwood Branch at First Street and North County Road

Cottonwood Branch runs along the north side of First Street and consistently develops overgrowth that inhibits the flow of the creek between North County Road and the railroad crossing as shown in Figure 5. Figure 3 shows some of the overgrowth that is occurring. Wildlife in the form of beavers also causes problems by building dams that impede the flow of runoff. The creek was cleaned out and the bottom was widened approximately 10-12 years ago, but the vegetation has since returned. The bridge at North County Road has recently been improved to prevent flooding problems. Figure 4 shows the creek at the bridge crossing looking downstream.

A regularly scheduled maintenance plan is necessary to keep the approximately 1,850 feet of creek clear of debris, while allowing the creek to remain in a natural condition and to provide a habitat for native wildlife. Maintenance would require sufficient equipment, including a bulldozer, track-hoe, and dump truck and should be performed approximately every five years. The approximate cost of this maintenance plan is between $100,000 and $250,000.

Figure 3. Overgrowth in Cottonwood Branch

Figure 4. Cottonwood Branch Looking Downstream from North County Road

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Cottonwood Branch at First Street and North County Road

Frisco Storm Water Utility

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Figure 5

Median on Main Street

A large natural channel is located in the median of Main Street from Dallas North Tollway to west of Legacy Drive as shown in Figure 7. The channel conveys runoff from the east side of Dallas North Tollway west past Legacy Drive and then north where it discharges into Cottonwood Branch. The natural channel within the median is causing a maintenance problem. The City mowers cannot reach the bottom of the channel due to the channel side slopes. As a result, overgrowth occurs that is unsightly and impedes flow and remains wet. Figure 6 shows the median channel with overgrowth at the bottom of the channel.

Potential improvements, such as the installation of a pilot channel within the median, would help to convey flows and reduce the amount of maintenance required. The proposed pilot channel would be approximately 2,750 feet long. The approximate cost of these improvements is between $500,000 and $1 million.

Figure 6. Median Channel on Main Street Looking Towards Dallas North Tollway

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Median on Main Street

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Figure 7

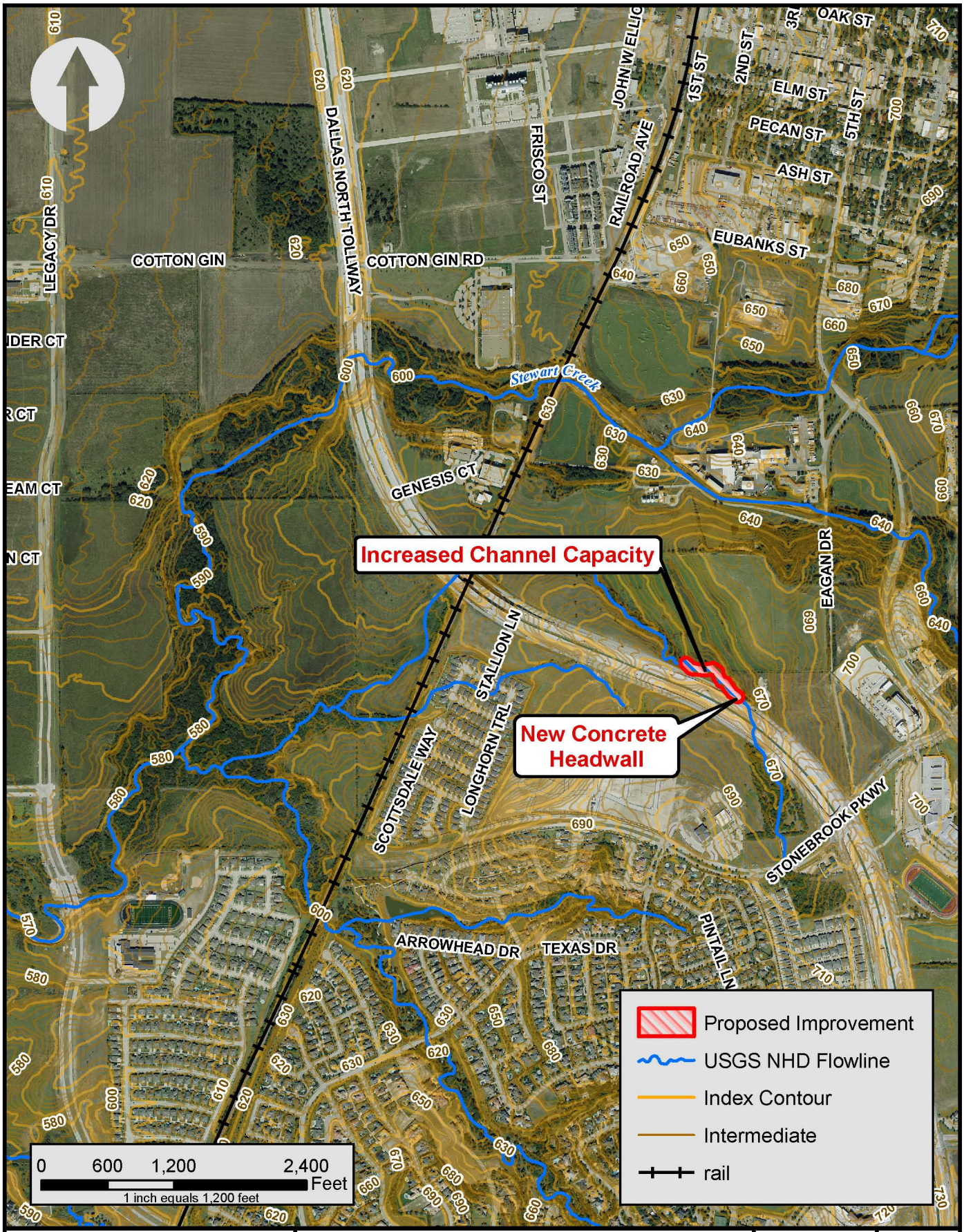
Dallas North Tollway Service Road Outfall and Channel

An outfall is located on the east side of the Dallas North Tollway service road northwest of Stonebrook Parkway, as shown in Figure 10. Large riprap has been placed at the outfall of the 18-inch culvert to act as a headwall. Figure 8 shows the outfall. The creek in this area has started to have erosion problems as shown in Figure 9. City crews have dredged the creek in this area multiple times.

Potential improvements include the cleaning of debris from the outfall and the replacement of rock riprap with a concrete headwall. These improvements would increase channel capacity, stabilize the stream banks near the outfall, and help convey runoff. Followup maintenance would be required to monitor the situation to determine whether additional measures would be necessary to protect the channel from erosion. The approximate cost of these improvements is less than $100,000.

Figure 8. Outfall of the Dallas North Tollway Service Road

Figure 9. Erosion Problems Downstream of Culvert Outfall



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Dallas North Tollway Service Road Outfall and Channel

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Figure 10

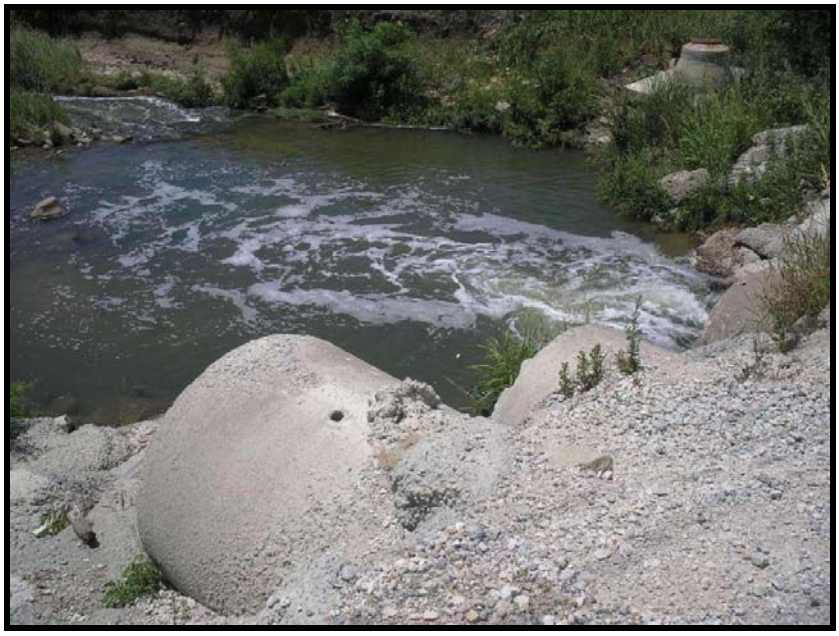
4th Army Memorial Road Crossing of Stewart Creek

The 4th Army Memorial Road is a gravel road that crosses Stewart Creek north of Lebanon Road' as shown in Figure 13. The crossing consists of two 48-inch reinforced concrete pipes (RCPs) at the elevation of the creek bed and two 42-inch RCPs with a flow line several feet above the creek bed. It appears that concrete has been poured down both sides of the road several times to create a type of headwall to prevent erosion. Some of the poured concrete has blocked portions of the culverts. Figure 11 shows the two lower RCPs on the upstream end of the crossing. City staff confirms that the road crossing consistently overtops during heavy rain events and that no current plans for roadway improvements exist. Figure 12 shows the downstream end of the crossing and ponding that is occurring at the outfall.

Potential improvements include replacing the culverts to prevent the roadway from overtopping during a 100-year storm event. Reconstruction of the roadway at the location of the culverts would also be necessary with new headwalls and erosion protection. In the event that plans to widen or pave 4th Army Memorial Road are made, drainage improvements should be scheduled at the same time. A span bridge could also be an option due to the large culverts that will be required for a crossing this size. The approximate cost of these improvements is between $100,000 and $500,000.

Figure 11. Upstream End of Stewart Creek Crossing

Figure 12. Downstream End of Stewart Creek Crossing



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4th Army Memorial Road Crossing of Stewart Creek

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Figure 13

Stewart Creek on the South Side of Hickory Street

A natural channel section of Stewart Creek flows west along the south side of Hickory Street that begins at a subdivision outfall, crosses Preston Road and then becomes a channel with a concrete pilot channel in the bottom at Rock Brook Street as shown in Figure 15. The length of the channel that does not have a concrete pilot channel has started to have erosion problems and unwanted overgrowth. Figure 14 shows the approximate location where the natural channel flows into the pilot channel.

The pilot channel that begins at Rock Brook Street could be extended approximately 1,200 feet to the Preston Road crossing. The remainder of the channel from Preston Road to the start of the channel at the subdivision outfall should be re-graded for bank stabilization purposes and the channel bottom lined with riprap to prevent future erosion. This area is likely jurisdictional waters of the U.S., which would require USACE authorization prior to construction, and it is unlikely that a concrete pilot channel would be authorized. It is recommended instead that the channel side slopes be laid back and multiple grade control structures be utilized to control channel bottom downcutting. The approximate cost of these improvements is between $2 million and $3 million.

Figure 14. Natural Channel Section on the South Side of Hickory Street

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Stewart Creek on South Side of Hickory Street

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Figure 15

Drainage Channel at Hillcrest Road and Preston Vineyard Drive

There is a natural channel that flows east from Hillcrest Road, north of Preston Vineyard Drive as shown in Figure 17. The channel conveys the outfall from a subdivision pipe system into another subdivision pipe system. Residents on the south side of the channel have complained about standing water and erosion of the channel that is entering their backyards. Figure 16 shows the channel from Hillcrest Road.

Potential improvements include re-grading the 450-foot long channel and the side slopes for stability. Riprap and other erosion protection methods should be used prevent future drainage problems. The approximate cost of these improvements is between $100,000 and $500,000.

Figure 16. Hillcrest Road Channel Looking East

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Drainage Channel at Hillcrest Road and Preston Vineyard Drive

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Figure 17

Cottonwood Branch at Cameron Road and Camfield Way

North of Preston Trace Boulevard, Cottonwood Branch flows through a subdivision as shown in Figure 19. The creek has become overgrown with mostly Cottonwood trees which are causing poor conveyance. The trees have become too large for the City to maintain. Figure 18 shows the overgrowth in the creek.

Potential channel improvements would include clearing out parts of the 1,500 foot long channel and possibly some slope stabilization. This could either be performed periodically by private contractors or the City could invest in the equipment and training required to carry out the improvements. The approximate cost of these improvements is between $100,000 and $250,000.

Figure 18. Overgrowth of Trees in Cottonwood Branch

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Cottonwood Branch at Cameron Road and Camfield Way

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Figure 19

Unnamed Tributary of Cottonwood Branch on the West Side of Sunset Drive

The creek on the west side of Sunset Boulevard is a tributary of Cottonwood Branch. The tributary is experiencing similar problems of overgrowth and poor conveyance. Figure 21 shows the location of the creek. As with the Preston Trace Creek, the trees have become too large for the City to maintain. Figure 20 shows the overgrowth in the creek that runs along Sunset Drive.

Channel improvements would require clearing out parts of the 1500 foot long channel. This could either be performed periodically by private contractors or the City could invest in the equipment and training required to carry out the improvements themselves. The approximate cost of these improvements is between $100,000 and $250,000.

Figure 20. Creek Overgrowth on the West Side of Sunset Drive

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Unnamed Tributary of Cottonwood Branch on the West Side of Sunset Drive

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Figure 21

Summary of Storm Water Capital Project Costs

The total cost of improvements for the eight areas described in this document is projected to be between $3,100,000 and $5,850,000. This cost projection is very rough in nature, is based on a cursory assessment of each location, and may be significantly higher or lower than the actual cost to address each issue. More detailed investigation may identify alternative approaches that would reduce the cost or may identify unknown circumstances that may increase the cost of each project. The cost projections are merely intended to provide a rough cost range for the determination of necessary funding for the storm water utility fee.

The storm water utility is not intended to finance any of the City's storm water capital projects at this time. Revenue from the utility will provide a source of funding to alleviate flooding and erosion in areas that regularly experience drainage problems. Currently, the storm water utility does not include additional budget for specific major maintenance needs or capital improvements. However, all or a portion of the $500,000 annual maintenance and planning budget may be utilized for the completion of projects with relatively low capital costs and high public benefits.

2.13 Administration

The storm water utility will be classified as an enterprise fund. This type of fund is used to account for revenues from goods or services provided by the City to the general public on a continuing basis. Enterprise funds are primarily financed through user fees. The City's water and wastewater utility services are examples of existing enterprise funds. The successful operation of these funds requires the support and services of various City departments to carry out regular functions, such as billing and customer service.

For this reason, the storm water utility budget includes an administrative reimbursement cost in the overall cost of service to account for the rendering of these services. Revenue from the storm water utility fund will be used to reimburse the City's general fund for storm-water related administrative activities performed by individuals and departments not directly involved in storm water management. Administrative costs incurred for storm-water related activities are determined as a percentage of the overall expenditures related to the storm water utility.

The administrative reimbursement accounts for miscellaneous costs related to the storm water utility but not specifically itemized in the storm water utility budget. This includes time and effort of senior staff, such as the City Manager, Assistant City Manager, and staff from other departments, such as the Finance Director and the Public Works Director. The year-to-year collective effort of these positions related to the storm water utility is projected to be approximately six percent of total annual operating expenditures, or approximately $66,629 in FY 09.

2.14 Operating Reserve

The City intends to develop an operating reserve for the storm water utility fund to account for contingency expenses. The operating reserve accumulates funds annually for the first five years of the storm water utility until reaching the minimum operating reserve goal. At that time, the

fund balance will be maintained at approximately the projected cost of three months of continued operations.

For the purpose of determining the proper reserve, operation expenses are considered to include annual expenses such as personnel, operation and maintenance costs, fuel, equipment repair, miscellaneous equipment, replacement fund deposits, and administration transfers to the General Fund. One-time costs such as capital project improvements or study cost reimbursements are not included in the determination of the operating reserve. Table 9 represents the four-year development of the operating reserve and depicts the project fund balance each year.

Table 9. Operating Reserve

Description	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Minimum Operating Fund Balance (Days)	60	90	90	90	90
Annual Operating Reserve Contribution	$157,206	$49,516	$177,726	$60,249	$101,910

3. REVENUE ASSESSMENT

3.1. Basis for Fee Calculation

By law, the storm water utility fee rate must be set according to a basis that is directly related to storm water. As a result, fee rates cannot be based solely on certain readily accessible information, such as property values or water usage rates. The City's storm water utility rates are based on the amount of impervious area for each property. Impervious areas do not provide storm water the opportunity for infiltration into the soil and therefore results in increased storm water runoff to the municipal storm water system.

Property improvements that are considered impervious area include buildings, paved parking lots, and driveways. Gravel parking lots and driveways are also considered impervious areas because of the low infiltration rate of storm water through their surface. Other structural features such as walkways, carports, sheds, and other hard non-natural surfaces and are also considered to be impervious area. Sidewalks within the City easement were not included in individual property impervious area calculations.

The potential storm water impacts of impervious area to the storm water system include the following:

- Increased total volume of water required to be managed by the municipal storm water system resulting in flooding
- Increased peak flows from storm events resulting in flooding
- Increased flow velocities resulting in increased erosive actions in creek channels and adjacent properties
- Increased pollutant loading resulting in degraded water quality

Site-specific design and maintenance approaches may minimize one or more of these impacts. As noted in Section 5.2 (Appeals), the City may reduce the storm water utility fee for a property by an equitable amount to account for the beneficial storm water impact of design and/or maintenance approaches by a property owner.

3.2. Billing Method

Fees for storm water utilities are collected in a variety of ways throughout the country, including line-items on water bills, yearly payments with property taxes, or stand-alone bills. The most common method to assess storm water utility charges is part of the water utility bill. The City considered several options for the billing mechanism and has determined that adding the storm water utility fee to the water utility bill is the most efficient method available and is the method that will be used by the City to assess the storm water fee.

The storm water utility fee would appear on the utility bill as a single line item with the monthly dollar amount for the property shown. Eligible improved property without a direct water account would still be assessed a storm water fee. If the property can be directly linked to a property with a City utility account, the fee for the improved property would be included on the

affiliated property's utility account. A common example is a restaurant with a parking lot located on an adjacent lot. A comment would be entered into the utility billing database maintained by the City noting the inclusion of additional property in the storm water utility fee for a property as appropriate. If no existing utility account can be associated with the improved property, a new utility account would be established by the City for the purpose of assessing the storm water fee.

The storm water utility fee is designed to be added to the City's utility bill in a straightforward manner utilizing the City's existing water utility billing database. The City's existing database already provides an entry field for a storm water utility fee. The impervious area for the property would be entered into this field for non-residential accounts.

3.3. Property Exemptions

Exemptions Mandated by State Law

Mandatory exemptions from the storm water utility fee are required by State law (LGC 402, LGC 430) for certain properties. Any property in the City meeting one or more of the criteria for the mandatory exemptions is not assessed a storm water utility fee. If circumstances for the property change so that no mandatory exemption is met, the property will be assessed an appropriate storm water fee from that point forward.

As of the date of the initial implementation of the City's storm water utility, the following mandatory exemptions were in place:

- Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system [LGC 402.053(c)(1)]
- Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the municipality in which the property is located for maintenance [LGC 402.053(c)(2)]
- A subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality in which the property is located [LGC 402.053(c)(3)]
- A State agency or public or private institution of higher education [LGC430.003]

The following entities located within the City limits qualify as exempt properties and are therefore not eligible to be assessed a storm water utility fee:

- Collin County Community College
- North Texas Tollway Authority
- Texas Department of Transportation
- North Texas Municipal Water District

In addition, as of 2006, land use data indicates that approximately 25,000 acres of land within the City remain undeveloped and are therefore subject to mandatory exemption from the storm water utility.

Local Government Code 402, Subchapter C provides the City the option to exempt certain other properties from the storm water utility fee for non-storm water-related reasons. These additional exemption options are as follows:

- Counties [LGC 402.053(b)(2)]
- Municipalities [LGC 402.053(b)(3)]
- School districts [LGC 402.053(b)(4)]
- Property owned by a tax-exempt religious organization [LGC 402.053(d)]

City property, county property, school district property, and property owned by tax-exempt religious organizations have been exempted from paying the storm water utility fee. As such, these properties were not included in the calculations presented in this storm water utility fee report.

3.4. Determination of Property Impact to Storm water system

The impact of developed properties on the City's storm water system was determined by identifying the amount of impervious area on each property. For single-family residential properties, an average amount of impervious area was calculated by tier, and for all other non-residential properties, the actual site-specific impervious area was estimated.

Impervious area was identified for properties using recent aerial photography. Impervious surfaces were digitized and the impervious area for properties was then determined using GIS. 2007 parcel data and 2006 planimetric GIS data provided by the City was utilized to calculate impervious area, identify property boundaries, and to assist in the correlation of the impervious area to the proper water utility account for billing purposes. Developed properties shown in recent aerial photography but not in City planimetric data were digitally evaluated and calculated by Freese and Nichols. Figure 22 is an example of the impervious area determination for a residential property, and Figure 23 is an example for a non-residential property.

Figure 22. Example Impervious Area for Residential Property

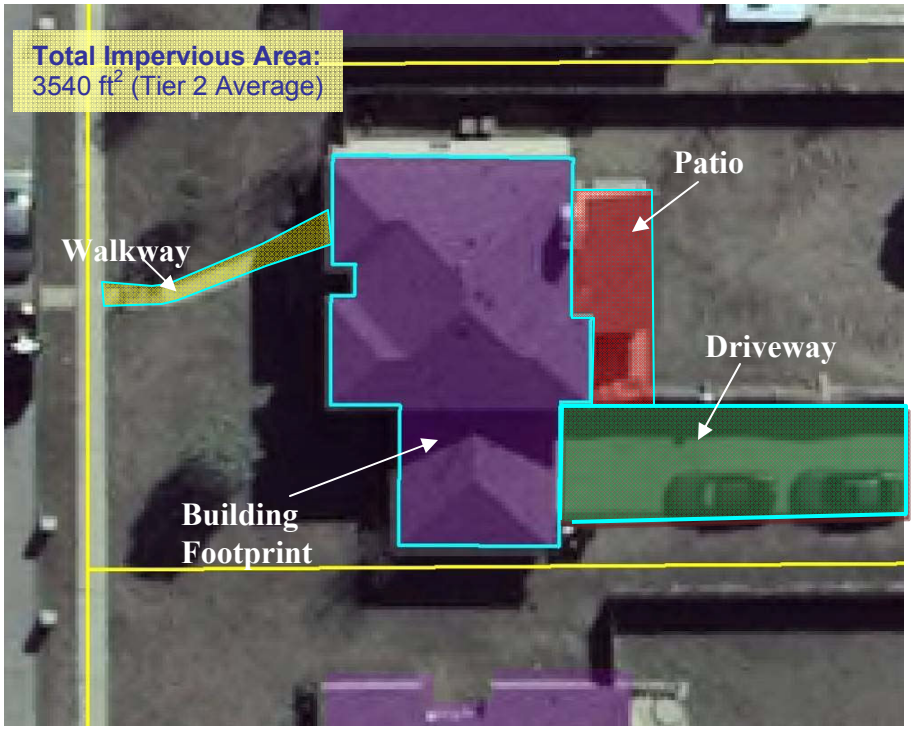
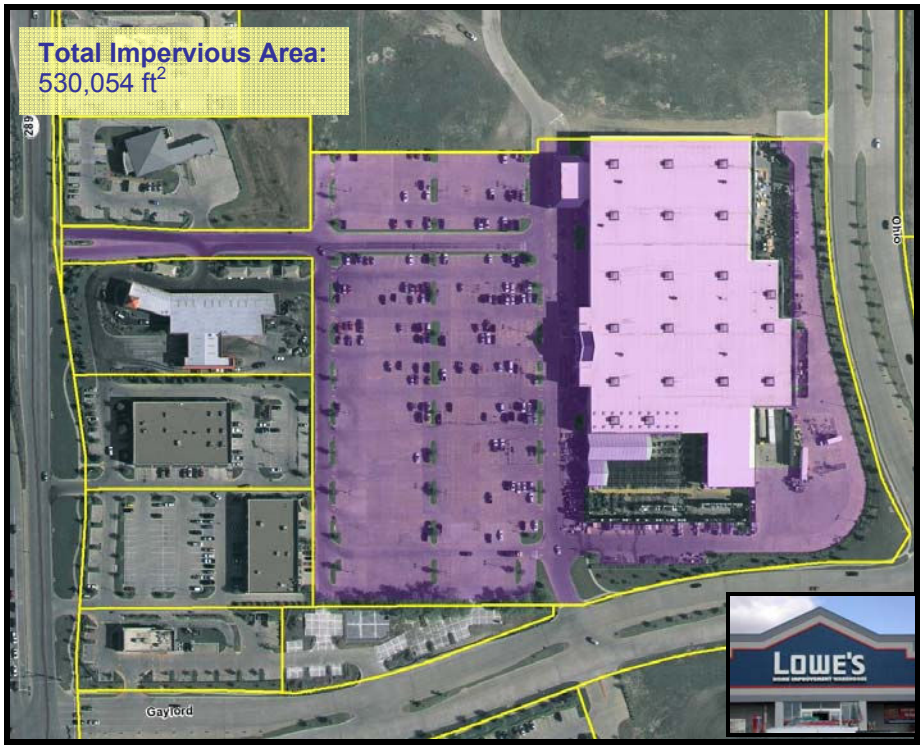


Figure 23. Example Impervious Area for Non-Residential Property



Approximately 90% of developed properties within the City are single-family residential and the remaining 10% are a combination of non-residential properties such as commercial, industrial, multi-family, municipal, school, and church developments. Although non-single family residential properties comprise a much smaller portion of the City's total water utility accounts, these properties account for approximately 40% of the impervious area in the City. As a result, the non-single family residential developments are responsible for about 40% of the projected revenue from the storm water utility fee.

3.5. User Fee Categories

The storm water utility fee system consists of user accounts of several types depending on the type of property and the category of property owner. The storm water utility fee rate structure is based on the type of user account. The three general account categories are as follows:

- Residential
- Non-Residential
- Exempt

Residential Accounts

Residential accounts consist of all developed single family residential properties within the City. Apartment complexes are not included in the residential category but considered to be non-residential for fee determination purposes. At the time of the initial implementation of the storm water utility fee, 36,787 eligible residential properties were present. The residential properties account for approximately 60% of total impervious area measured for the City in this storm water utility fee study.

The City elected to use a tiered structure for assessing fees for eligible residential properties. This method separates residential properties into three tiers. An attempt was made to avoid an inordinate administrative burden in developing the tiers. Readily available, relevant information, namely parcel size, was therefore used to place properties into the proper tiers, and average impervious areas for each tier were determined using available data.

The tiers were divided into the following lot sizes:

1. <5,000 square feet
2. 5,000 to 20,000 square feet
3. >20,000 square feet

Impervious area includes the footprint of the residence, including roof overhangs, and other impervious surfaces such as driveways, walkways, patios, sheds, and carports, when data is available. The City's 2006 planimetric GIS data does not include additional surfaces other than the building footprint. A representative sampling of approximately 25 residential properties was evaluated to assess the amount of additional impervious area not being captured through the City's existing planimetric data. Based on the analysis, ancillary features account for approximately 30% of residential property impervious area. To accommodate this

underrepresentation, a standard factor of 30% was added to the building planimetric data for each residential property. Average residential impervious areas by tier are shown in Table 10. An example of residential fee calculation, estimated for FY 09, is provided in Table 11.

Table 10. Average Residential Impervious Area by Tier

Tier	Average Impervious Area (square feet)	% of Residences in Tier
1	2,081	5.1%
2	3,540	92.1%
3	6,767	2.8%

Table 11. Example Storm Water Utility Calculation for Residential Properties in FY09

Residential	Parcel Area (square feet)	Monthly Storm Water Utility Rate *
Tier 1	<5,000	$1.20
Tier 2	5,000 to <20,000	$2.00
Tier 3	≥ 20,000	$3.85

*Rate is equivalent to $0.057/100 ft^2 impervious area

Non-Residential Accounts

Non-residential accounts include commercial and industrial properties. Other developed properties in the City that do not qualify as single-family residential and do not meet any of the exemption criteria are also considered non-residential. Non-residential accounts include retail, commercial, multi-family properties, and private schools.

Storm water utility fees for eligible non-residential accounts are individually calculated based on the total amount of impervious area for the affiliated properties. A non-residential property is assessed a storm water utility fee at a rate proportional to a residential property. For example, a non-residential property with 35,400 square feet of impervious area is equivalent to 10 times the average Tier 2 residential impervious area and would pay a fee ten times greater than the Tier 2 residential rate. An example of fee calculation, estimated for FY 09, is provided in 12 below.

Table 12. Example Storm Water Utility Calculation for Non-Residential Properties

Non-Residential	Impervious Area (square feet)	Total Monthly Fee
IKEA**	842,195	$ 480.05
Nordstrom	387,686	$ 220.98
LA Fitness	151,431	$ 86.32
Walgreens	61,656	$ 35.14
McDonalds	31,581	$ 18.00

*Non-residential rate is $0.057/100 ft²

**Largest current projected monthly rate payer

At the time of the initial implementation of the storm water utility fee, 2,927 eligible non-residential accounts were present. The non-residential properties account for approximately 40% of total impervious area measured for the City in this storm water utility fee report.

Exempt Accounts

Accounts in the exempt category are not assessed a storm water utility fee. A variety of circumstances can lead to a utility account and/or a property being exempt. A property meeting any of the mandatory exemptions or the City's selected optional exemptions are considered exempt and the associated utility accounts for these properties are categorized in the exempt classification.

Inactive historical utility accounts are also automatically classified as exempt. The City's utility billing database maintains historical accounts that are no longer active, usually as a result of change in property ownership. These accounts are included as exempt accounts. The current property owner's account is assessed the storm water utility fee.

If no utility account exists for an eligible property, a utility account will be created for the express purpose of assessing the storm water utility fee to the property owner. Properties are not eligible to be exempted from the storm water utility fee for the reason of having no water, sewer, or waste disposal service with the City. The City's utility bill serves only as an efficient method to assess the storm water utility fee.

Duplicate utility accounts for a property are considered exempt from the storm water utility fee. Only one storm water utility fee is to be assessed per eligible property.

3.6. Debt Schedule

Storm water utility revenues provide the City with an opportunity to issue debt for larger capital improvement projects. The City has no plans to issue debt based on storm water utility revenues within the next five years. The City intends to review and update the storm water utility five-year plan on an annual basis, and the City's approach towards the issuance of debt for the storm water utility may be modified at that time.

Issuance of certificates of obligation is typically preferred for storm water utility bonds because revenue bonds result in higher interest rates and lower available debt values. Revenue bonds require revenue stream trend data, and no trend data currently exists for the storm water utility program. Additionally, revenue bonds have higher interest costs and have a higher level of required reserves.

4. FEE DETERMINATION

From the five-year cost of service projection detailed in Section 2, the annual revenue necessary to implement and operate the City's storm water management program was determined. The annual costs are summarized in Table 13.

Table 13. Storm Water Management Program Expenses

Cost	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
Labor	$467,100	$490,456	$789,029	$810,435	$842,856
Equipment	$76,557	$202,904	$216,316	$383,214	$393,902
Maintenance and Planning	$526,488	$551,488	$577,738	$605,301	$634,241
Administrative Reimbursement	$64,209	$74,691	$94,985	$107,937	$112,260
Operating Reserve	$157,206	$49,516	$177,726	$60,249	$101,910
Total	**$1,291,560**	**$1,369,055**	**$1,855,794**	**$1,967,136**	**$2,085,169**

Over the course of the developing the storm water utility fee, the City explored various service levels and fee structures. The City has selected a service level which will provide the funds necessary to:

- finance equipment, labor, and materials needed for the operation and maintenance of the storm water system;
- achieve minimum compliance with Phase II MS4 storm water regulations;
- conduct storm water planning; and
- begin small scale capital improvements to remedy known existing structural issues.

A budget of $500,000 dollars per year, escalated annually for inflation, has been allocated for maintenance, planning, and capital improvements. Reimbursements for the storm water utility study and Phase II MS4 storm water quality management plan study are included in the maintenance and planning cost of service. Contributions to the operating reserve fund after the minimum reserve goal is achieved in FY 12 are based on projected inflation cost increases increased revenues from increased population growth and tax base.

Section 3 detailed the approach for allocating the cost of the storm water management program to the users of the system – eligible developed properties with runoff to the City's storm water

system. The annual revenue necessary to account for the annual expenditures for the storm water management program is allocated in a fair and equitable manner through the determination of the impervious area for each property. The annual expenditures shown in Table 13 become the necessary annual revenue for the storm water utility. Table 14 shows the storm water utility fee rate needed to obtain the annual revenue to meet each year's projected storm water management expenditures. The storm water utility budget would be reviewed on an annual basis to determine if adjustments in the rate structure are necessary.

Table 14. Storm Water Utility Fee Rate

Property Type	Parcel Size (square feet)	**2009**	**2010**	**2011**	**2012**	**2013**
Residential	<5,000	$1.20	$1.20	$1.55	$1.55	$1.55
	5000 - 20,000	$2.00	$2.00	$2.60	$2.60	$2.60
	>20,000 or more	$3.85	$3.85	$5.00	$5.00	$5.00
Non-Residential	Per 100 sq ft impervious area	$0.057	$0.057	$0.074	$0.074	$0.074

5. UTILITY IMPLEMENTATION

5.1. Storm Water Utility Ordinance Adoption

The storm water utility is required by State law to be enacted by ordinance through a majority vote of the City Council. The implementation ordinance declares the utility adoption and declares the storm water system of the City to be a public utility. The resolution sets the schedule of storm water charges.

Before enacting the storm water utility, the City is required to publish a public notice in a newspaper of general circulation in the City stating the time and place of a public hearing to consider the proposed ordinance. Public notice for the fee resolution is required to begin assessing storm water utility fees.

The entirety of the proposed fee resolution is to be provided in the public notice. The notice is to be published three times prior to the public hearing, and the first publication is required to occur at least 30 days prior to the date of the hearing.

If the City chooses to eliminate the storm water utility at any time, State law requires waiting a minimum of five years before reestablishing the utility. Fee schedule changes can only be implemented after a public hearing has been conducted and an affirmative Council vote has been recorded.

5.2. Appeals Process

Payers of storm water utility fees have the opportunity to appeal the storm water utility rates set for their properties. Valid reasons for protest include the following:

1. Property qualifying for mandatory exemption is assessed a storm water utility fee.
2. Account for undeveloped property is assessed a storm water utility fee.
3. Property runoff is wholly contained and does not contribute to the City's storm water system.
4. Property is improperly classified in the water account database (i.e., classified as Commercial instead of Residential), resulting in the incorrect rate being applied.
5. Fee is charged on multiple accounts for the same physical property.
6. Fee is based on incorrect impervious area for property.
7. Fee rate is based on impervious area for property unrelated to the water account under appeal.

A recommended appeals process is as follows:

1. Protests must be made in writing by the account holder and submitted to the storm water utility administrative staff (Utility Billing) for review. The specific reason for protest must be provided, along with necessary information such as the account numbers under protest.

2. Storm water utility administrative staff will conduct a review of the protest and is authorized to correct utility fee rates for any of the above reasons, except for claims of incorrect impervious area determinations.
3. Claims of incorrect impervious area determinations will be assessed by the City Engineer.
4. An initial determination will be provided by the City to the protesting party within 30 days of the protest submission.
5. Appeals denied by the storm water utility administrative staff may be appealed to the City Engineer. The City Engineer will conduct a review of the appeal and provide a determination in writing to the protesting party within 30 days of the appeal. Appeal determinations made by the City Engineer may be appealed to City Council.
6. Any adjustment to a storm water system user's fee must be made on a basis that remains nondiscriminatory, equitable, and reasonable for all utility fee payers. Approved fee adjustments will apply for future bills and will include a credit for bills up to six months prior to the appeal. No credit will be applied to bills prior to six months before the appeal was submitted, and no credit will be applied to bills to prior owners of the property.

Appendix A

Draft Storm Water Utility Fee Ordinance

CITY OF FRISCO **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING CHAPTER 94 (UTILITIES), ADDING ARTICLE VIII (MUNICIPAL STORM WATER UTILITY SYSTEM) TO FRISCO'S CODE OF ORDINANCES; ESTABLISHING A MUNICIPAL STORM WATER UTILITY SYSTEM; PROVIDING FOR DRAINAGE SERVICE, BILLING, EXEMPTIONS, FEES AND APPEALS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas ("City") to promote the public health, safety and welfare of the citizens to adopt a Municipal Storm Water Utility System; and

WHEREAS, the City Council further investigated and determined that it would be in the best interest of the citizens to adopt the Municipal Drainage Utility Systems Act as set forth in Chapter 402, Subchapter C, Texas Local Government Code, as amended, ("Act"); and

WHEREAS, the City Council hereby adopts the Act and incorporates it herein in its entirety for all purposes;

WHEREAS, the City Council finds that the drainage of the City is a public utility within the meaning of the Act; and

WHEREAS, the City Council further finds that the City will establish a schedule of drainage fees against all real property in the proposed service area(s) subject to charges under this Ordinance; and

WHEREAS, the City Council further finds that the City will provide drainage for all real property in the proposed service area(s) on payment of drainage charges, except real property exempted under the Act; and

WHEREAS, the City Council further finds that the City will offer drainage service on nondiscriminatory, reasonable and equitable terms; and

WHEREAS, the City Council further finds that it would be in the best interest of its citizens to amend Chapter 94 (Utilities) of Frisco's Code of Ordinances to add Article VIII (Municipal Storm Water Utility System) as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment of Chapter 94 (Utilities) of Frisco's Code of Ordinances; Adoption of Article VIII (Municipal Storm Water Utility System). Chapter 94 (Utilities) of Frisco's Code of Ordinances is hereby amended to adopt Article VIII (Municipal Storm Water Utility System) as set forth below:

"**ARTICLE VIII. MUNICIPAL STORM WATER UTILITY SYSTEM**

Sec. 94-280 Adoption of Act.

The Municipal Drainage Utility Systems Act, Chapter 402, Subchapter C, Texas Local Government Code, as amended, ("Act") is hereby adopted and shall be fully implemented as provided by the Act and by the City Council; and the drainage of the City is hereby found to be a public utility within the meaning of the Act.

Sec. 94-281 Drainage service provided.

The City will provide storm water drainage for all real property within its boundaries upon payment of the determined drainage charges, as defined in the Act, and excluding certain exempted real property, and that the fees, assessments, and charges will be based on nondiscriminatory, reasonable and equitable terms.

Sec. 97-282 Billing for service.

The City is hereby authorized to bill the drainage charges incurred as a result of the adoption of the Act and through the establishment of the municipal storm water utility system. The storm water utility fee shall be separately identified from other public utility billings.

Sec. 97-283 Authority to levy charges.

The City may levy a schedule of drainage charges upon satisfaction of the procedural requirements provided in the Act and this Ordinance.

Sec. 97-284 Exemption Authorized.

The City is authorized to exempt certain entities or persons from all ordinances, resolutions, and rules which the City may adopt from time to time in

connection with the adoption of the Act and the establishment of its municipal storm water utility system.

Sec. 97-285 Fees.

(a) The City will adopt a schedule of drainage fees after the passage of this Ordinance which will be collected through the City's bill for public utilities pursuant to the Act other applicable law.

(b) The fees which will be established will apply to the accounts maintained by the City for utility services.

(c) All billings, credits, exemptions and other procedures relating to these fees shall be subject to the provisions of the Act and other applicable law.

Sec. 97-286 Appeals.

(a) Billing and payment disputes for administrative issues shall be subject to appeals procedures used by the City for other utility billing disputes.

(b) Appeals for the following reasons shall be directed to the Storm Water Utility Director or his designee for evaluation and determination:

(1) exempt property has been assessed a storm water utility fee;

(2) storm water utility fee for an individual property is based on an incorrect determination of the property's contribution to the storm water system, as established in the Municipal Storm Water Utility Fee Schedule;

(3) storm water utility fee for an individual property is assessed on more than one utility account; or

(4) storm water utility fee is assessed to individual property outside the City's jurisdictional area.

(c) The Storm Water Utility Director or his designee shall render a written decision on such appeals within thirty (30) days after receiving a written notice of appeal from the landowner.

(d) Any landowner who disagrees with the decision of the Storm Water Utility Director or his designee may appeal such decision to the City Council. The decision of the City Council shall be final.

Sec. 97-287 Penalties.

(a) Failure to pay the storm water utility fee promptly when due shall subject such user to discontinuance of any utility services provided by the City, in accordance with all applicable laws.

(b) The City shall not require a deposit for drainage charges as a precondition to accepting surface flow from benefited property into the City's

drainage utility system. All real property of the City will be provided with drainage service on payment of drainage charges."

SECTION 3: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, paragraph, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this _____ day of _____, 2008.

_____
Maher Maso, Mayor

ATTESTED TO AND CORRECTLY RECORDED BY:

_____
Ron Patterson, Interim City Secretary

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd & Joplin, P.C.
Rebecca Brewer
City Attorney

Date(s) of Publication: _____, in the *Frisco Enterprise*

Appendix B

Draft Storm Water Utility Fee Resolution

Three-Tier Residential Option

CITY OF FRISCO, TEXAS **ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS, AMENDING CHAPTER 94 (UTILITIES), ARTICLE VIII (MUNICIPAL STORM WATER UTILITY SYSTEM) OF FRISCO'S CODE OF ORDINANCES, ADDING SECTION 94-288 (MUNICIPAL STORM WATER UTILITY SYSTEM FEE SCHEDULE); ESTABLISHING A MUNICIPAL STORM WATER UTILITY SYSTEM FEE, EXEMPTIONS AND CREDITS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") has previously investigated and determined that it would be advantageous and beneficial to the citizens of the City of Frisco, Texas ("City") to promote the public health, safety and welfare of the citizens to adopt a Municipal Storm Water Utility System; and

WHEREAS, the City Council has adopted a Municipal Storm Water Utility System under Ordinance No. _____, as amended; and

WHEREAS, pursuant to Chapter 402, Subchapter C, Texas Local Government Code, as amended, ("Act"), the City Council has investigated and determined that a schedule of drainage fees shall be applied against all real property in the proposed service area(s); and

WHEREAS, the City Council further finds that it would be in the best interest of its citizens to amend Chapter 94 (Utilities), Article VIII (Municipal Storm Water Utility System) of Frisco's Code of Ordinances, adding Section 94-288 (Municipal Storm Water Utility System Fee Schedule) as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment of Chapter 94 (Utilities), Article VIII (Municipal Storm Water Utility System) of Frisco's Code of Ordinances; Adding Section 94-288 (Municipal Storm Water Utility System Fee Schedule). Chapter 94 (Utilities), Article VIII (Municipal Storm

Water Utility System) of Frisco's Code of Ordinances is hereby amended to add Section 94-288 (Municipal Storm Water Utility System Fee Schedule) as set forth below:

"**Sec. 94-288 Municipal Storm Water Utility System Fee Schedule.**

(a) The following fees are hereby established and shall be collected through the City's bill for public utilities pursuant to the Act and other applicable law.

(b) Impervious Area.

(1) Rates shall be charged based on a property's contribution to the public storm water utility system. The contribution shall be based on the impervious area for the property.

(2) The storm water utility fee shall be established according to the following schedule on a monthly basis. Parcel sizes are to be based on the City's parcel data:

Property Type	**Parcel Size (sq ft)**	**Rate**
Single-Family Residential		
Tier 1	<5,000	$1.20
Tier 2	5,000 to <20,000	$2.00
Tier 3	≥20,000	$3.85
All Other Non-Exempt Property		$0.057 per 100 sq ft of impervious area

(3) A minimum charge equivalent to the Tier 1 rate shall be applied to each non-exempt developed property, regardless of classification.

(4) A property shall be charged a storm water utility fee on a maximum of one utility account, regardless of the number of utility accounts established for the property.

(c) Exemptions. The following shall not be assessed a Municipal Storm Water Utility System Fee:

(1) Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the City in which the property is located for maintenance.

(2) A subdivided lot, until a structure has been built on the lot and a Certificate of Occupancy has been issued by the City.

(3) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system.

(4) State property.

(5) Public or private institutions of higher education property.

(6) City property.

(7) Frisco Independent School District property.

(8) Property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Texas Tax Code, as amended.

(d) Fee Credits.

(1) A property owner may petition to the City to reduce the Storm Water Utility Fee for an individual property to account for on-site storm water management controls that reduce the property's impact to the storm water utility system.

(2) The petition shall be evaluated and the fee adjustment decision determined by the City Engineer or the City Engineer's designated representative. The City Engineer's evaluation and determination shall be based on nondiscriminatory, reasonable and equitable terms in accordance with the Act, the City's Municipal Storm Water Utility System Ordinance and this Ordinance.

(e) The rates established above apply to the accounts maintained by the City for public utility services.

(f) All billings, credits, exemptions and other procedures relating to this fee shall be subject to the provisions of the Act."

SECTION 3: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, paragraph, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this _____ day of _____, 2008.

_____
Maher Maso, Mayor

ATTESTED TO AND CORRECTLY RECORDED BY:

_____
Ron Patterson, Interim City Secretary

APPROVED AS TO FORM:

_____
Abernathy, Roeder, Boyd & Joplin, P.C.
Rebecca Brewer
City Attorney

Date(s) of Publication: _____, in *The Frisco Enterprise*

Appendix C

Texas Municipal Drainage Utility Systems Act
Local Government Code Section 402
and
LGC Section 430.003 (Exemption for State Property and Public Institutions)

Texas Municipal Drainage Utility System Act
Local Government Code §402 Subchapter C

§ 402.041. Short title

This subchapter may be cited as the Municipal Drainage Utility Systems Act.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.042. Legislative Finding

(a) The legislature finds that authority is needed to:

(1) permit municipalities to establish a municipal drainage utility system within the established service area;

(2) provide rules for the use, operation, and financing of the system;

(3) protect the public health and safety in municipalities from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from nonpoint source runoff within the boundaries of the established service area;

(4) delegate to municipalities the power to declare, after a public hearing, a drainage system created under this subchapter to be a public utility;

(5) prescribe bases on which a municipal drainage utility system may be funded and fees in support of the system may be assessed, levied, and collected;

(6) provide exemptions of certain persons from this subchapter; and

(7) prescribe other rules related to the subject of municipal drainage.

(b) This subchapter is remedial.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.043. Application of Subchapter to Municipalities

This subchapter applies to any municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(c), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.044. Definitions

In this subchapter:

(1)(A) "Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

(B) "Benefitted property," in a municipality with a population of more than 1.18 million which is operating a drainage utility system under this chapter, means a lot or tract, but does not include land appraised for agricultural use, to which drainage service is made available under this subchapter and which discharges into a creek, river, slough, culvert, or other channel that is part of the municipality's drainage utility system. Sections 402.053(c)(2) and (c)(3) do not apply to a municipality described in this subdivision.

(2) "Cost of service" as applied to a drainage system service to any benefitted property means:

(A) the prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;

(B) the prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;

(C) the prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;

(D) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;

(E) the prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the benefitted property;

(F) the prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the municipality; and

(G) the administrative costs of a drainage utility system.

(3) "Drainage" means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(4) "Drainage charge" means:

(A) the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any benefitted property; and

(B) if specifically provided by the governing body of the municipality by ordinance, an amount made in contribution to funding of future drainage system construction by the municipality.

(5) "Drainage system" means the drainage owned or controlled in whole or in part by the municipality and dedicated to the service of benefitted property, including provisions for additions to the system.

(6) "Facilities" means the property, either real, personal, or mixed, that is used in providing drainage and included in the system.

(7) "Public utility" means a drainage service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefitted property within the service area and that is based on:

(A) an established schedule of charges;

(B) the use of the police power to implement the service; and

(C) nondiscriminatory, reasonable, and equitable terms as declared under this subchapter.

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow

into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor, except as provided by Section 402.0451, may a service area of one municipality extend into the boundaries of another municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

(A) a municipality of more than 400,000 population located in one or more counties of less than 600,000 population according to the most recent federal census;

(B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Natural Resource Conservation Commission; or

(C) as provided by Section 402.0451.

(9) "User" means the person or entity who owns or occupies a benefitted property.

(10) "Improved lot or tract" means a lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

(11) "Wholly sufficient and privately owned drainage system" means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal drainage utility system.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, § 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, § 1, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 35, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, § 11.258, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 633, § 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 62, § 13.22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, § 108, eff. Sept. 1, 2001.

§ 402.045. Adoption of System; Rules

(a) Subject to the requirements in Subsections (b) and (c), the governing body of the municipality, by a majority vote of its entire membership, may adopt this subchapter by an ordinance that declares the adoption and that declares the drainage of the municipality to be a public utility.

(b) Before adopting the ordinance, the governing body must find that:

(1) the municipality will establish a schedule of drainage charges against all real property in the proposed service area subject to charges under this subchapter;

(2) the municipality will provide drainage for all real property in the proposed service area on payment of drainage charges, except real property exempted under this subchapter; and

(3) the municipality will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

(c) Before adopting the ordinance, the governing body must publish a notice in a newspaper of general circulation in the municipality stating the time and place of a public hearing to consider the proposed ordinance. The proposed ordinance must be published in full in the notice. The governing body shall publish the notice three times before the date of the hearing. The first publication must occur on or before the 30th day before the date of the hearing.

(d) After passage of the ordinance adopting this subchapter, the municipality may levy a schedule of drainage charges. The municipality must hold a public hearing on the charges before levying the charges. The municipality must give notice of the hearing in the manner provided by Subsection (c). The proposed schedule of drainage charges, as originally adopted or as revised, must be published in the notice.

(e) The municipality by ordinance may adopt and enforce rules as it considers appropriate to operate the drainage utility system. Provided, however, that the prohibitions contained in Section 212.003(a) of the Local Government Code relating to quasi-zoning and other land use regulations in the extraterritorial jurisdiction of a municipality shall apply to any rule or ordinance adopted or enacted by the municipality under this Act, except that rates may be established using impervious cover measurements relating to land use and building size.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(e), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.0451. Extension of Service Area by Certain Municipalities

(a) A municipality with a population of more than 900,000 located in one or more counties with a population of less than 1.5 million as of the 1990 federal census may extend its service area:

(1) into the boundaries of another municipality if:

(A) before the extension water from the municipality to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and

(B) the extension is provided for by an interlocal agreement between the municipalities; or

(2) beyond its municipal boundaries into an unincorporated area of its extraterritorial jurisdiction if:

(A) before the extension water from the area to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and

(B) the extension is provided for by an interlocal agreement between the municipality extending its service area and the county containing the area to which the service area is to be extended.

(b) An interlocal agreement under Subsection (a) may:

(1) contain provisions necessary for the operation of a drainage system within the area to which the service area is extended; and

(2) provide for charges for treatment of drainage water and methods of assessment of the charges to an owner of a lot or tract of benefitted property in the area to which the service area is extended.

(c) Charges and methods of assessment agreed to under Subsection (b)(2) must comply with Section 402.047.

Added by Acts 1993, 73rd Leg., ch. 773, § 2, eff. June 18, 1993.

§ 402.046. Incorporation of Existing Facilities

The municipality may incorporate existing drainage facilities, materials, and supplies into the drainage utility system.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.047. Drainage Charges

(a) The governing body of the municipality may charge a lot or tract of benefitted property for drainage service on any basis other than the value of the property, but the basis must be directly related to drainage and the terms of the levy, and any classification of the benefitted properties in the municipality must be nondiscriminatory, equitable, and reasonable.

(b) In setting the schedule of charges for drainage service, the governing body must base its calculations on an inventory of the lots and tracts within the service area. The governing body may use approved tax plats and assessment rolls for that purpose. The governing body may also consider the land use made of the benefitted property. The governing body may consider the size, in area, the number of water meters, and topography of a parcel of benefitted property, in assessing the drainage charge to the property.

(c) The governing body may fix rates for drainage charges in advance and may change, adjust, and readjust the rates and charges for drainage service from time to time. The rates must be equitable for similar services in all areas of the service area.

(d) Unless a person's lot or tract is exempted under this subchapter, the person may not use the drainage system for the lot or tract unless the person pays the full, established, drainage charge.

(e) Users residing within the established service area, but outside the municipality's boundaries, may appeal rates established for drainage charges to the Texas Natural Resource Conservation Commission as authorized by Section 13.043(b) of the Water Code.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991; Acts 1995, 74th Leg., ch. 76, § 11.259, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 633, § 2, eff. Sept. 1, 1997.

§ 402.048. Billings; Deposit Not Required

(a) The municipality may bill drainage charges, identified separately, with the municipality's other public utility billings. Any delinquent billings may be collected on the benefitted property under the procedure prescribed by this subchapter.

(b) The municipality may not require a deposit for drainage service as a precondition to accepting surface flow in the drainage utility system.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.049. Segregation of Income

The income of a drainage utility system must be segregated and completely identifiable in municipal accounts. If drainage charges are solely for the cost of service, the municipality may transfer the charges in whole or in part to the municipal General Fund, except for any part collected outside municipal boundaries and except for any part pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve for future construction, repair, or maintenance of the drainage system. If the governing body has levied, in the drainage charge, an amount in contribution to the funding of future system improvements, including replacement, new construction, or extension, that amount is not transferable to the General Fund.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(f), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.050. Delinquent Charges

(a) Any charge due hereunder which is not paid when due may be recovered in an action at law by the municipality. In addition to any other remedies or penalties provided at law or in this subchapter, failure of a user of the municipal utilities within the service area to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the municipality, and municipalities are hereby empowered to enforce this provision against delinquent users. The employees of the utility established in accordance with this subchapter shall have access, at all reasonable times, to any benefitted properties served by the drainage utility for inspection or repair or for the enforcement of the provisions of this subchapter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.051. Drainage Revenue Bonds

By majority vote of the governing body, the municipality may issue drainage revenue bonds. The municipality may use Chapter 1201, Government Code. In addition, the municipality may pledge income received by contracts for the provision of drainage to other governments or governmental subdivisions located inside or outside the service area.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, § 8.350, eff. Sept. 1, 2001.

§ 402.052. Discontinuation of Drainage System

(a) If, after at least five years of substantially continuous operation of a municipal drainage system, the governing body of the municipality determines that the system should be discontinued, that the powers under this subchapter should be revoked, and that provision for municipal drainage should be made by other revenues, the governing body may adopt an ordinance to that effect after providing notice and a public hearing as provided by Section 402.045.

(b) If the municipality discontinues a system under Subsection (a), it may not adopt a system under this subchapter for at least five years after the discontinuation.

(c) A discontinuation does not affect a written obligation incurred by the municipality for funding or for the purchase of equipment, materials, or labor for the drainage system that is not then fully paid or otherwise discharged.

(d) A claim for damages based on an alleged failure of the drainage system that is filed with the municipality before the adoption of the ordinance discontinuing the drainage system is not abated by the discontinuation.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(g), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.053. Exemptions

(a) A governmental entity or person described by Subsection (b) and a lot or tract in which the governmental entity or person holds a freehold interest may be exempt from this subchapter and all ordinances, resolutions, and rules adopted under this subchapter.

(b) The following may be exempt:

(1) this State;

(2) a county;

(3) a municipality;

(4) a school district.

(c) The following shall be exempt from the provisions of any rules or ordinances adopted by a municipality pursuant to this Act:

(1) property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;

(2) property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the municipality in which the property is located for maintenance; and

(3) a subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality in which the property is located.

(d) A municipality may exempt property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Tax Code, from drainage charges under this subchapter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, § 2, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, § 3, eff. June 18, 1993.

§ 402.054. Effect of Subchapter

This subchapter does not:

(1) enhance or diminish the authority of a home-rule municipality to establish a drainage utility under Article XI, Section 5, of the Texas Constitution;

(2) preclude a municipality from utilizing revenues, other than drainage utility revenues, for drainage purposes; or

(3) preclude a municipality from imposing impact fees or other charges for drainage authorized by law.

Added by Acts 1989, 71st Leg., ch. 1230, § 1(h), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Miscellaneous Provisions Relating to Municipal and County Water
Local Government Code § 430.003

§ 430.003. Exemptions of Certain Property from Infrastructure Fees

No county, municipality, or utility district may collect from a State agency or a public or private institution of higher education any fee charged for the development or maintenance of programs of facilities for the control of excess water or storm water.

Added by Acts 2003, 78th Leg., ch. 1310, § 83, eff. June 20, 2003.

Amended by Acts 2007, 80th Leg., R.S., Ch. 1430, § 2.33, eff. September 1, 2007.